Introduction

1. On 30 August 2012 the Secretary of State for Communities and Local Government called-in this application, submitted on 11 June 2011, for planning permission for an energy from waste (“EfW”) and incinerator bottom ash (“IBA”) recycling facility, known as the Willows Power and Recycling Centre (“the Willows”), with a capacity to treat a maximum of 275ktpa of residual non hazardous solid waste and to produce some 24.2MW of electricity of which approximately 21.1MW would be exported to the local grid (“the proposal” or “proposed development”).

2. The waste to be treated at the Willows would be residual waste\(^1\), comprising both municipal solid waste (“MSW”) and commercial and industrial waste (“C&I”). The MSW would be supplied under a PFI contract dated 7 February 2012 entered into between Norfolk County Council (“NCC”) and Willows Power and Recycling Limited, a joint venture between Cory Environmental Management Limited and Wheelabrator Technologies Inc. (together “CW” or “the Applicant”), (“the Contract”). A very considerable part of the Contract formed part of the core documents to this inquiry.\(^2\) Some

\(^1\) KLWIN closing §50 states that JB accepted in XX that the plant would burn waste material that could and should be recycled: this is quite wrong: all JB agreed was that black bag waste could contain some waste which could be recycled but that regard had to given to what was economically reasonable and economic to recycle. He did not agree that it would burn waste which should be recycled.

\(^2\) CD.J1.
parts of this document were redacted and this caused much grumbling during the course of the inquiry. However, this is a perfectly normal approach where commercially sensitive information is concerned\(^3\) and, in our submission, the inquiry had more than enough information to determine the material issues before it.

3. The Secretary of State for DEFRA concluded on 18 January 2012 that the proposal met the Government’s criteria for the award of PFI credits and, as a result, has confirmed the award of £91m waste infrastructure credits. John Hollister (“JH”) accepted in XX that the Willows was not only a pivotal part of the Contract but a key part of the overall waste management strategy of NCC. This was a matter he put particular weight on in his support of the Shrewsbury plant which was also brought forward under a PFI contract.\(^4\)

4. There has been a legal challenge by a local objector (and member of King’s Lynn Without Incineration (“KLWIN’’)) to the Contract as well as a separate legal challenge by King’s Lynn and West Norfolk Borough Council (“the BC”) to the award of the PFI credits. The Courts dismissed both challenges.

5. Approximately twelve months after the application was made, during which time the application was subject to a thorough and assiduous examination by NCC and numerous statutory consultees and following a recommendation for approval by planning officers set out in an extremely detailed report to the Planning Regulatory Committee, NCC on 29 June 2012 resolved to grant planning permission for the Willows subject to conditions (and the withdrawal of the Secretary of State’s Article 25 direction).

6. Unsurprisingly, therefore, NCC and CW are in broad agreement on the issues identified by the Secretary of State and the Inspector. Both parties contend that planning permission should be granted. The extent of these parties’ agreement on the issues is set out in a statement of common ground between NCC and CW.\(^5\) The support of the NCC, as the waste planning authority (“WPA”), should weigh heavily in favour of the development.

\(^3\) See, for example, Shrewsbury (where John Hollister was a witness for the Appellant Company) (CD.A4, §127-129).
\(^4\) C87, §3.4 – a consideration which is “most important.”
\(^5\) CD.X2.
7. It is noteworthy that earlier questions raised by the BC about the ability of NCC fairly to
determine the application have not been pursued. NCC has throughout been careful to
ensure that its role as WPA was kept separate from its role as WDA and that the
procurement of the Contract was dealt with independently of the planning process.

Main issues

8. The Secretary of State identified five principal matters on which he wishes to be informed:
the extent to which the proposal complies with the development plan, PPS10 and the
National Planning Policy Framework ("NPPF"), how it relates to the emerging Norfolk
Minerals and Waste Specific Site Allocations DPD ("WSSA") and any other matters the
Inspector considers relevant.

9. At the pre-inquiry meeting, Ken Smith, the Inspector originally appointed to hold this
inquiry and report to the Secretary of State, identified a number of further matters which
had been raised in objections to the proposal: flood risk and water quality, health (but only
within the parameters set down by PPS10)\(^6\), perceived harm, ecology, landscape and visual
effects, alternatives and the carbon footprint from transport of waste to alternative sites, the
proximity principle, prematurity, waste hierarchy and the disincentive to recycle, air
quality (as it relates to health, ecology and transport)\(^7\), the adequacy of the environmental
assessment (as raised by Joy Franklin with regards to the Police Investigation Centre
("PIC"))\(^8\), conditions and section 106 obligations. This list was endorsed by the current
Inspector and no further main issues have been identified or added during the course of the
inquiry.

The application site

10. As we said in opening, the application site and its surroundings are unusually well suited to
the development proposed. Indeed, in our experience, it is rare to find a site so well suited
to an EfW proposal. The site is located in an industrial estate lying within the settlement
boundary of King’s Lynn and in an area that is identified in the development plan as
suitable for development. The area is already characterised by major industrial and
infrastructure uses operating from large-scale buildings and plant and which include a
series of chimneys and stacks. Further permissions for similar uses and buildings have
recently been granted. The site enjoys unrivalled opportunities to deliver CHP – a subject

\(^6\) CD.U5, §26-31. The Inspector reiterated this point orally.
\(^7\) As clarified in the PIM notes, §10.
\(^8\) PIM notes, §10.
to which we return below. Indeed, in this regard both Roger Miles (“RM”) and Simon Aumonier (“SA”) made clear that the application site could not be bettered in Norfolk. RM stated that in his (extensive) experience, it was only Severnside that had a similar level of CHP potential. The application site is well served by the existing local and strategic road network, is generally remote from potentially sensitive receptors (including dwellings) and important cultural heritage assets and is of no ecological importance itself. Whilst some concerns have been expressed (principally by the Norfolk Wildlife Trust) about the proposal’s impact on the Roydon Common part of the Roydon Common and Dersingham Bog Special Area of Conservation (“SAC”), there is no objection from the Environment Agency (“EA”), Natural England (“NE”), NCC (having taken advice from specialist consultants) or the BC. All are satisfied that either there would be no likely significant effect on the SAC or that there would be no adverse impact on its integrity.
National waste, energy and climate change policies

11. Although there is no reference to national energy and climate change policies in the Secretary of State’s call in letter, these policies are of key relevance to the determination of this application. The Willows will not simply treat waste but will also generate energy, a significant proportion of which will be renewable. Consequently, national waste, energy and climate change policies are all highly relevant.

12. The dual role played by facilities of the type proposed is acknowledged in national policy. The Overarching National Policy Statement for Energy (EN-1) states that the principal purpose of the combustion of waste is to reduce waste going to landfill and to recover energy from that waste as electricity or heat. The Government Review of Waste Policy in England 2007 (“GRWP”) makes plain that waste management policy falls within the wider energy policy context. The Waste Strategy for England 2007 (“WS2007”) emphasises that recovering energy from waste which cannot be sensibly reused or recycled is an essential component of a well-balanced energy policy and underlines the importance of maximising energy recovery from the portion of waste which cannot be recycled. Furthermore, the Secretary of State and Inspectors have repeatedly confirmed the relevance of all these strands of policy and have confirmed that, in addition to an EfW plant’s role as a waste management facility, weight should also be attached to its role both as a generator of energy, thereby meeting the Government’s policy for a secure, affordable and diverse energy supply, and as a generator of renewable energy, thereby contributing to combatting climate change.

Waste

13. The Government recognises that to achieve its key waste planning objectives set out in PPS10 a step change in the way waste is handled is required which necessitates significant new investment in waste management facilities. Those key waste planning objectives include: to meet and exceed the diversion targets in the Landfill Directive (the key driver of national waste policy) for biodegradable municipal waste in 2010, 2013 and 2020 and to increase diversion from landfill of non-municipal waste and secure better integration of

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9 CD.U3, §3.4.3 (see also EN-3 (CD.U4, §2.5.2)).
10 CD.U23, §33 (as does WS2007 (U24, p.76, §18)).
11 CD.U24, p.76.
12 CD.U5, §1.
treatment for municipal and non-municipal waste; to secure the necessary investment in infrastructure needed to divert waste from landfill and for the management of waste; and to get the most environmental benefit from that investment, through increased recycling of resources and recovery of energy from residual waste using a mix of technologies. The Government will ensure that the market demands these new waste management facilities by, inter alia, increasing Landfill Tax.

14. The GRWP announced the Government’s objective for a zero waste economy in which material resources are re-used, recycled or recovered wherever possible, and only disposed of as the option of very last resort. Zero waste does not mean that no waste is produced. Rather it means that only the minimal amount of waste possible is sent to landfill such that it is truly a last resort. Government policy does not distinguish between MSW and C&I in this regard: it is a key objective of WS2007 to secure the better integration of treatment of both. And so landfill tax does not discriminate between the two and neither does the GRWP when it states that sending any waste to landfill which could have been recovered is ‘clearly wrong.’ The GRWP states that there is ‘clearly a gap’ between the potential for energy recovery from waste and delivery of the required capacity which results in valuable resources going to landfill.

15. At present Norfolk consigns prodigious quantities of waste to landfill. In 2011/2012 some 433kt of waste was landfilled in Norfolk. JH accepted in XX it was a significant proportion of the arisings in the County. Of this 206kt or 53 per cent of the County’s MSW was sent to landfill (meaning 227kt of C&I was landfilled). This compares to a national landfill rate for MSW of 37.4 per cent. These quantities are anything but small and

13 CD.U24, p.28, §23.
14 From 1 April 2013 the Landfill Tax is £72 per tonne. It will rise by a further £8 per tonne from 1 April next year. JB explained that it was not clear if increases would continue beyond April 2014 but the waste industry and JB expect at the every least increases in line with inflation.
15 The GRWP forms alongside WS2007, PPS10, waste local plans and other relevant development plan documents the Waste Management Plan for England as required by Article 28 of the rWFD. It is the Government’s intention to review all these national documents and release a consolidated National Waste Management Plan (originally expected in 2012).
16 CD.U24, p.11.
17 CD.U23, §240.
18 CD.U23, §219.
19 CD.G18, p.23.
21 CD.U27, p.3.
22 CD.U24, p.9, see aim(iii) and its reference to a “small amount”. 
represent a manifest failure to treat landfill as the ‘home of last resort.’ This is, in the words of the GRWP, “clearly wrong” and there is an urgent need to treat that waste higher up the waste hierarchy. Remarkably, there is currently virtually no residual waste recovery capacity in Norfolk so that the County is entirely dependent on landfilling for the management of its residual waste. Bearing in mind the lengthy lead times to establish such facilities, there is an obvious and urgent need for the recovery capacity that will be provided by the Willows. If this application is rejected, the landfilling of very large quantities of waste will in all probability continue, entirely contrary to the waste hierarchy, or possibly be transported for treatment out of County which would plainly be less sustainable than treating such waste at the Willows. JH accepted that the consequences of delaying the provision of recovery capacity in the County would be to prolong the WDA’s dependence on landfill. Such a result would be wholly contrary to national waste policy and in particular the waste hierarchy.

16. JH floated the idea of exporting waste to Europe – as an interim measure only – in the event that planning permission is refused. The idea came very late in the day (it was not referred to in JH’s written evidence) and was based on paragraphs 53 and 55 of DEFRA’s Guide to the Debate.

17. However, it was clear that the issue had not properly been investigated. Only SRF and RDF may be exported for recovery and in XX JH said he was not aware of any facilities in Norfolk which could provide the required treatment prior to export. Dr.C subsequently stated that the FCC site at Costessey now has planning permission for RDF as well as for MRF. However, this planning permission was not submitted by Dr.C; and his description of it having a combined capacity of 219ktpa was unclear. Further, JH was candid that no investigation of either shipping costs or gate fees had been carried out. Whilst he thought there was capacity in Amsterdam, this was only from looking at the Internet. There was no proper analysis of whether such capacity existed. Moreover, the Guide to the Debate is hardly encouraging of the export of waste. It provides: “whilst such exports are permissible, the energy recovered from the waste does not contribute to UK renewable

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23 CD.U24, p.46, §34.
24 K14, §2.4.3.
25 CD.U32.
26 We are instructed that the facility is permitted mainly as a waste transfer station/materials recycling centre with an overall throughput limit of 219ktpa. RDF production is limited to the residual C&I waste output from the MRF. It has no permission to produce 219 ktpa of RDF, whether derived from C&I or MSW.
energy targets and is effectively a lost resource to the UK.” In the circumstances, we submit that no weight should be given to the wholly unsubstantiated and uncosted potential export of waste.

Classification of the Willows as a recovery facility

18. The rWFD sets out a calculation – the R1 test – by which it can be determined whether or not a municipal waste incinerator should be classified as a recovery facility. The distinction between a recovery and disposal operation depends on the efficiency of the plant in converting the waste into electrical and/ or heat energy.

19. RPS carried out a R1 calculation that was submitted with the application and which demonstrated that it would exceed the 0.65 required threshold in electricity only mode. Both NCC and the BC accept that the Willows is likely to pass the R1 test and should be determined on the basis that it is a recovery facility.

20. However, in both the Eunomia Scoping Report and KLWIN’s statement of case it is asserted that the Willows, operating in electricity only mode, would not meet the R1 threshold. The EA decision document confirms that, although no application had been made for certification as a recovery plant, the Willows is designed to operate at the top end of the efficiency range. Nonetheless, in light of KLWIN’s position, SA undertook a further R1 calculation. He did it on a conservative basis, again in electricity only mode, and used the same design parameters as Eunomia in its scoping report. SA demonstrated the R1 test was still met adopting Euonmia’s design parameters. Moreover, operating in CHP mode the efficiency of the facility only increases. KLWIN did not suggest for a moment that the Willows would not meet the R1 threshold in CHP mode. As a result of SA’s calculation, Dr. Hogg (“Dr.H”) conceded that the Eunomia Scoping Report had been in error and he put forward no evidence to support the assertion that the Willows in electricity mode would not meet the R1 threshold. The point was, therefore, effectively abandoned by KLWIN.

27 CD.L6, Annex II.  
29 JH in XX.  
30 CD.R8, §2.2.  
31 §2.2.1.  
32 CD.E2, p.20-22.  
33 It appears from KLWIN’s statement of case that the concern in relation to the R1 threshold relates to the Willows in electricity only mode (§2.2.1).
21. Dr. H’s objection at the inquiry shifted to the assertion that, since no certification from the EA had been obtained of the project’s recovery status, the Willows must be treated as a disposal facility.

22. Dr.H’s argument was based on the European Commission Guidelines on the Interpretation of the R1 Energy Efficiency Formula and the fact that guidelines state that for new plants the R1 status shall initially be granted on the basis of the planning or construction specifications. However, it can only be a provisional grant based on the plant design because the final certificate must always be based on a year’s worth of operational data. It follows that all that can ever be granted prior to the completion of a year of operation is a provisional certificate. A decision-maker therefore will always have to consider the likelihood of a proposed plant meeting the R1 threshold whether or not there is provisional certificate. That reflects the long held approach to determining these types of applications where Inspectors and the Secretary of State have relied on SA’s evidence and other experts like him.

23. Indeed, there has to date only been a single appeal where the applicant had at that time a provisional certificate: Shrewsbury. However, it made no difference to the analysis. The Inspector understood it was only a provisional certificate, not a guarantee that the facility will operate at a high enough level of efficiency to pass the R1 test, and, therefore, that he had to apply his mind to the likelihood of the facility meeting the R1 criterion. In other words he continued to apply the traditional approach even where there was a provisional certificate. We note there that the presence of a provisional certificate did not stop the objectors from challenging the plant’s efficiency in any event.

24. We suggest Dr.H undermined his reliability as a witness to this inquiry when he urged the Inspector and the SoS to treat the Willows as a disposal plant even were they to consider that the Willows would be likely to pass the R1 test. In so doing, Dr.H only served to emphasise the fact that this was an objection wholly of form and not substance. Dr.H no doubt felt the need to push the point untenably far because he appreciated that two of his

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34 CD.R1, p.18.
35 For example, SA’s R1 calculations have been accepted at: Cornwall, Severnside, and Shrewsbury.
36 CD.A4, §104.
four of his objections to the Willows would fall completely if the SoS concludes that the Willows should be treated as a recovery facility.\textsuperscript{37} The evidence before the inquiry is clear that it should be.

25. DEFRA’s Guide to the Debate was only published at the end of February 2013. It says that it is important for operators to strive towards demonstrating that the proposal would be classified as recovery under the rWFD and encourages early applications to the EA.\textsuperscript{38} Because of this new advice, which for the first time recommends such early applications for R1 certification, CW considered it appropriate to submit such an application, as DS explained. EA has dealt with the application expeditiously and has granted a provisional R1 certificate for the Willows\textsuperscript{39}. This completely removes any objection KLWIN had on this matter.\textsuperscript{40}

\textit{Government support for EfW}

26. Although the Government has made it absolutely clear that it is strictly technology neutral\textsuperscript{41} and it is for the market to bring forward development,\textsuperscript{42} both WS2007\textsuperscript{43} and the GRWP provide explicit policy support for the provision of EfW facilities in the form of thermal treatment and recognise the environmental and economic benefits of recovering energy from residual waste.\textsuperscript{44} This encouragement is more than mere words: as RM explained, 18 out of the 27 PFI projects around the country that incorporate residual waste treatment rely either solely or jointly on the use of EfW.\textsuperscript{45} It is clear that there is considerable scope for additional EfW capacity to be provided through increased diversion of waste from landfill. Not only would this assist in weaning the country and Norfolk from the wholly unsustainable practice of landfilling but it would contribute to meeting national

\textsuperscript{37} Both his first and second objections are predicated on the classification of the Willows as a disposal facility (W-500, §44).
\textsuperscript{38} CD.U32, §52.
\textsuperscript{39} C77
\textsuperscript{40} The delay in submitting the certificate to the inquiry (KLWIN closing §46) was because CW checked with EA whether the document should be signed; as soon as EA confirmed this was not necessary, the certificate was submitted.
\textsuperscript{41} CD.U24, p.79, §27 subject to the encouragement of anaerobic digestion for food waste; CD.U23, §22, CD.U3, §3.1.2; and CD.U4, §2.5.11.
\textsuperscript{42} CD.U3, §2.2.4, 3.1.2
\textsuperscript{43} CD.U24, p.15: EfW is expected to account for 25 per cent. of MSW by 2020 compared to 10 per cent today; and p.76, §17: EfW is ‘an essential component’ of a well-balanced energy policy.
\textsuperscript{44} See CD.U23, §207: “potential to grow”, §212: the Government’s overarching goal is, \textit{inter alia}, to ensure that EfW “is understood and valued by households, businesses and the public sector in the same way as re-use and recycling”; §214: “energy recovery is an excellent use of many wastes that cannot be recycled and could otherwise go to landfill”; §234: there are significant opportunities in relation to C&I; and §239: the Government will “support the role of energy recovery from waste within the waste hierarchy and aim to improve understanding of this role.”
\textsuperscript{45} C80, §4.5.33.
energy policies and renewable energy targets and help address climate change which the Government regards as the nation’s greatest challenge. The scale of waste derived renewable energy from thermal combustion envisaged in the GRWP is vast: it envisages a threefold increase by 2020 even with the expected improvements in re-use and recycling.\textsuperscript{46} There is now clearly a gap between the potential of energy recovery from waste and delivery of recovery capacity.\textsuperscript{47} The UK Renewable Energy Road Map recognises that the combustion of the biomass content of waste is one of four major contributors to the increased deployment of biomass electricity that it seeks by 2020\textsuperscript{48}. As both PPS10 and WS2007 recognise, the planning system is pivotal to the adequate and timely provision of new waste management facilities.\textsuperscript{49} If that is ever to be delivered, having regard to the lead time for these type of facilities, planning permissions need to be granted and now. The UK Renewable Energy Roadmap explains that the statement of the Government’s commitment to EfW in the GRWP was designed to address directly the difficulties that the industry has experienced in gaining consents.\textsuperscript{50}

27. The reasons why the Government are so supportive of EfW are clear and are in part precisely because EfW reaches beyond mere waste management and addresses energy and climate change:

“The benefits of recovery include preventing some of the negative greenhouse gas impacts of waste in landfill. Preventing these emissions offers a considerable climate change benefit, with the energy generated from the biodegradable fraction of this waste also offsetting fossil fuel power generation, and contributing towards our renewable energy targets. Even energy from the non-biodegradable component, whilst suffering from the negative climate impacts of other fossil fuels, has additional advantages in terms of providing comparative fuel security, provided it can be recovered efficiently.”\textsuperscript{51}

28. The energy produced is \textit{dependable} in that it provides security of supply by utilising homegrown residual waste thereby reducing reliance on insecure energy imports; EfW is a \textit{diversified} energy source in accordance with Government policy to have a wide range of

\begin{footnotesize}
\begin{enumerate}
\item CD.U23, §214-215.
\item CD.U23, §219.
\item CD.U39 §3.123
\item See, for example, CD.U5, §1. EN-1 makes the related point in the context of energy generating infrastructure that there is a requirement for substantial and timely private sector investment which is precisely what CW seeks to deliver (see CD.U3, pp.2.2.25).
\item CD.U39, pp.3.142-3.146.
\item CD.U23, §208.
\end{enumerate}
\end{footnotesize}
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 lessens 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 in modern parlance dispatchable. It is energy that meets what we would describe as the four ‘Ds’: it is dependable, diversified, distributed and dispatchable. JH accepted in XX that energy produced by the Willows would have these qualities.

Energy and climate change policies

29. Energy policy is central to tackling climate change and the two need to be approached in tandem. The Climate Change Act established a legally binding target to reduce the UK’s greenhouse gas emissions by at least 80 per cent. by 2050 whilst the UK is committed to a target of producing 15 per cent. of its total energy from renewable sources by 2020\(^{52}\) and the unremitting message from the Government is one of urgency: the Energy White Paper seeks to provide a positive policy framework to facilitate and support investment in renewable energy;\(^{53}\) the aim of UK Renewable Energy Strategy is radically to increase the use of renewable energy;\(^{54}\) the UK Low Carbon Transition Plan records that the scale of change we need in our energy system is unparalleled;\(^{55}\) in EN-1 the Government expresses its commitment to increase dramatically the amount of renewable energy generation, increasingly from the combustion of waste\(^{56}\) (no limits or targets are set on the provision of such infrastructure);\(^{57}\) and the NPPF – the latest manifestation of national planning policy – seeks a radical reduction in greenhouse gas emissions.

30. The NPPF describes renewable energy infrastructure as central to the economic, social and environmental dimensions of sustainable development.\(^{58}\) The NPPF underlines the Government’s commitment to restructure the economy to meet the twin challenges of

\(^{52}\) CD.U3, §3.4.1.
\(^{53}\) CD.U37, §5.3.67 is important it provides, amongst other things: (1) applicants will no longer have to demonstrate need for renewable energy or for the particular proposal to be sited in a particular location, (2) that planners should create an attractive environment for innovation and in which the private sector can bring forward investment in renewable and low carbon technologies and (3) give a clear steer to decision makers that in considering applications they should look favourably on renewable energy developments.
\(^{54}\) CD.U36, Summary.
\(^{55}\) CD.U40, p.36.
\(^{56}\) CD.U3, §3.3.10.
\(^{57}\) CD.U3, §3.3.24
\(^{58}\) CD.U1, §93.
global competition and a low carbon future and seeks to support the delivery of renewable and low carbon energy by, inter alia, requiring local planning authorities to design their policies to maximise renewable and low carbon energy development while ensuring that adverse impacts are addressed satisfactorily and by directing them not to require applicants for energy development to demonstrate need. The NPPF establishes a presumption in favour of granting permission for the generation of renewable and low carbon energy where the impacts of development are (or can be made) acceptable – which JH accepted in XX. He further confirmed that neither he nor the BC challenged the WRATE assessment which demonstrates the significant carbon savings the Willows would achieve in comparison with landfill (the comparison with landfill is entirely appropriate in circumstances where there is no firm proposal for an alternative to landfill aside from the Willows and R.Burton (“RB”) agreed this in XX).

31. In short, the exhortation to industry is 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. JH agreed in XX that the proposal would comprise renewable and low carbon energy and would therefore accord with the general thrust of national policy in relation to energy and climate change. RB too accepted that the Willows would produce renewable energy.

32. All parties to this inquiry are agreed that the Willows will produce renewable energy from the biomass fraction of the waste. CW, NCC and the BC are agreed that the Willows will also produce low carbon energy. Only KLWIN disputes this. We analyse this dispute below and conclude that as a matter of policy energy from waste should be treated as low carbon and, accordingly, CW, NCC and the BC are correct to regard the Willows as low carbon.

**CHP**

33. The climate change benefits of the proposal will increase should its significant CHP potential be realised. In XX of SA, NLQC made it clear that the BC recognise that “CHP is nothing but a benefit” but, as SA agreed, one needs to look at the likelihood and magnitude

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69 CD.U1, §18.
60 CD.U1, §97.
61 CD.U1, §98.
62 CD.U1, §98.
of CHP provision to judge the weight to be afforded to its potential. Therefore this issue goes only to how much weight in favour of the grant of planning permission should be afforded to the fact that CW has ensured, at no little expense, that the Willows is CHP enabled such that it can take advantage of commercial opportunities to export heat in the form of steam as well as generating and exporting electricity.

34. National policy is clear as to the importance the Government attaches to CHP, that particular attention should be paid to the siting of facilities to maximise opportunities for CHP and that substantial additional positive weight should be given to applications incorporating CHP. EN-1 recognises the need for CHP plants to be located close to industrial or domestic customers with heat demands. The latest DEFRA guidance states that it is essential that customers for heat are relatively close by. Local policy is no different. Both the Norfolk Minerals and Waste Core Strategy Development Management Policies DPD (“WCS”) and WSSA place significant emphasis upon the encouragement and delivery of CHP.

35. Both policy and previous appeal decisions further recognise that it cannot be expected that contracts for the supply of heat and power will have been entered into before planning permission is obtained. The reasons are obvious: potential customers are unlikely to spend the time negotiating heads of terms in advance of the relevant facility even gaining consent.

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63 C10, §7.8 in which JB explains that CW have invested an extra £1.25m in turbine selection and plant design to ensure the plant is CHP enabled. As SA said in XX, no commercial enterprise would waste such capital expenditure if it did not judge that there were realistic possibilities of bringing the investment into use. Furthermore, the EA is satisfied that the plant recovers heat as far as practicable (CD.E2, p.20 – 21).
64 CD.U4, §2.5.26 – 27.
65 CD.U24, p.79, §28. See also the NPPF (CD.U1), §97, last bullet, where local planning authorities are exhorted to identify opportunities where development can draw its energy supply from decentralised, renewable or low carbon energy supply systems and for co-locating potential heat customers and suppliers.
66 CD.U3, §4.6.8.
67 CD.U3, §4.6.5.
68 U32, §136.
69 See in particular policies CS8 and CS13 of the WCS (CD.G26).
70 CD.U23, §237.
71 See, for example, the Inspector’s comments at Sinfin Lane where he stated: “In my view, it would be unusual for the operator to sign up customers to take any heat produced by the plant at the outset. Potential customers are likely to want to see whether the plant comes up to expectations in terms of the amount of heat that it produces and the reliability of supply of the heat. Once they are satisfied on these points, then the contracts to take the heat may well be signed. It is in the financial interests of the operator of the plant to secure customers to take any heat generated. The important factor is that a plant is located so that potential customers for the heat are within easy reach” (CD.A5, §37 – 38). See also Shrewsbury (CD.A4, §138), Hartlebury (CD.A11, §11.48) and Green Lane, Salford (CD.A9, §78).
to be built. Indeed, for this reason, previous Inspectors have explicitly stated that no adverse inference should be drawn where existing industry near to a proposed EfW has not indicated an interest in taking heat by the time of any planning inquiry into the EfW facility.

36. This application site enjoys unrivalled opportunities to deliver CHP. Not only does the Willows benefit from a very short and easy connection to the grid for the export of electricity (a matter not disputed by any party), the site immediately adjoins Palm Paper, the largest heat user within Norfolk with a stated intention to obtain its energy independently of the national grid. Further, Palm Paper is a paper mill which is a form of industry specifically identified by EN-1 as a likely potential customer for CHP. Furthermore, the application is in close proximity to the proposed major new growth and regeneration areas of King’s Lynn which have the potential to benefit from a district heating system and is adjacent to Centrica B. In short, the application site could hardly be bettered in Norfolk in terms of CHP potential. No-one has suggested a better site for CHP potential.

37. Much endeavour has been made by third parties and the BC to contend that Palm Paper would not take heat from the proposed development. However, this effort has only served to highlight the fact that Dr Wolfgang Palm, the Chief Executive of Palm Paper, has steadfastly refused to say the one word that would have put the issue beyond doubt – “no”. Instead, Dr Palm’s very carefully crafted letters have served to keep his options open whilst avoiding becoming embroiled in local controversy for the sake of an opportunity that is currently wholly contingent on CW gaining planning permission. In the circumstances, it is readily understandable that Palm Paper wishes to “keep out of the difficult discussions and take on a strictly neutral role.”

72 SA provided an example of this when he pointed out that it was only some months after the beginning of the construction of SITA’s Great Blakenham EfW facility in Suffolk that agreement was reached to supply heat to some nearby commercial green houses (C70, §88) which SA explained in Re-X were not development that had been proposed by the time the consent was granted for the EfW facility and, then, in XX by reference to the SELCHP facility in Southwark, London which is, after almost 20 years of operation, looking to provide heat to nearby new Council housing estates.
73 See, for example, CD.A4, §138.
74 Furthermore, there is a connection offer in place (C11, App.14).
75 CD.U3, §4.6.5.
76 CD.Y6.
38. However, Dr Palm has certainly not dismissed the option of taking the heat generated by the Willows. Indeed, he identified four options open to Palm Paper in April 2012: to maintain the status quo, to acquire steam and/ or power from the Willows or Centrica B, should they be built, or to develop its own CHP plant. Palm Paper intends to select the “most cost efficient option.” He has not ruled out any of these options.

39. It has now, of course, decided to apply for planning permission for its own CHP plant. It is significant that, even after this decision, Dr Palm still refuses to rule out taking heat from the Willows despite being encouraged to do so. As both John Boldon (“JB”) and SA explained, Palm Paper’s planning application is a shrewd commercial move. If the Willows is permitted, Palm Paper will be able to negotiate with all four options in place.

40. It was suggested in XX of SA that the Willows could meet only 32 per cent. of Palm Paper’s heat demand and that this undermined the CHP potential of the Willows. However, the question was put on a flawed basis for, in fact, the Willows would be able to provide somewhere between 50 to 90 per cent. of Palm Paper’s heat requirements (depending on what the heat requirements actually are). The calculation of the 90 per cent. figure is set out in an inquiry note. Further, even if the question had been put on the basis of the correct facts, the implication that the provision of a third of Palm Paper’s heat requirements undermines the CHP potential of the proposed development is unfounded. First, Palm Paper taking the entirety of the heat off-take would ensure that the Willows operates as efficiently as possible. Secondly and in any event, the fact that Palm Paper would require another source of energy in no way means that taking all the heat from the Willows cannot be part of the most cost efficient solution for Palm Paper. Indeed, it may be that a supply from both the Willows and Centrica B would be an ideal solution so that a supply of heat could be maintained during any shut down of either plant. As SA said in Re-X, there could be no better juxtaposition between heat supplier and user.

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77 CD.Y6.
78 CD.Y6.
79 See CD.Y7.
80 The question was put by reference to K9, p.25 to which SA in C76 and JB in C15 subsequently responded.
81 C19. The BC contest this figure on the basis of the Palm Paper scoping report which suggests a steam requirement of between 100-130t/hr. The CW figure of 90 per cent. was based on CW’s understanding from earlier discussions with Palm Paper of its need being 72 t/hr.
82 Which is, itself, CHP enabled (CD.A15, pp.6.2).
83 A benefit expressly recognised by the Government (CD.U32, §136).
41. There are, of course, significant other potential opportunities to supply heat beyond Palm Paper, not least, the nearby 23 ha. proposed employment allocation EMP2, new housing development proposed on land South East of King’s Lynn and the extensive NORA regeneration area.

42. The BC accepts that there is potential for CHP utilisation on the 23ha emerging allocation EMP2 in the King’s Lynn and West Norfolk Site Allocations DPD (subject to the nature and heat-use requirements of the future occupiers). EMP2 is only 500m from the Willows.

43. There is also a prospective allocation for significant new housing south east of King’s Lynn (1,600 dwellings in the plan period and 6,000 dwellings in the longer term). This lies approximately 2.5 km to the east of the Willows.

44. Furthermore, around 1.5kms from the application site, lie the multiple allocations that make up the NORA masterplan – the largest brownfield regeneration project ever handled in Norfolk – and which plainly comprise a further significant opportunity for CHP use. All the BC say against this potential is that it is north of the A47. However, as SA made clear, there are obvious crossing points along the A47. There is nothing to indicate that a supply of heat could not be routed to NORA.

45. Dr.C’s suggestion that heat has been offered and rejected by the partners promoting NORA is not supported by any evidence. Any such offer was not made by CW. Furthermore it was likely to have been based on the Enviros Report of 2008 which was based on an assumed capacity of 150ktpa and so a much lower output of energy. Whilst some infrastructure has already been provided, that in no way would prevent the installation of a DH system today, especially given that the economics of doing so are highly dynamic and driven in large part by the seemingly ever increasing cost of energy. As the Government recognises, with the escalating costs of energy the likelihood of CHP take up has only increased.

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84 K33, §4.4.2.
85 C70 §105
86 K33, §4.4.5.
87 K9.
88 See C76.
89 CD.U34, p.14.
46. These are significant (but not the only\textsuperscript{90}) opportunities for CHP and must of themselves weigh heavily in favour of the grant of planning permission for the Willows. SA who has been involved in numerous EfW projects did not hesitate in saying that he could not recall a project with stronger CHP potential.\textsuperscript{91} RM agreed (with the sole exception of Severnside which he thought may have similar potential).

**Conclusions**

47. The Willows 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 Norfolk’s waste from landfill; secondly, providing much needed renewable energy with unrivalled potential exploitation of CHP, thereby increasing energy security and contributing to renewable energy targets; and, thirdly, reducing the carbon dioxide that would otherwise be emitted to generate energy and displacing the harmful methane emissions that arise from landfilling. The conclusion which we invite the Secretary of State 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.

\textsuperscript{90} Others are explored in detail in SA’s evidence (C70, p.48 – 67).

\textsuperscript{91} Aside, he said, from Lostock which was specifically designed to supply heat to the existing Soda Ash plant on site.
The Secretary of State’s issues

The development plan

48. The development plan comprises the WCS, King’s Lynn and West Norfolk Core Strategy (“the KLCS”) and the saved policies of the King’s Lynn and West Norfolk Local Plan (“the KLLP”).

49. The Willows’ compliance with the development plan is the first matter on which the Secretary of State wished to be informed. However, as JH acknowledged in XX neither he nor the BC provide a comprehensive analysis of the proposal’s compliance with the development plan in its evidence. Nor does KLWIN.

50. RM, however, provides a detailed analysis of the proposal’s compliance with the development plan in his proof of evidence. He concludes (as did the original OR) that the Application is in accordance with the relevant development plan policies individually and with the development plan as a whole. Nick Palmer (“NP”) for NCC also analyses the proposal’s compliance with development plan policies and concludes that there is no conflict. The statement of common ground between NCC and CW also records those parties’ agreement that the Willows accords with the relevant development plan policies and the development plan as a whole.

51. The BC’s failure to analyse the proposal’s compliance with the development plan as a whole is odd given that BC officers provided clear advice as to the relevance of a long list of development plan policies to members of the Development Control Board. The March 2012 OR (which was after JH was instructed and after he had provided advice to officers) listed some 25 policies. However, of those 25 only three were relied on in the BC’s resolved reasons for objection: policies DM4 (flood risk) and CS5 (general location of waste management facilities) of the WCS and policy CS08 of the KLCS (in so far as it relates to flood risk). JH now also relies on conflict with policies CS8, CS10 and CS13 of the WCS in so far as they relate to the management of waste in accordance with the Waste  

92 C80, p.97-125.  
93 CD.M1, §7.441.  
94 N10, §18.  
95 CD.X2, §14.  
96 Excluding RSS policies which are no longer relevant and, quite rightly, not pursued by the BC.  
97 Confirmed by JH in XX.
Hierarchy and PPS10.\textsuperscript{98} We note that none of these additional policies were referred to in the BC’s statement of case which was drafted largely by JH.

52. We address the policies in relation to flood risk elsewhere (i.e. policy DM4 of the WCS and policy CS08 of the KLCS) and policy CS5 when dealing with the proximity principle. The remaining polices relied on by the BC all form part of the WCS.

53. As JH agreed, it is no part of the BC’s case to suggest that the WCS is out of date. That must be right for it was subject to examination and found to be sound in the context of up to date national waste policy in August 2011 and adopted in September 2011. This proposal is wholly consistent with that strategy as well as according with the specific waste management policies and, in particular, those policies setting out the required residual waste treatment capacity in the County.

54. Turning, then, to the specific policies on which the BC now rely:

(i) CS8 (residual waste treatment facilities): JH all but agreed in XX that the Willows complies with this policy. He agreed that there was a clear and pressing need for residual waste treatment capacity (by reference to paragraph 6.38). It follows that the first paragraph is complied with and, as he also agreed, the situation contemplated in the last paragraph does not arise. JH said that the Willows complied with point b) of the second paragraph (the other points are alternatives) save insofar as the BC’s objections on flooding and proximity were relevant. Finally, he conceded that the Willows complies with the third paragraph. We deal later with the flooding and proximity issues, but the reality is that JH did not identify any material conflict with this policy;

(ii) CS10 (non-hazardous and hazardous landfill): it is difficult to understand why this policy was referred to, although it contains a reference to moving waste up the waste hierarchy. However, this has nothing to do with residual waste recovery capacity and is not applicable to the application. JH appeared to acknowledge as much in XX; and

\textsuperscript{98} K12, §4.10.2.
(iii) CS13 (climate change and renewable energy generation): in XX JH agreed that the Willows complies with this policy. It would generate renewable energy and comply with the co-locational requirements of the policy. The application therefore deserves to be “welcomed” in accordance with the wording of the policy itself. JH expressly agreed such ‘welcome’ applied here.

55. Importantly, JH confirmed in XX that in so far as WCS policies were not cited in either the BC’s reasons for objection or its evidence before the inquiry then it could be assumed that the BC considered the Willows to be compliant with them (subject to the need for conditions to which we turn below in some instances). This is highly significant and the SoS is invited particularly to note that the BC does not dispute the project’s compliance with key WCS policies such as CS3, CS4, CS6, CS14 and CS15.

56. As to KLWIN:

(i) As Dr.H confirmed in XX, his assertion that the Willows would not comply with the development plan was based solely on his view that the plant could not be treated as a recovery operation. For reasons we have already set out, that point was never valid and, in any event, has now been overtaken by the EA certifying the Willows as a recovery operation. It follows that Dr.H’s suggested conflict with the development plan has fallen away;

(ii) RB identified conflict with only one development plan policy: policy CS13. However, in XX he agreed that the proposal complied with the express wording of the policy. His argument was that the policy did not reflect the NPPF’s aims to maximize the delivery of renewable and low carbon energy. However, policy CS13 is precisely about the encouragement of the generation of renewable energy at minerals and waste developments. Indeed, it imposes a minimum standard. RB suggested a minimum standard is not enough. However, that misses the point: it is not a ceiling and, further, requires developers to generate renewable electricity and/or

99 See W-500, §44.
100 W-000, §5.5.7.
capture heat where practicable rather than merely encouraging them to do so. In short, this policy is doing precisely that which the NPPF seeks; and

(iii) No other witness for KLWIN referred to a development plan policy.\textsuperscript{101}

57. Accordingly, we submit that the proposals must enjoy the presumption in favour of permission being granted for development which accords with the development plan set down by section 38(6) of the 2004 Act.\textsuperscript{102}

\textsuperscript{101} We note too that no development plan policy conflict was referred to in either the KLWIN opening or statement of case.

\textsuperscript{102} The statutory test, properly formulated, is whether the proposal scheme accords with the development plan as a whole. In \textit{R v Rochdale MBC ex parte Milne (No.2) [2001] Env. L.R. 22} at 50 Mr Justice Sullivan (as he was then) held that for the purposes of section 54A 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. The same principle should apply to section 38(6) of the 2004 Act.
Planning Policy Statement 10

58. Having set out the broad scheme of national waste policy, we turn to consider the Willows’ compliance with PPS10, a matter on which the SoS specifically asked to be informed, but not one the BC decided to address in evidence as JH conceded. Given the call-in letter and that it is the Government’s principal national planning policy document on sustainable waste management, its was an extraordinary omission. 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 rWFD. As JH agreed in XX, one of the reasons for the revision of the document was to increase the use of waste as a resource (e.g. as a fuel), as was made clear in the Chief Planning Officer Letter. In the circumstances, compliance with PPS10 is perhaps the best indicator of this proposal’s fit with up to date waste policy (including proximity and waste hierarchy).

59. In our submission the Willows would meet the Government’s overall objectives for waste by using waste as a resource and source of energy and reducing substantially the amount of waste that is being landfilled. Willows alone would treat virtually all the residual MSW in Norfolk for which no residual recovery capacity exists and which, in its absence, will almost certainly continue to be landfilled. It would represent the positive planning required by paragraph 2 by providing sufficient new management facilities of the right type, in the right place and at the right time (more realistically, very belatedly); in other words, the adequate and timely provision of facilities which PPS10 states is the pivotal role of the planning system. JH agreed in XX that it was ‘plain’ that this applies in Norfolk and the need for timely provision here was acute.

60. PPS10 sets out a number of key planning objectives with which the Willows fully accords in that it would:

(i) Assist in driving the management of the County’s residual MSW and C&I waste up the waste hierarchy, use waste as a resource and look to disposal as the last option –

103 CD.X1, §7.
104 CD.U5, §5 and 23.
105 CD.U7.
106 CD.U5, §1.
107 CD.U5, §3.
all of which JH agreed in XX. As identified above, Norfolk landfilled some 433kt of waste in 2011/2012. The Willows comprises a recovery facility. There is no alternative recovery capacity in the County and no proposals in the planning pipeline for the capacity required to recover the County’s residual MSW and a significant proportion of its C&I. The Willows, therefore, would and only the Willows could within the timeframe envisaged by the WCS deliver the required step change in the management of the Norfolk’s waste;

(ii) Help communities take more responsibility for their own waste and would represent timely provision of waste management facilities to meet the needs of the County. In addition, so far as C&I is concerned, it will also provide an appropriately located facility for the local business community to take responsibility for its own waste;

(iii) Make a significant contribution to implementing the national waste strategy and, more particularly, to meeting the national landfill diversion targets set out in WS2007 – which JH agreed. It follows from the fact that Norfolk has no operational recovery facilities that it failed to meet the 2010 target. The next target is 67 per cent. recovery by 2015. Given the lead times for large scale recovery facilities this target will be next to impossible to achieve, but if the Willows is granted planning permission by the SoS there is a real prospect that the required levels of recovery could be achieved within Norfolk by 2020;

(iv) Help secure the recovery of waste without endangering human health (JH agreed) and without harming the environment (JH agreed save for the BC’s arguments in relation to flood risk) and enable waste to be disposed of in one of the nearest appropriate installations (there would be no nearer facility and JH agreed that the BC accepts EfW as an appropriate technology). The Willows has been the subject of a full environmental impact assessment which concludes that there are no significant or unacceptable impacts remaining following the adoption of appropriate mitigation measures. The adequacy of the ES has not been seriously questioned at this inquiry.

108 There is a consent for a 20ktpa biomass (wood waste) plant at Shrubbs Farm, Saxthorpe, Melton Constable.
109 We consider the materiality of the Material Works Contract later in these submissions.
110 CD.U5, §3, 1st key planning objective.
111 CD.U5, §3, 2nd key planning objective.
112 CD.U24, p.11.
113 CD.U5, §3, 3rd key planning objective.
The EA has already issued an environmental permit confirming it is satisfied that the Willows is acceptable from a pollution control perspective.  

The objective of enabling waste to be disposed of in one of the nearest appropriate installations has been extended through the Waste Regulations 2011 to the recovery of MSW and co-collected C&I waste (but not for C&I generally). This has not as yet been reflected in PPS10. What is very clear from PPS10 is that the Government’s only concerns with regard to the hierarchy are the under provision of recovery capacity and the over provision of disposal capacity. As JH agreed, this part of PPS10 relates to the waste hierarchy and no concern is expressed about over provision of recovery (not, of course, that that would result from permission for the Willows). Indeed, the Inspector relied on precisely this point at Shrewsbury.

The vast majority, if not all of MSW and C&I waste arising within Norfolk that is not recycled is currently landfilled. A small amount of MSW is currently sent for recovery outside the East of England region. Given the absence of suitable recovery facilities to accommodate this waste, and the location of the proposal relative to the source of the waste arisings, it will therefore be one of the nearest appropriate installations (“NAI”) for the management of waste within the intended catchment and, in fact, until any other facility is operational, the NAI;

(v) Clearly reflect the concerns and interests of communities, the needs of waste collection authorities, waste disposal authorities and business, and encourage competitiveness by the provision of much needed waste treatment capacity (as well as the generation of renewable energy) within Norfolk, not least by enabling NCC to meet its recovery and landfill diversion targets and - to the extent that the facility takes C&I waste - by providing local business with a cost effective route for waste management that avoids the cost of landfill tax. JH accepted in XX RM’s evidence on the need for competition and that the provision of facilities such as the Willows is a good thing for local businesses. We note in this regard that the BC did not carry out

114 CD.E1.
115 CD.U5, §4, last bullet and §25.
117 CD.U5, §3, 4th key planning objective.
118 CD.U5, §3, 5th key planning objective.
any assessment of demand by C&I producers for EfW and did not dispute JB’s evidence on this matter. JB said that following an investigation of the market CW were confident of being able to attract C&I waste.

(vi) Supports sustainable waste management through the design and layout of the development.\(^{119}\) There has been no real criticism of the design and layout of the Willows. It is remarkable for a facility of this nature and scale not to have attracted significant landscape and visual impact objections. The BC dropped its initial objection on this ground. Obviously, the BC did not consider that it could sustain a landscape objection. In so far as the technical design of the Willows is concerned, the EA described the efficiency of the Willows as towards the top end of the best available techniques (“BAT”) range for electricity generation and noted that it would recover heat as far as practicable and was therefore compliant with Article 6(6) of the rWFD and should be regarded as BAT for energy efficiency.\(^ {120}\)

61. PPS10 also provides guidance on the location of waste management developments. Paragraph 20 requires waste planning authorities, in identifying suitable sites to consider, inter alia, a broad range of locations including industrial sites and look for opportunities to co-locate facilities together and with complementary activities. As we have already indicated, the application site forms part of an industrial estate within the settlement boundary of King’s Lynn and in an area identified in the development plan as suitable for development. In terms of co-location the application site could hardly be bettered. It lies adjacent to Norfolk’s largest heat demand, as well as next to a household waste recycling centre (“HWRC”).

62. Applications for waste management facilities on unallocated sites should be treated favourably where they are consistent with, first, the policies within PPS10, including the criteria contained in paragraph 21 (by which waste planning authorities should identify suitable sites for waste management facilities), and, secondly, the waste planning authority’s core strategy.\(^ {121}\)

\(^{119}\) CD.U5, pp.3, 7\(^{th}\) key planning objective (the 6\(^{th}\) KPO relates to Green Belt).
\(^{120}\) CD.E2, p.20-22, §4.3.7(iii) and (iv)
\(^{121}\) CD.U5, §24. RM tests the Willows against all these factors and concludes that it is in conformity with PPS10 (C80, §4.2) and the locational criteria within it (C80, §4.2.34-4.2.50) and the WCS (C80, §5.3).
The application site is – to date – unallocated pending the adoption of the WSSA but, as noted by the examining Inspector, the application site is “heavily trailed” within the WCS. It is referred to on three separate occasions within the WCS. It follows that the Inspector at the examination of the WCS was fully aware that the site was being promoted as the proposed PFI project site for a large scale treatment facility. Indeed, as we indicate below, one of those references was included as a minor modification to the plan which inserted an explicit reference to such development at the Willows with a capacity of 275ktpa. Whilst the Inspector expressed no view on the merits of the site, he could hardly have expressly endorsed this modification had he considered the site or the scale of development suggested for it to be intrinsically unsuitable.

We have set out above the reasons why the application site and its surroundings are unusually well suited to the development proposed. That analysis in our submission surely leads to the conclusion that the PPS10 locational criteria are fully met. It has demonstrated that the Willows:

(i) Conforms with and promotes the aims behind the PPS10 key planning objectives;

(ii) Having regard to the Annex E locational criteria, there are no unacceptable physical and environmental constraints affecting the application site;

(iii) The only potential cumulative effect of previous waste management operations that could arise relates to the co-location of the Proposal with the King’s Lynn HWRC. This has been fully assessed within the ES;

(iv) There are no highway safety or capacity issues. There is a short and suitable route connecting the site to the Strategic Highway Network. The accompanying transport assessment demonstrates that the capacity of the surrounding highway network is adequate to accommodate the maximum volumes of traffic forecast to be generated both during the construction and operational phases. This includes assessment of the combined effects when taken together with other development that may occur within

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122 CD.D1, §3.18, 3.29 and 6.23.
123 CD.G9, App.A, p.12, PC162.
the vicinity. This has been confirmed in consultation responses from the County Highway Authority and the Highways Agency; and

(v) Whilst the Site does not comprise previously developed land, it lies within an area previously permitted for industrial development and that is identified within the Local Plan as suitable for development, subject only to that development being in harmony with the character of its surroundings. The principle of waste related development on the Site is accepted by all parties (and was agreed by JH in XX).

65. No doubt, it is as a result of this combination of favourable factors that neither the BC nor KLWIN have objected in respect of issues as diverse as design, landscape and visual effects, residential amenity, heritage assets and highways safety and capacity.

66. CW contends that the site is particularly suitable in land use planning terms for accommodating a strategic waste management use of the nature and scale proposed. JB said the Willows was one of the best sites he has seen in his long career in waste management. As did RM and SA. CG said it was unique in his experience for there not to be a landscape objection to a proposal of this nature. This conclusion is supported by NCC.\textsuperscript{124} Indeed, it is hard to conceive of a better site in Norfolk and it is no surprise that the site was selected by NCC as the reference site in the procurement process for the Contract and has been proposed for allocation for thermal treatment in all four versions of the draft WSSA.

67. It is manifestly clear that the Willows would deliver the PPS10 KPOs and is an excellent fit with the rest of the policy guidance in the PPS including the locational criteria. Three of the BC’s grounds of objection are stated to result in conflict with PPS10, namely; flood risk, waste miles and disincentive to recycle. We shall seek to refute these objections in detail subsequently, but submit that none is valid.

68. In our submission, the proposal’s compliance with PPS10 should be accorded significant weight. The Willows would help Norfolk comply with its legal duty to apply the waste hierarchy as a priority order and to curtail the wholly unsustainable practice of landfilling

\textsuperscript{124} CD.X2, §14.
by using waste as a resource. Furthermore, the Willows is deserving of favourable
treatment as a result of its compliance with paragraph 24. This is equates to a further
presumption in favour of the grant of planning permission.
NPPF

69. The Willows conformity with the policies contained in the NPPF was another matter that the Secretary of State asked to be informed upon but also a further area that neither JH nor the BC addressed. The NPPF has replaced the majority of Planning Policy Statements as the national planning policy guidance and as such it should be afforded significant weight. It does not, however, deal expressly with waste management: that is the province of PPS10 which we have already addressed.

70. The principal objective of the NPPF is to promote sustainable development. The NPPF identifies three dimensions of sustainable development: economic, social and environmental. The Willows contributes positively to all three dimensions. At the heart of the NPPF is a presumption in favour of sustainable development, described as a “golden thread running through...decision making”. In our submission this proposed development plainly qualifies under this definition of sustainable development and therefore enjoys the presumption in favour of permission being granted. Paragraph 14 is explicit that development proposals which accord with the development plan should be approved, which as we have already submitted is the situation that applies here. The proposed development should therefore be permitted without further delay.

71. The policies of the WCS encourage and require the development of residual waste treatment facilities in order to maximise the renewable energy that can be generated from this source and provide much needed and sustainable waste management infrastructure of the right type.

72. They also seek to ensure that development is located in accordance with the principles of sustainable development, favouring sites that are well related to the major urban areas and are on land already identified or suitable for the accommodation of such facilities. It further adopts policies designed to ensure appropriate protection of the environment and of the amenities and health of local communities. There has been no serious suggestion that the adopted WCS is not in general conformity with the NPPF.

125 CD.U1, §7.
126 CD.U4, §14 and 197.
73. Weight must also now be given to emerging plans,\textsuperscript{127} such as the submission version of the WSSA, according to the stage of preparation of the Plan, the extent of any unresolved objections and the degree of consistency with the NPPF. The allocation of the application site within the submission version of the Plan for the development proposed is therefore a relevant consideration to which weight should be given. We deal in detail below with the WSSA in the context of prematurity and in doing so note that the application site has been allocated in all four iterations of the plan, notwithstanding objections. In our submission, it is highly unlikely that WSSA EIP will result in its deletion now.

74. The NPPF sets out a number core planning principles\textsuperscript{128} which include:

(i) Ensuring that planning is genuinely plan-led;

(ii) Proactively driving and supporting sustainable economic development, including the infrastructure that the country needs. Every effort should be made objectively to identify and then meet the needs of an area;

(iii) Supporting the transition to a low carbon future by, inter alia, encouraging the development of renewable and low carbon energy;

(iv) Contributing towards conserving and enhancing the natural environment and reducing pollution; and

(v) Actively managing patterns of growth.

75. The Willows would contribute directly towards the achievement of these core planning principles in that it would:

(i) Accord fully with the Development Plan;

(ii) Constitute sustainable economic development in its own right as well as having the potential to contribute towards enhancing sustainability for other businesses through

\textsuperscript{127} CD.U1, §216.

\textsuperscript{128} CD.U1, §17
the generation of renewable/ low carbon energy and its potential to serve the heat requirements of the Palm Paper and/or the growth and regeneration areas of King’s Lynn through the development of its CHP potential. Further, the WCS identifies objectively the urgent waste management needs of the county which can be met in large part through the delivery of the proposed development;

(iii) Can be developed without unacceptable impact on the environment or on local communities;

(iv) Will serve to enhance the environment and reduce pollution through its significant contribution towards the diversion of residual waste from landfill; and

(v) Supports sustainable patterns of growth, with the Proposal being located in accordance with the locational policies of both the adopted WCS and the saved policies of the Local Plan. In this regard, the comparative WRATE assessment and the Alternative Sites Assessment together demonstrate that the proposed location represents one of, if not the most, sustainable location for a facility of this type and scale within the County.

76. The NPPF encourages LPAs to approach decision-taking in a positive way to foster the delivery of sustainable development. LPAs should look for solutions rather than problems. Decision-takers should look to approve sustainable development where possible and LPAs should work proactively with applicants to secure developments that improve economic, social and environmental conditions in their area. Infrastructure to deliver renewable energy is central to achieving this.

77. Central to the concept of sustainable development is the transition to a low carbon economy and the maximisation of renewable energy developments. Paragraph 98 of the NPPF requires planning permission for such development to be granted where its impacts are or can be made acceptable. The Willows represents sustainable development that accords with the Development Plan. It can be delivered without unacceptable harm to the

129 CD.U1, §186.
130 CD.U1, §187.
131 CD.U1, §97-98
environment or to local communities. It therefore accords fully with the NPPF and benefits from both the general presumption in favour of sustainable development as well as the specific presumption in favour of the generation of renewable and low carbon energy. The policies in the NPPF are, of course, material considerations and the proposed development’s compliance with them should be accorded significant weight.

78. We note that paragraph 119 of the NPPF provides where development requiring Appropriate Assessment is being considered, planned or determined, the presumption in favour of sustainable development does not apply. Karen Colebourn (“KC”) explains why the Willows would not have a likely significant effect on ecological receptors of interest and as such an Appropriate Assessment is not required. Accordingly the situation does not, we submit, arise here.

79. However, we acknowledge that NCC did carry out an Appropriate Assessment, adopting a highly precautionary approach. Its conclusions were entirely consistent with those of CW, NE and the EA; namely, that the Proposal will not adversely affect the integrity of the relevant European sites. Even if NCC were correct to carry out the Appropriate Assessment, in circumstances where the results demonstrate that no adverse impacts to the integrity of the relevant sites will arise, then we see no reasonable or logical explanation as to why the presumption in favour of sustainable development should be withdrawn.

80. Even if we are wrong in that and paragraph 119 is taken to apply literally in this case, it has no material bearing on the substance of the Willows as a proposal: we have demonstrated 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 generation, 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.

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132 CD.U1, §212
133 By virtue of Section 38(6) of the Planning and Compulsory Purchase Act 2004.
134 CD.U1, §98.
The emerging Norfolk Waste Site Specific Allocations DPD

81. The fourth issue on which the Secretary of State wished to be informed was how the application relates to the emerging WSSA. We deal with this issue extensively in the context of the BC’s objections on prematurity and the proximity principle as well as in relation to alternative sites and so will not go into detail here. In short, the proposal could not relate better to the emerging WSSA. The application site is allocated within the submission draft of the WSSA for a range of waste uses including thermal treatment. It is one of only three such sites that are identified for thermal treatment following an extensive call for sites to the waste management industry, landowners and agents. WSSA has been submitted to the Secretary of State and the examination took place concurrently with this inquiry. Given the advanced stage of this document, the fact that it has been through repeated iterations (throughout which the application site has been allocated for thermal treatment), the extensive consultation that it has undergone at all stages of the process and the Willows close fit with the submission draft, it should in our submission be accorded significant weight.
**King’s Lynn and West Norfolk Borough Council**

**Introduction**

82. Perhaps one of the more startling claims of the inquiry was JH’s contention that the BC’s Development Control Board’s resolved reasons for objection to this application were “irrelevant” and the ORs were no more than historical documents. It was a very surprising claim, particularly given, as JH confirmed, the 2\textsuperscript{nd} and 3\textsuperscript{rd} ORs were written with the benefit of his advice, but perhaps indicates how keen JH was to downplay the sequence of events. What the series of three reports and the BC’s statement of case (which was drafted largely by JH) demonstrate is a significant narrowing of the grounds of objection from those originally advanced by the BC.\textsuperscript{136} Most of the jettisoned grounds were taken up by KLWIN and third parties. As JH agreed in XX – with some initial hesitation, no doubt alive to the implications for others in the room – these grounds were not pursued by the BC, which he acknowledged was set against the proposal and seeking grounds for objection, because the BC had been advised and accepted that they were not capable of being sustained at the inquiry.

83. A statement of common ground between CW and the BC confirms that the BC has no objection in the following areas: air quality and health impacts, ecology and nature conservation, landscape and visual impacts; design; highways and transport; ground contamination; noise and vibration; archaeology and cultural heritage; socio-economic impact and amenity.\textsuperscript{137} To those areas JH added in XX that there will be no adverse impact on: regeneration or inward investment (generally and, in particular, in relation to NORA); tourism; on food producers or processors; the AQMAs in King’s Lynn. Significantly, JH confirmed that the BC did not object in relation to the perception of harm to human health notwithstanding it was fully aware of the large number of objections on this ground.

84. JH clarified too that: the BC accepts that there is a clear and pressing need\textsuperscript{138} for residual waste treatment capacity in Norfolk; that no such operational capacity currently exists in Norfolk; the County is, consequently, landfilling ‘a significant proportion’ of the waste arisings in Norfolk (we have already set out precisely how much); that in so far as the

\textsuperscript{136} 13 RRs in OR1 (25 July 2011) (CD.M3), 7 RRs in OR2 (12 March 2012) (CD.M5) and 9 RRs in OR3 (30 April 2012) (CD.M7) to 4 RRs in the statement of case (ASA/ST, Prematurity, Proximity and Waste Hierarchy).

\textsuperscript{137} CD.X3, §13.

\textsuperscript{138} By agreeing the wording of §6.38 of the WCS.
Willows diverts waste from landfill it would be moving waste up the hierarchy; the BC supports the need for improved energy recovery from waste; it acknowledges that EfW and moving grate in particular is an appropriate technology for residual waste treatment and, as he said in evidence at Shrewsbury, EfW (appropriately scaled and sited) represents sustainable waste management; and that the land use is acceptable on the application site, subject to the BC’s points on scale (but confined to the proximity issue) and flood risk/sequential test. In relation to scale, it is noteworthy that JH accepted that a plant of 105ktpa would be appropriate, but such limitation is decidedly odd in the light of his acceptance that a 275ktpa thermal treatment facility would be appropriate at Snetterton near Thetford, which has a population half the size of King’s Lynn and which is only marginally more centrally located in the County. JH further agreed that the BC accept that the application should be determined on the basis that the Willows comprises a recovery facility as it is likely to pass the R1 test; that a proportion of the energy produced would be renewable and the remainder low carbon and accordingly the Willows is “bang in line” with the general thrust underpinning national policy on energy and climate change, adopting the same position as he did in Shrewsbury where JH concluded that a plant that will generate less energy than the Willows (indeed only a third of the amount generated by the Willows) accords with those Government policies which seek to support the generation of renewable and low carbon energy).

85. The BC’s case focuses almost exclusively on matters of principle: the ST, prematurity, proximity and the waste hierarchy. There is a notable absence of any allegations of harm caused by the proposal. These are all matters to be weighed in the planning balance. None is a knock out blow.

139 By reference to C81, App.4, p.1.
140 BC Opening Submissions, §2 “all matters will weigh in the balance”
Prematurity

86. This objection is expressly confined to MSW as JH confirmed in XX. As in all objections on prematurity, it is confined to issues of timing rather than substance or the merits of the proposal itself. When the objection was originally conceived the BC had ecological concerns and the prematurity objection was based in part on those concerns. The ecological concerns have been dropped by the BC and so part of the original basis for this objection has been removed. More importantly, when this objection was conceived the BC did not know when the WSSA EIP would be held and when the Inspector would report upon it. We now know that the Inspector will issue his final report in August of this year. JH confirmed as much. He also accepted the obvious: the Secretary of State will in all probability know the WSSA Inspector’s conclusions on the WSSA EIP before this application is determined and possibly have the adopted version of WSSA before him.

87. If the application site is endorsed for allocation, then there is no possible prejudice to WSSA and the issue disappears (as does that relating to flooding and the ST). JH and the BC accept this.

88. If the Willows is not endorsed for allocation, it would be unlikely, as JH accepted in XX, that NCC would adopt the WSSA until the decision on this application were known, so that if the Secretary of State takes a different view from the WSSA Inspector on the suitability of Willows for this proposal there is a practical way of ensuring that WSSA is not prejudiced. In XX by NCQC, JH accepted that if these circumstances arise and the Willows is not allocated, it would make no difference to the BC’s case in relation to any of the ST and flood risk, the proximity principle and the waste hierarchy. Whatever the outcome of the WSSA EiP, the Secretary of State will face a simple choice of whether or not the application site is acceptable in the light of all the information before him including the WSSA Inspector’s report.

89. In other words, whatever the temporal relationship between this application and the WSSA process as perceived when the BC decided to object on prematurity grounds, the way events have turned out actually means that whether there is accord or discord between the conclusions of the WSSA Inspector and the Secretary of State on the suitability of

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141 See also §2.3.1.1 of the BC’s Statement of Case.
142 As JH accepted in XX, see CD.M5, p.27, RR5.
Willows, there is in practice no ability for the grant of planning permission to prejudice either the WSSA process or its outcome.

90. The BC was particularly concerned about objectors to the Willows proposal being prejudiced in the WSSA process. However, this inquiry surely has provided a far more effective opportunity for objectors to set out their case on and the Inspector and the Secretary of State to judge the application site’s suitability for thermal treatment at this scale, not least given the depth of scrutiny the application has been subjected to over this 30 day inquiry as compared to the consideration of the application site (as WAS65) on only ½ a day at the WSSA EiP. Furthermore, third parties at this inquiry have been afforded a remarkable degree of freedom to pursue at considerable length, both in XX of our and NCC witnesses and in their own evidence, a bewildering variety of objections and issues which never would have been possible in the WSSA process. It was clearly the judgment of the Inspector examining the WCS (the same individual as conducted the WSSA EiP) that this inquiry was the better forum for the detailed analysis of this site. He said that the appropriate time for an open and transparent debate on the suitability and deliverability of the application site was during the determination of a planning application. 143 JH confirmed that there were no objectors present at the WSSA EiP and there have been no suggestions that any were prevented from attending the EiP. Neither has any party complained that they were prevented or limited in making representations to WSSA on account of this application. Further, JH said that the WSSA Inspector was fully aware of this Inquiry and did not indicate that his task had in anyway been inhibited. As a result, JH effectively abandoned paragraph 2.3.1.2 of the BC’s statement of case (impact on objectors’ ability to make their case and the issue of fairness) which had been a prime reason for raising a prematurity objection. Given the latitude afforded to objectors throughout this inquiry, it is difficult to conceive how they could have have had a fairer “crack of the whip”.

91. Therefore, the reality is that prematurity is not in practice a tenable basis for rejecting this proposal. Nor can it for the additional reasons we set out below.

143 CD.G9, §44 - 45.
92. Prematurity may be a valid objection but only in the strictly limited circumstances as set out in paragraphs 17 – 19 of The Planning System: General Principles (“PSGP”).\textsuperscript{144} Planning permission should not be refused on grounds of prematurity unless it can be shown that the proposed development is so substantial, or the cumulative effect would be so significant, that the grant of planning permission could prejudice the outcome of an emerging DPD in that it would predetermine decisions about the scale, location or phasing of new development \textit{“which are being addressed in the policy in the DPD.”}\textsuperscript{145}

93. It follows that prematurity could only begin to be a valid objection to this application where the WSSA was to determine issue of scale, location and phasing. However, WSSA is expressly not considering these issues for – whatever JH says – the spatial distribution, scale and timing of waste management facilities in Norfolk have already been determined in the WCS:

\begin{itemize}
\item[(i)] Policy CS4 sets out the \textbf{scale} of the requirement for new waste management capacity in Norfolk and, in particular, identifies a recovery capacity requirement for both MSW and C&I of \textbf{703ktpa}.\textsuperscript{146} Whilst the WSSA indicates an indicative capacity for each allocation, it significantly does not specify a capacity as part of the site policy: that, as the WCS makes plain, is a matter for the applicant and the market to determine.

\item[(ii)] Policies CS5, CS6 and CS8 of the WCS set out specific locational criteria for the location of waste management facilities. Accordingly, the WCS deals extensively with \textbf{location}. Whilst the WSSA will allocate sites and therefore it can be said that it too deals with location, its purpose is to ensure that sufficient sites are allocated to meet the WM infrastructure required in the WCS. Not all of the sites allocated in WSSA have to be delivered and other sites can come forward in accordance with the locational criteria in CS5, CS6 and CS8 of the WCS. In this sense the outcome of the WSSA does not matter as planning permission could always be granted if a proposal accords with these policies. Indeed the BC itself placed reliance on the prospect of windfall sites; and
\end{itemize}

\textsuperscript{144} CD.U14.
\textsuperscript{145} CD.U14, §17.
\textsuperscript{146} CD.D1, p.46.
(iii) Policy CS4 also determines **phasing**. We note, in this regard, the special emphasis on phasing in the final sentence of §17 of PSGP. Policy CS4 requires 370ktpa of recovery capacity by 2015 and the remainder of the required recovery capacity (333ktpa) by 2020 (again, there can be no dispute that the application complies with this aspect of the policy). Here, the Willows is required to enable the adopted phasing policy to be met. There is, therefore, compelling justification _not_ to refuse on the grounds of prematurity. The irony is that if the Willows is refused on prematurity grounds there will be no prospect of policy CS4 being met, a situation which PSGP guidance seeks to avoid.

94. The purpose of the WSSA is to set out specific, allocated sites where waste management facilities are considered acceptable in principle until the end of 2026 and which are available for development as waste management facilities.\(^{147}\) The WSSA explicitly states that the background to the need and the strategy for provision of sufficient waste management capacity in Norfolk is set out in the WCS.\(^{148}\) The WSSA, therefore, concerns itself solely with the suitability of individual sites for the accommodation of different WMFs. It expressly does not deal with any of: the overall WM strategy in Norfolk; the type of WMFs required, the number of WMFs required, the overall capacity of residual treatment required, phasing, the scale or capacity of individual sites and their distribution throughout the County. Furthermore, as JH accepted, the policies in the WSSA must be consistent with those in the WCS unless it is intended and explicitly stated that the policies in the WSSA are to supersede those in the WCS.\(^{149}\) That is not the situation here. Accordingly, the only issue for consideration in the WSSA is the suitability of individual sites to deliver the requirements in the WCS. JH, it will be recalled, accepted in XX that the Willows was suitable for a thermal treatment plant.

95. The application site was extensively trailed in the WCS. It is one of only three sites that are identified as potentially suitable for accommodating a TT plant in the WSSA (another of which is also in King’s Lynn (WAS05) but is agreed to be less suitable than the application site for the proposed development). Two other sites have been allocated for other residual

\(^{147}\) CD.G26, §1.1 and 2.1.  
\(^{148}\) CD.G26, §2.4.  
waste treatment uses. Furthermore, the WCS Inspector expressly endorsed NCC’s schedule of proposed minor changes in Appendix A to his report which included an amendment to include a paragraph that specifically referred to the development at the Willows of a WMF with a capacity of 275ktpa.\textsuperscript{150} He surely would not have done so if he had had any misgivings about its fit with the policies and strategy that he had found to be sound. Importantly, no party to the WSSA EIP advanced any objection sites either generally or in relation to this application site so that the Inspector examining the WSSA has no remit or need to compare the merits of the application site with one or several rival sites.

96. Neither will the grant of planning permission for the Willows prevent development coming forward on any other WSSA site. Indeed, more than one site for the recovery of waste will be required since the Willows will provide only about 40 per cent. of the recovery capacity sought by the WCS. RM accepted in XX that there would be no need for another strategic WMF for residual MSW but stated there would be a need for at least another strategic scale plant to manage residual C&I. We noted NLQC’s reliance on the WCS Inspector’s reference\textsuperscript{151} to the Willows not being central to the achievement of the core strategy in Re-X of JH. This was trying to have it both ways: if the Willows is not central to the strategy, how can it if now permitted predetermine a fundamental locational or other issue in the WSSA?

97. The height of the BC’s case, as put in XX of RM, was that the Willows would take up at least 70 per cent. of the residual MSW and thereby set the scale and location of treatment for MSW. As RM said, this may be so, but, first, issues of scale and location have already been determined by the WCS and the Willows clearly complies with the parameters laid down in the WCS. Indeed, as already mentioned, the Willows represents the only extant opportunity to make some progress towards the phasing requirement laid down in Policy CS4 of the WCS, as JH agreed. Secondly, the basis – an analysis of MSW alone – on which the BC now seek to demonstrate prejudice and therefore predetermination is wholly flawed given that the WCS does not distinguish between MSW and C&I when prescribing the recovery capacity requirements.

\textsuperscript{150} CD.G9, App.A, p.12, PC162.
\textsuperscript{151} CD.G9, §43 and 44.
As to objections to the allocation of the application site in the WSSA, it has been included in all four draft versions of the WSSA. Objections to the allocation have been assessed at each stage of the DPD process and the allocation has remained unchanged. The objections that remained and were considered at the EIP were prompted in the main by this planning application. Some 93.5 per cent. of these took the form of a standard response and, in any event, the substance of the objections is reflected fully in the issues being dealt with in great detail at this inquiry. As to the BC’s reliance at this inquiry on their own objections to the WSSA, they were clearly stimulated by this planning application\(^{152}\) and, in any event, repeat the issues dealt with in much greater detail at this inquiry.\(^{153}\) This inquiry is, again, best placed to adjudicate on these issues.

Finally, we record that this objection is another policy based issue with no clear evidence of resulting harm. It is disguised as a point which supports the plan led system but the reality is the reverse. The WCS has set down the scale, distribution and phasing of the recovery capacity required in Norfolk. The phasing element is particularly important given the urgent need to divert waste from landfill and the fact that this proposal is the only one that has been put forward and which can materially contribute to achieving delivery requirements expressed in mandatory terms in the adopted development plan. The grant of planning permission for the Willows, far from undermining the plan led system, would be in accordance with it. It is hard to see, therefore, how the grant of permission now could in any way prejudice the outcome of the WSSA process. It certainly could not be contended that the participatory process involved in formulating the DPD and testing its soundness has in any way been prejudiced: not only has this inquiry provided a hugely better opportunity to objectors to have their say than the WSSA EiP itself, but significantly it cannot be said that anyone would have been denied the opportunity to put forward alternative sites and have them considered by the EiP Inspector for the simple reason that no-one advanced alternative sites. Whatever attempt was made at the EiP by the BC to suggest sites as examples of windfalls that could come forward, the Inspector is obviously unable to pass judgment on their suitability in the absence of sustainability appraisal and consultation.

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\(^{152}\) The BC’s initial representations to WSSA had been to commend the site in relation to the waste hierarchy, proximity and CHP potential: CD.G28 p.154

\(^{153}\) See, for example, KLWNB.C’s Reason 5 dated 12 March 2012, CD.M5 relating to the location facility, the waste hierarchy, the ST and flood risk, ecology and the need for appropriate assessment – all matters expressly before this Inspector.
100. In any event, insofar as there is any substance in the prematurity objection, it is a matter that needs to be considered in the overall planning balance, as JH agreed. The need for residual waste treatment facilities is so pressing that this factor alone could and should outweigh any prematurity concerns. There appears to be no dissent on this proposition from the BC. JH goes only so far as to suggest that either the determination of this application should be deferred until after the WSSA Inspector has reported on the EIP and parties have a chance to make representations on that report or that the matter is simply a material consideration that weighs against the proposed development.  

154 There is no suggestion that the issue is any way determinative of this application, again as JH confirmed in XX.

154 K12, §3.7.3 and 3.7.4.
Proximity principle

101. We said in opening that it was not at all clear when the BC first formulated its objection in relation to the proximity principle that it appreciated the significance of the changes introduced in the 2005 version of PPS10. It is now clear following XX of JH that he still does not properly appreciate those changes. It is perhaps worth beginning by recording JH’s agreement in XX by NCQC that if the Willows is found to comply with the development plan then this objection falls away.

102. JH’s approach to this issue was, we submit, fundamentally flawed: he focused, contrary to law and policy, on a single issue – waste miles – explaining in XX “because that is what the proximity principle is all about.” He did so in the absence of any evidence of harm arising from waste miles. Worse, he did so where his client Council has expressly agreed in the statement of common ground that there would be no such harm.\(^{155}\) This illustrates the impossible position JH placed himself in: he relied upon the very adverse effects his client had formally agreed – with the benefit of his advice – would not arise. It is a position devoid of logic. Perhaps that is why JH felt compelled to state during XX that “the proximity principle is nothing to do with sustainability or carbon footprint.” In light of this – and the primacy of sustainability issues in planning – one wonders why he saw fit to detain the inquiry on this issue? It hardly needs to be said that that statement is wholly at odds with JH’s entire case on the proximity principle which is that the principle is underpinned by a concern about the environmental effects of transport. We turn to analyse the issue.

103. The proximity principle drives from European legislation and, in particular, from Article 16 of the rWFD. At a national policy level, the proximity principle is contained in the fourth KPO of PPS10 which states that all planning authorities should prepare and deliver planning strategies that:

\[\text{“help secure the recovery or disposal of waste without endangering human health and without harming the environment, and enable waste to be disposed of in one of the nearest appropriate installations.”}\]

\(^{155}\) CD.X3, §13.

\(^{156}\) CD.U5, §3.
104. By contrast, the previous and now superseded formulation in PPG10 provided that waste should generally be managed as near as possible to its place of production because transporting waste itself has an environmental impact.\(^{157}\) It applied to all waste without any distinction between MSW and C&I. Nor did it distinguish between treatment methods and, in particular, between the disposal and recovery of waste (as the fourth KPO now does). Further, it had the sole objective of minimising travel distance. DEFRA warns against perpetuating the old formulation:

“The principle is often over-interpreted to mean that all waste has to be managed as close to its source as possible to the exclusion of other considerations, and that local authorities individually need the infrastructure required to do so. This is not the case. Indeed the final part of the Article itself states, “The principles of proximity and self-sufficiency shall not mean that each Member State has to possess the full range of final recovery facilities within that Member State”. Clearly if not even the entire country needs to have the full range of facilities, a specific local authority does not have to. While there is an underlying principle of waste being managed close to its source, there is no implication of local authorities needing to be self-sufficient in handling waste from their own area.”\(^{158}\)

105. Policy is clear that it is for the market to decide when and where to build energy infrastructure\(^ {159}\) and for the applicant to determine the throughput.\(^ {160}\) It is also clear that there is no requirement for a facility to be centrally located.\(^ {161}\) This is the legal and policy context on which the proximity principle is founded.

106. Article 16 is entitled “Principles of self sufficiency and proximity.” It is apparent, therefore, that the proximity principle is inextricably linked to the concept of self-sufficiency, as JH himself contended\(^ {162}\). Self-sufficiency is a concept that applies at the Community and Member State level, not at the level of individual WPAs.\(^ {163}\) So both the concepts of the nearest appropriate facility and the network of facilities relate to the Community and Member State as a whole.\(^ {164}\) JH agreed that the network of facilities required under the rWFD did not relate to the intra-national level. At Shrewsbury, he said that the self-sufficiency principle as it has been transposed by the Waste Regulations continued to apply

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\(^{157}\) K13, App.2, Box 1.
\(^{158}\) CD.U32, §151.
\(^{159}\) CD.U3, §2.2.19.
\(^{160}\) CD.U4, §2.5.13.
\(^{161}\) CD.A14, Secretary of State, DL, §16.
\(^{162}\) Main JH proof, §2.3.4
\(^{163}\) CD.L6, Recital 32.
\(^{164}\) This is made clear in the Waste Regulations (CD.L, schedule 1, §4(2) and (3)).
at the national level. There is no basis for suggesting the principle of self-sufficiency should relate to a WPA area, let alone an individual town or district within such a WPA. JH did say in Re-X it was no part of his case to suggest that King’s Lynn had to be self-sufficient. However, that answer needs to be placed in context. He spent some time in XIC setting out the various population figures of the major urban areas in Norfolk and explaining that, based on an allocation of Norfolk’s residual waste proportionate to the population of King’s Lynn, a residual treatment plant of 105ktpa was justified in the town. In XX JH agreed, subject to flood risk, such a plant would be acceptable on the application site. It is difficult to see how that approach is anything but seeking self-sufficiency at the level of individual towns – even if such a facility could take waste from other parts of the County.

107. Whether one calls it self-sufficiency or proximity, the reality was that JH sought to apply the principle at the intra-WPA level. If he did not, there would be no point to pursue. To justify this approach, JH referred to the DCLG December 2012 Guidance for local planning authorities on implementing the requirements of the rWFD. However, as JH agreed the smallest dominion that document refers to is the WPA’s area. It provides no justification for the application of the principle to individual communities within that area. JH could point to no policy that supports the application of the principle to a level below the WPA area. Moreover, the latest Government guidance (and JH repeatedly emphasised the need to look to the latest manifestation of Government guidance, in particular, with regard to justifying his revised waste forecasts) states in terms that each WPA is not required to be self-sufficient. Any suggestion that King’s Lynn should not have to treat waste from other communities within Norfolk is, therefore, totally misconceived, as is confirmed in the Guide to the Debate. This states unequivocally that “there is nothing in legislation or the proximity principle that says accepting waste from another council, city, region or country is a bad thing and indeed in many cases it may be the best economic and environmental solution and/or be the outcome most consistent with the proximity principle”.

165 C87, §10.4.6.
166 CD.U30, Annex 2, Article 16.
167 CD.U32, §151.
168 CD.U32, §153.
108. It is instructive to compare JH’s view that in order to comply with the proximity principle a proposal needs to help minimise waste miles and contribute to the spatial distribution of facilities within each WPA to enable communities (i.e. within those areas and at a sub-county level) to manage their own waste\textsuperscript{169} with the Government’s view that:

“an over emphasis on restricting facilities to ‘local waste’, particularly defining it by administrative ownership of waste and the boundaries and quantities this implies, can lead to sub-optimal solutions in terms of cost, efficiency and environmental impact; and a significant loss of long term flexibility.”\textsuperscript{170}

109. JH claimed that one large facility more centrally located in the County than Willows would accord with the proximity principle. This was exactly the “over interpretation” the Government eschews. It is hard to understand why the residents of, say, Great Yarmouth would feel their waste was being more responsibly treated if it was done at Snetterton or even Costessey rather than King’s Lynn. Both locations are just as “remote” from Great Yarmouth as King’s Lynn.

110. Central to the BC’s objection on this issue is an interpretation of policy CS5 which requires facilities to be sized in proportion to waste arisings in the urban area in which the facility is sited. However, JH accepted in XX that on the plain wording of the policy it neither requires a waste management facility at each of the locations identified in the policy nor that any such facility should be sized in relation to the waste arisings in the area it is situated. In the circumstances and for the reasons set out below it is hard to see how the Willows can be seriously suggested to conflict with this policy. Indeed, JH agreed in XX that the proposed development did not conflict with the express wording of policy CS5. BC’s closing §95 states it would be absurd to suggest that a 700ktpa plant in King’s Lynn would comply with the policy, but this is completely irrelevant given that JH agreed the Willows was compliant with the policy’s express terms.

111. At the time of the BC’s first OR, the WCS had yet to be found sound and the BC was arguing that it was unsound for reasons which included that it did not clearly identify whether a centralised or distributed strategy for the treatment of residual waste was proposed.\textsuperscript{171} The BC’s representations on the WCS demonstrate that it well appreciated

\textsuperscript{169} K12, §2.3.6.
\textsuperscript{170} CD.U32, §154.
\textsuperscript{171} C81, App.7.
that the submission policies could lead to a single large plant serving the entire County. It resisted that outcome strongly and argued for a linkage between the location of sites and local waste arisings, but failed to convince the Inspector who found the spatial strategy sound and, indeed, the most appropriate strategy when considered against the reasonable alternatives (which, as JH agreed in XX, must have included the alternative strategy that was central to the BC’s representations in opposing the strategy which was ultimately endorsed).

112. Furthermore, specific text was introduced in the final version of the WCS in response to the BC’s objections to make it absolutely clear that it is for the market to decide whether there should be larger centralised sites in a small number of locations or a larger number of small sites dispersed across the County (and in the process demonstrating that the BC’s interpretation of the WCS that it could permit a large facility on the western edge of the County was absolutely correct). Two further points should be made: first, the BC now put forward an interpretation of policy CS5 that is diametrically opposed to its understanding of this policy when making submissions to the WCS. Secondly, the WCS Inspector plainly felt a single 275kpta plant at the application site was consistent with the strategy – it would be extraordinary if he had not commented adversely on paragraph 6.23 of the WCS (which is wholly unqualified) given the BC’s representations at the WCS EiP if he had been at all concerned. Indeed, that wording was a proposed change expressly endorsed by the WCS Inspector. Further, as NCQC – who attended the WSSA EiP on behalf of NCC – pointed out, the WSSA Inspector made precisely this point to JH. The spatial strategy has been settled and it is not open now for the BC to complain. Neither is it, consequently, an argument that ought to have been raised at the examination of the WSSA.

113. At the heart of the BC’s concern expressed in the first OR (dated 25 March 2011) was the fact that the proposal would lead to a facility designed to serve the whole of a large County but sited in its north west corner. This concern was allied with two further concerns: the

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172 CD.G9, §41.
173 CD.D1, §6.41.
174 CD.G9, §45 and PC162.
175 CD.M3, p.19.
capacity of the A47 and conformity with some of the PPS10 locational criteria. The BC did not rely on any development plan policy in relation to this objection. The position changed in the BC’s statement of case where reliance was placed on WCS policy CS5.

114. The first OR concluded that the Willows was a “fundamental departure” from the proximity principle precisely because it would lead to a large facility on the western edge of the County and because “waste should be processed near to where it is generated.” These concerns found expression in RR1 to the first OR which said that the proposed facility was “geographically isolated from the areas in which the waste will be created and has poor transport links to those areas.” It can be readily appreciated that the BC did not have a proper understanding of the proximity principle at that time.

115. By the time of the second OR (March 2012) the WCS had been found sound – in the face of the BC’s objection – and adopted. It follows that policy CS5 of WCS was found to be sound in the light of the policies in PPS10 and must be regarded as fully up to date.

116. As a result of the adoption of the WCS, the BC officer concluded that a number of the original objections could not be maintained. Officers also recognised that first OR had not properly reflected the proximity principle because it only applied to disposal and not recovery. Interestingly, all reference to the proximity principle was dropped from the RRs attached to the second OR. RR6 to that report, however, reflects the same underlying concern on which RR1 to the first OR was based – the transport of waste to the western most extremity of the County – but this time under the badge of sustainability.

117. However it is expressed, the objection as now put forward still focuses on waste miles and wholly ignores other considerations and the rationale for the change in national policy. It is an approach that is manifestly flawed. The 2005 changes were brought about expressly to enable local planning authorities to consider factors other than distance alone. In XIC JH explained that the change from the formulation in PPG10 to that contained within PPS10

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176 CD.M3, p.20. As to the A47 capacity issue the HA were satisfied and the BC do not now pursue such an objection. Similarly, the suggested conflicts with the PPS10 locational criteria related to nature conservation, air emissions and land use conflict none of which are now pursued as objections and see RR1, p.34.
177 BC statement of case, §2.2.4.
178 CD.M3, p.33.
179 CD.M5, p.12.
was to introduce a greater degree of pragmatism and, further, that he fully recognised that there was a range of considerations that need to be taken into account in the application of the proximity principle. However, as he accepted in XX, there is a complete failure to deal with those other factors in his evidence. His proof was focused entirely on waste miles because “that is what the proximity principle is all about.” The inclusion of the words “one of” in the reformulated expression “one of the nearest appropriate facilities” demonstrates the inappropriateness of that stance.

118. Further, other factors which JH accepted should be considered but which he failed to do include matters such as size and economies of scale; maximising the potential for CHP, and the relative suitability, availability and deliverability of sites. These are all highly relevant to whether a facility is appropriate and are considered elsewhere in these submissions. Moreover, given the urgency of the need for recovery capacity in Norfolk, another important factor in considering NAI is whether the possibility of identifying a nearer site to the main source of arisings would justify the serious delay implications of refusing the Willows. JH suggested that planning permission should not be granted simply as a matter of expediency. But to claim that granting permission for the Willows would simply be a matter of expediency is, of course, wholly wrong: in particular it ignores that there is a development plan policy that expressly requires the delivery of 370kt of recovery capacity by 2015/16 (policy CS4) and that the Willows is the only proposal that can hope to do so. On this point alone it is demonstrably the most appropriate facility.

119. In any event, if one was to focus on waste miles one has to ask what is the harm? The BC quietly dropped all its environmental concerns that initially supported its objection on the grounds of the proximity principle. It has adduced no evidence to substantiate any harm arising from additional waste miles. JH provided a calculation on waste miles but, even if it is a valid piece of arithmetic, that’s all it is – arithmetic. It does not establish consequential harm. Further, it should be recalled that the NPPF states that transport impacts should result in a refusal only where they are severe. There is no transport issue

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181 His proof, as he accepted is entirely focused on waste miles (see §2.1.1; 2.3.1; 2.3.6; 2.9.1(c); 2.10.5 and 2.11.1).
182 K12, §6.2.4.
183 Namely, the capacity of the A47, nature conservation, air emissions and conflicting land use (see CD.M3, p.20).
184 K13, App.3.
185 CD.U1, §32.
before the inquiry. It follows that transport should not be a basis of refusal and yet that is what really underlies this objection.

120. JH appeared to give up the waste miles issue (and so his case on proximity) almost entirely in XX (and in Re-X when he was invited to revisit the point but only confirmed his original clear answer) when he said that a 275ktpa facility serving the whole of Norfolk at Snetterton, close to Thetford – a town much smaller than King’s Lynn, but only marginally closer to the centre of the County - would be acceptable. His entire analysis to that point had been based on optimising waste miles which he sought to justify by comparison with a site at Costessey.\(^{186}\) That position was, in effect, abandoned without any analysis of the implications for waste miles. JH further accepted that the 105ktpa facility he said would be acceptable at King’s Lynn could accept waste from east Norfolk and comply with the proximity principle. With those concessions, what we submit always had been a bad point, was effectively abandoned – whether JH realised it or not.

121. That was, we submit, the right outcome. The WRATE assessment\(^ {187} \) shows there would be little or no climate change benefit from locating the EfW Facility at Costessey, near Norwich in the centre of the County as compared to King’s Lynn. The WRATE analysis and its conclusions were not challenged by the BC, as confirmed by JH (despite the BC having engaged Eunomia specifically to assess whether it could be undermined).\(^ {188} \) In particular, JH confirmed in XX that he did not take issue with the conclusion of the WRATE assessment that any transport dis-benefits are comfortably outweighed by benefits of the diversion of waste from landfill.

122. The tiny CO\(_2\) saving in locating the facility centrally in the County as compared with King’s Lynn would be completely wiped out by the first weeks of delay that will inevitably be caused if planning permission is refused. Moreover, the delay would be considerable: RM estimates that it would take a minimum of 6 years to carry out the actions required to deliver an alternative strategy (without considering the effects of any need to retender for the Contract). RM’s estimate of delay was not challenged in any material way during the inquiry. The irony is that as a result of the call-in and the consequent delay, the modest

\(^{186}\) K13, App.3.
\(^{187}\) C71, App.O.
\(^{188}\) C71, App.O, p.20, fig.4.2. and CD.R8.
benefits of a more centrally located facility in transport terms have already been wiped out many times over.

123. In short, it is far preferable in sustainability terms to divert residual waste from landfill at the earliest possible opportunity and to seek to optimise aspects of sustainable development generally, than it is to await an outcome based upon minimising transport distance alone. The latter approach is not the correct interpretation of the requirement to dispose of or recover waste at one of the nearest appropriate installations. It is not required for policy compliance and will not assist in securing the most sustainable outcome.

**Conclusion**

124. DEFRA has only recently said that the phrase ‘one of the nearest’ does not mean that the waste must be managed in the closest facility to the exclusion of all other considerations including cost.\(^{189}\) The reality is that the Willows will be not one of but the nearest appropriate installation in the absence of any other facility.\(^{190}\) It will not prevent other sites coming forward and in time it will be part of a wider network of WMFs across the County.

125. The irony underlying this whole issue is that the main landfill resources within Norfolk are, in any event, within the Borough Council’s area (some 86.5 per cent of the remaining capacity in Norfolk).\(^{191}\) If permission is refused for the Willows, then in all probability the County’s waste will continue to be transported to the western part of the County and landfilled, thereby involving a *similar* quantity of waste miles to achieve a waste management method at the very bottom of the waste hierarchy. If the waste is not disposed in these landfill sites it in all likelihood will have to travel an even *greater* distance to facilities beyond Norfolk given the deficit of landfill capacity in neighbouring counties or be exported to other countries.

126. We submit that on any analysis the BC’s case as promoted by JH on the proximity principle was manifestly flawed. Even on JH’s analysis the point falls if the proposal complies with the development plan. For the reasons set out above we contend that it does.

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\(^{189}\) CD.U32, §152, 1\(^{st}\) bullet.

\(^{190}\) Which JH seemingly recognises (K14, §3.20.3).

\(^{191}\) C80, §3.4.5.
Waste hierarchy

127. This is an objection, pursued by both the BC and KLWIN,\textsuperscript{192} that relates to the terms of the Contract and not the land use implication of the development proposed. Aside from his specific concern in relation to the Contract, JH agreed in XX that the Willows would divert waste from landfill and thereby move the management of the waste up the waste hierarchy (which accords with the argument he made at Shrewsbury for the Appellant).\textsuperscript{193}

The Contract

128. JB explains the terms of the Contract in some detail in his written evidence.\textsuperscript{194} That analysis indicates that there is no basis on which to suggest the terms of the Contract will prevent management of waste in accordance with the waste hierarchy or otherwise provide a disincentive to recycle. Rather it demonstrates that the Contract provides sufficient flexibility to ensure that if insufficient MSW is available (under the Contract the WDA is to provide a minimum tonnage of 170ktpa) then substitute and/or top up waste will be secured. It is precisely this form of flexibility that the Government states avoids the problem of competition between recycling and energy from waste.\textsuperscript{195}

129. We demonstrate below that the minimum forecast level of residual MSW arisings is comfortably higher than the minimum tonnage in all scenarios. However, in the highly unlikely event that the WDA fail to deliver the MT of MSW then the operator is obliged to use reasonable endeavours to secure substitute waste, which may include C&I waste from within Norfolk or from adjoining counties.\textsuperscript{196} Again, the Applicant has demonstrated that there is ample C&I waste available and that there is forecast to be significantly more MSW and C&I arisings than the Willows’ proposed capacity. Contrary to BC’s closing §9(c), the pricing of this substitute waste is not “entirely a commercial matter”: clause 25.2.4 of the contract (CD.J1) requires CW to demonstrate to the WDA’s satisfaction that the price is reasonably obtainable on the market.

130. If the operator fails to source substitute waste, then the WDA has the option to provide top up waste as if it were Contract waste and, again, this can include C&I waste or other MSW

\textsuperscript{192} KLWIN Statement of Case, §2.2.2.
\textsuperscript{193} C87, §8.2.1.
\textsuperscript{194} C10, §5.4-5.17.
\textsuperscript{195} CD.U32, §61.
\textsuperscript{196} C10, §5.11.
that is available to the WDA.\textsuperscript{197} Such a position is even less likely to occur. As a result, even if residual MSW falls below 170ktpa – an event we submit is highly unlikely – there is more than sufficient residual C&I waste to make good any such deficit and the terms of the contract provide for such an eventuality. As already mentioned, the co-treatment of MSW and C&I is wholly in accord with national and European legislation and policy.

131. Both the BC and KLWIN have suggested that a failure by NCC to deliver the MT would result in a financial penalty and that the threat of a financial penalty would act as a disincentive to NCC to recycle.\textsuperscript{198} However, there is no such penalty in the Contract. In the unlikely circumstances, where CW has to make up any shortfall in the MT by securing substitute waste, if the price that CW is paid is greater than the base price there is a sharing mechanism under which CW and NCC will share equally any uplift received. If, conversely, the price CW is paid for the substitute waste is less than the base price under the Contract, NCC will make up the shortfall. JB considered this latter situation to be unlikely given that the gate fee paid for C&I waste would be likely to be higher than that paid for MSW under a long term contract.

132. Having regard to these contractual provisions, JH agreed in XX, that his argument on the waste hierarchy was reliant on a number of assumptions all of which the Secretary of State would have to agree in order for JH to make out his case. If only one of the assumptions is incorrect, the entire objection fails.

133. The assumptions were that:

(i) The minimum tonnage would not be met – in other words the Secretary of State must accept JH’s calculations on the amount of residual waste arisings available for recovery (and, importantly, JH further agreed in XX that this assumption is not made out unless the Material Works contract is included in the analysis);

(ii) CW, contrary to JB’s clear evidence, would not be able to source enough C&I waste to make up any shortfall if the minimum tonnage is not met (as Substitute Waste);

\textsuperscript{197} C10, §5.12.
\textsuperscript{198} KLWIN Statement of Case, §2.2.2.
Similarly NCC would not be able to do the same (as Top Up Waste); and, finally that NCC will be incentivised and able (lawfully) to act in a way which results in treating waste in the Willows which it would be reasonable in the circumstances to recycle.

134. Sensibly assessed, there is next to no chance of all these assumptions – as NCQC put it, multiple layers of uncertainty – being proved correct in practice. JH accepted that the fact that there were multiple layers of uncertainty must be taken into account and will affect the weight to be given to the issue. We submit in the circumstances that no weight can be given to this issue for the following reasons.

Need

135. Need is not in issue in this case. JH agreed in XX that there is a clear and pressing need for residual waste treatment capacity and further that the need was, even on his own figures, the almost 475ktpa total residual waste shown in his Table 2 of K15. That figure is substantially above the Willows’ capacity and indicates another facility would be required. RM sets out an extensive quantitative analysis of need.\(^{199}\) There is no requirement to revisit it in detail here given JH’s agreement set out above. In short, policy CS4 of the WCS sets out the overall scale of new waste management capacity needed in Norfolk. The WCS, as we have identified, is recently adopted and (despite Dr.Hogg’s protestations to the contrary) is up to date having been found to be sound following an EIP. At Shrewsbury JH described the development plan as the ‘most authoritative source.’\(^{200}\) We agree with the contention put forward at that inquiry by JH: that one should not go behind recently adopted local development plan documents. Policy CS4 sets out a requirement for 703,000 tonnes of residual waste treatment capacity by 2020 of which 370,000 tonnes is needed before 2015. The forecasts upon which this requirement is based were accepted by the Inspector at the WCS examination as being robust and credible.\(^{201}\) They are the only objectively assessed and publically tested forecasts of Norfolk’s waste arisings and, therefore, remain the relevant and most authoritative forecasts for planning purposes. Furthermore, they remain to be met in full: the parties are agreed that there is no

\(^{199}\) C80, p.17-37.

\(^{200}\) C87 §12.2.2.

\(^{201}\) CD.G9, §33.
operational residual waste treatment capacity currently within Norfolk to meet the requirement identified within Policy CS4.

136. RM concludes that, even if pessimistic assumptions are adopted in relation to the future amounts of MSW and C&I waste that are likely to be generated and more optimistic assumptions are made about the level of recycling that is achievable, more than enough residual waste will still remain after recycling to supply the Willows. Incidentally, RM’s comments about an uplift in economic activity indicated by the recent increase in waste arisings, much derided at the time by Dr. Hogg and JH, were it seems prescient and chime with predictions earlier this week by the Governor of the Bank of England.

137. Despite this, JH suggests that there is a danger that the minimum tonnage of 170ktpa may not be met. He arrives at this conclusion via the following steps:

(i) First, he takes the residual MSW arisings forecast for 2014/15 of c.207kt (an oral addition made in XIC to table 2 of K15);

(ii) Secondly, he applies a 5% discount based on his understanding of what proportion of MSW is unsuitable for treatment in the plant to arrive at c.197ktpa;

(iii) Thirdly, he deducts a further c.16ktpa for what he says will be the improved rate of household recycling which will be delivered through the Norfolk Dry Recyclables Processing Services contract (“NDRPS”) to arrive at c.181ktpa;

(iv) Fourthly, he deducts a further 35ktpa to reflect the Materials Works Contract to arrive at c.146ktpa;

(v) Fifthly, he tentatively suggests that other district councils in Norfolk may enter similar contracts and, specifically that Breckland are considering doing so and

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\(^{202}\) K12, §4.2.1, as amended in XIC. JB explains that at Riverside it is Cory’s experience that the figure is 0.02 per cent. (C13, §2.10).

\(^{203}\) K12, §4.2.3, as amended in XIC.

\(^{204}\) K12, §4.3.9, as amended in XIC.
deducts a further 24ktpa to reflect this, taking the total available residual MSW available down to c.122ktpa.\textsuperscript{205}

138. There are multiple flaws in this analysis as follows:

(i) First, JH’s base year is prior to the first full year of operation of the Willows (likely to be 2016-17 if planning permission is granted expeditiously). It makes sense to consider the position then rather than at a point two years prior to it becoming operational;

(ii) Secondly, as can be seen from K15 Tables 1 and 2, JH has departed (significantly) from the MSW forecasts in the WCS. He does so by applying national forecasts contained in the DEFRA Forecasting 2020 Waste Arisings and Treatment Capacity Document.\textsuperscript{206} JH applies national trends without any regard to local circumstances. Furthermore, the DEFRA document highlights the uncertainties in forecasting – uncertainties which are exacerbated by applying national forecasts at the local level.\textsuperscript{207} The dangers are amply demonstrated by the fact that there has been a three per cent. increase in residual household waste arisings in the first nine months of this year.\textsuperscript{208} As RM demonstrates, if that trend continues into the fourth quarter of this year the total residual MSW arisings in Norfolk will exceed the WCS projections by over 6,500 tonnes.\textsuperscript{209} In the circumstances, it is simply not safe to predict a large fall as JH does in K15 and on which his analysis is founded;

(iii) Thirdly, JH assumes that any enhancement in recycling as a result of the NDRPS will be additional to the increase already factored into the forecasts underpinning the WCS. However, as RM explains, it is more likely that the enhanced recycling resulting from the NDRPS will contribute towards the increase in recycling already anticipated within the WCS and will not be wholly additional to it. Furthermore, JH assumes that glass will be included in the NDRPS whereas the contract is out to tender and it is clear that the provision of a glass service is left for the bidder to

\textsuperscript{205} K12, §4.3.9.
\textsuperscript{206} CD.U33.
\textsuperscript{207} And as demonstrated by alternative forecasts before this inquiry: see the DEFRA forecast in RM’s Rebuttal App.8 (C84) which shows an 8 per cent increase in household waste arisings to 2020.
\textsuperscript{208} C89.
\textsuperscript{209} C89, table at the foot of the page.
determine.\textsuperscript{210} JH is not in a position to judge what will be offered by those tendering for the contract; and

(iv) Fourthly JH is, even on his own figures, reliant on the Material Works contract. His reliance is misplaced. The evidence of Robert Billson (“RBil”) only served to demonstrate quite how uncertain the delivery of the Material Works contract is.

First, it should be noted that it is the Secretary of State’s long-standing and consistent policy in determining applications for EfW facilities to have regard only to operational capacity and not permitted capacity given the uncertainties associated with developing new facilities regardless of their planning status.\textsuperscript{211} This is reinforced in EN-3 by reference to \textit{existing} capacity.\textsuperscript{212} In this regard, the treatment capacity the subject of any Material Works contract should not be considered. RBil confirmed in XX that:

\begin{itemize}
  \item[(a)] The BC has entered into a contract subject to what was described as ‘exacting conditions’ which must be met before the contract becomes binding;
  \item[(b)] It is a condition precedent that a demonstration plant is installed and operated in Norfolk. This has not been done. Indeed, RBil confirmed that his 1,000 litre demonstration plant has never been operated;
  \item[(c)] There is no preferred site for the development; three potential sites are said to be still under consideration, but he was not prepared to reveal their identity;
\end{itemize}

\textsuperscript{210} C86, p.5.
\textsuperscript{211} The Lostock Inspector’s Report (CD.A12) at paragraph 16.18 states: “\textit{The issue of existing capacity has been fully explored in the Rookery South decision (para 5.15), where it is taken to mean operational capacity, rather than permitted capacity. Other recent decisions at Ineos Chlor and Ince Marshes, despite being taken in slightly different contexts, have also interpreted capacity in terms of operational, rather than permitted capacity. Given the national and European imperatives to divert waste from landfill, there is a need to ensure that this does not result in the underprovision of waste treatment further up the hierarchy, since there is no certainty that permissions would lead to operational development. Therefore, it is considered that operational capacity should also be used in this case.”}
\textsuperscript{212} CD.U4, § 2.5.67. See also footnote 36, p.22 of CD.U3.
(d) There is (consequently) no purchase agreement or option arrangement in place. Contrary to BC’s closing §43, the acquisition of the still unidentified “agreed site” is a condition precedent in the call-off contract\(^\text{213}\);

(e) There is no planning permission for the facility. Nor has an application yet been made. As a consequence of not having a site, no specific environmental impact assessment work has been undertaken and there has been no request made to the Waste Planning Authority for a screening or scoping request;

(f) RBil does not have confirmation that the process constitutes recycling based upon end of waste criteria. This is a further and very significant condition precedent. The BC is not contributing any finance to the proposal whatsoever. It has structured the deal such that it will be financially neutral to it. The gate fee of £55 per tonne matches the NCC recycling credit. If the NCC recycling credit is not received then the deal will founder. To receive that credit the process will have to pass the end of waste criteria. Moreover, in the order of 90% of the input must be recycled.\(^\text{214}\) RBil had hoped and expected a decision would have been made by the EA on the end of waste criteria in February 2013, but his expectations were unduly optimistic and suggests that EA may see the matter in a very different light. Moreover, RBil accepted that in order for the end of waste criteria to be met the EA will have to regard the disposal of water to the sewer as recycling. The disposal of water to sewer represent some 25 per cent by weight of the output of the Material Works process\(^\text{215}\) which alone demonstrates that the 90 per cent. recycling rate could not be met without counting this water as recycling. RBil confirmed that he was unaware of any example of water disposed to sewer being regarded as recycling;

(g) There is no EP in place and no application has been made (another condition precedent); and

\(^{213}\) CD.J7 call-off contract clause 1.1.2 (f)
\(^{214}\) C81 appx.11 p.H3
\(^{215}\) NB this is additional to the large volume of water “in process or lost” which might be thought analogous to evaporation in composting: see method statement 3 in CD.J7
There is no funding in place (a further condition precedent). RBil revealed that he needed some £85m and accepted that the banks are “notoriously conservative” when it comes to innovative waste management facilities.

It follows that there is an immense amount to achieve before the contract even binds BC. It would not be unfair to suggest that RBil failed to provide a proven track record, either of the successful development of waste management companies or of an existing market for products made from black bag waste, which will be critical to end of waste certification. Indeed, the paucity of evidence in this latter regard – a few letters from a number of companies over a long period of time (which did not relate to products produced from residual MSW) – only serves to underline how speculative the commercial marketability for the intended product is. Another major hurdle is regulation 14 of the Waste Regulations. We reject the submission made at §59-60 of the BC’s closing regarding regulation 14: the stage of the process when the separately collected plastics are added to the black bag waste is, of course, before the material has ceased to become waste (if it ever does) and so mixing the materials at that stage is manifestly in breach of the regulation. This in itself raises huge doubts about the practicability and legality of the omnicite process.

In short it is, to borrow the words from EN-1, a “vague and inchoate” proposal. EN-1 advises that such proposals can be excluded from consideration on the grounds that they are not important and relevant to the IPC’s decision.\textsuperscript{216} It is our submission that no weight should be accorded to the Material Works contract. If that proposition is accepted, even on JH’s own figures, there is enough residual MSW alone to meet the minimum tonnage and, accordingly the objection must fail;

\textbf{(v)} JH’s reliance on Breckland District Council can no longer be maintained in light of its letter dated 23 April 2013 (attaching an earlier letter written shortly after and contradicting K13.9) in which it again confirmed it had no interest in the Material Works Contract;\textsuperscript{217} and, lastly,

\textsuperscript{216} CD.U3, §4.4.3.
\textsuperscript{217} REP/1.
(vi) RM demonstrates that using the WCS forecast for the first year of operation, even assuming the NDRPS is treated as wholly additional to the WCS forecast and including the Material Works contract, there is still more than the minimum tonnage of residual MSW.\textsuperscript{218}

139. It follows that there is no realistic basis on which the suggestion that the minimum tonnage will not be met and this ground of objection must fall.

140. Furthermore, one arrives at that conclusion even before any consideration is given to C&I. RM deals with C&I arisings in detail in his proof.\textsuperscript{219} There is no need to descend into detail as JH accepts that the combined level of residual C&I and MSW within the county is “well above” the plant’s capacity (even on his own figures). As RM explains, there is also further C&I in neighbouring counties which is currently being landfilled and could usefully be recovered at the Willows. JH does not assert at any stage that there is insufficient waste. The proportion of the County’s C&I waste that CW would need to capture to ensure that the plant operates at full capacity would be well within its reach as RM demonstrated.

141. We turn to consider whether NCC would be incentivised to send waste which could otherwise be recycled to the Willows and, in particular, whether there would be a compelling financial case for NCC to divert waste from the HWRCs to the Willows.\textsuperscript{220} JH confirmed in XX that this was the only specific example he gave of waste which might be caught by his concerns. JB deals with this issue in some detail in his rebuttal.\textsuperscript{221} First, as JB explained, JH’s assumptions on pricing at his paragraph 4.4.3 are not correct.\textsuperscript{222} The pricing is a complex matter and assumptions cannot be made as readily as JH assumes. The WDA briefing note on tonnages and costs provides a direct critique of JH’s analysis and concludes that JH’s assumptions are flawed and that there will be no incentive for NCC to maximise the waste it delivers to the Willows or to deliver more than the minimum tonnage.\textsuperscript{223} In short, operators of HWRCs are incentivised under their contract terms to maximise recycling and are directly rewarded financially for so doing.

\textsuperscript{218} C83, p.4-5.
\textsuperscript{219} C80, p.30-37.
\textsuperscript{220} K12, §4.9.1, 3\textsuperscript{rd} bullet.
\textsuperscript{221} C13, §2.1-2.10.
\textsuperscript{222} BC’s closing §74 suggests there was no “real demurring” from JH’s estimation of the unitary charge of £110, but this is totally incorrect: see C13 §2.5-6 and C14 appx.1 §4.3.
\textsuperscript{223} C14, App.1.
142. Moreover, JB is confident that, after market testing, there would be ample C&I arisings. No such similar exercise was carried out by BC. Despite this failure, the BC tried to assert that market forces would make it difficult for the Willows to compete for C&I. The argument was based on the WRAP reports.\(^{224}\) However, what the latest WRAP report demonstrates\(^{225}\) is that when landfill tax is taken into account the median price for non-hazardous landfill will be £109 in 2014.\(^{226}\) This is well above the prices shown in the WRAP report for EfW gate fees. It follows that the suggestion that neither CW nor NCC could source C&I waste to make up any shortfall against the minimum tonnage is also without foundation.

143. Further, JH (and Dr.H) take no account of Regulation 12 of the Waste Regulations which places an obligation on establishments or undertakers to operate in accordance with the waste hierarchy. This applies, however, on the transfer of waste. Regulation 35 places the obligation on the transferor to confirm, via the transfer note, that it has discharged its duty in relation to Regulation 12.\(^{227}\) In other words, the Regulations place an obligation on the WDA to confirm that it has complied with Article 4 when delivering any residual waste to the Application facility. The BC say that Regulation 12 only applies where reasonable in all the circumstances and that includes a consideration of viability. The above analysis demonstrates that it would not be justified to refrain from recycling materials on the basis of viability and so it would be unlawful to convey waste to the Willows which should have been recycled at the HWRCs. Of course, if it was so justified, the treatment of such materials at the Willows would accord with Regulation 12 and the waste hierarchy.

144. Accordingly, the BC has failed to make out any of the numerous assumptions on which the ground of objection was founded and it should fail.

*Disincentive to recycle*

145. We deal, briefly, with whether or not the Willows will, more generally, disincentivise recycling which has been suggested by a number of third parties. As JH said in XX, there is rarely an EfW inquiry where this issue is not raised and he was not aware of any adverse findings against EfW facilities in this regard.

\(^{224}\) K3, K4 and C14, App.2.
\(^{225}\) C14, App.2 (2012).
\(^{226}\) C14, App.2 £85 based on a landfill tax of £56 per tonne (see footnote 10). Landfill tax will be £80 in April 2014: £85 + (£80-£56) = £109.
\(^{227}\) CD.L8, Reg.35(2)(d).
146. There are a number of drivers that incentivise both public authorities and the private sector to recycle. First, waste authorities are subject to a range of regulatory provisions that ensure waste that is practicably capable of being recycled is recycled. In this regard, it is important to understand the respective functions of the WCAs and WDAs. The WCAs have primary responsibility for recycling waste generated by households and can withhold any amount of waste which will genuinely be recycled. It follows that the terms of the Contract between the WDA and CW cannot and will not affect the level of household waste recycling that can be achieved. The Inspector on the Shrewsbury appeal concluded:

“This appeal should be determined on the basis that regulatory provisions for the collection and treatment of MSW will be properly applied and enforced. I find, therefore, that there would not be much risk of the proposed EFW incinerating waste that could viably be reused, recycled or composted. This finding would accord with the IPC’s view in the Rookery South Resource Recovery Facility Order that the regulatory system governing MSW would result in a low risk of local authorities delivering waste that could practically be recycled.”

147. Secondly, the private sector is commercially incentivised to recycle as much waste as possible. The position was summed up pithily by the Inspector on the Cornwall appeal. He said:

“A waste producer selling materials to a contractor for recycling is hardly likely to pay for the same materials to be sent to the CERC plant. The existence of a market in recyclable materials is likely to ensure that the CERC facility will not necessarily be the first port of call for the treatment of wastes which could otherwise be recycled. Thus, the Council’s concern that the existence of capacity for C&I waste in the CERC facility would act as a disincentive for C&I waste to be recycled is unlikely to be realised.”

148. Thirdly, turning to the Willows itself, the waste inputs are controlled by Condition 2.3.3 of the EP which prevents the facility from accepting separately collected materials for

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228 See, in particular, Regulation 12 of the Waste Regulations (CD.L8). It was suggested by NLQC in XX of JB that the application of the Waste Hierarchy under Regulation 12 is subject to an assessment of viability (Regulation 12 provides the transferor of waste must take all such measures available to it as are reasonable in the circumstances to apply the following waste hierarchy as a priority order). Clearly viability is a factor that is to be considered under the proper application of the waste hierarchy. However, as RM said in XX on the same point, it cannot be sensibly suggested that this permits a simple price comparison and the selection of the cheapest option.

229 CD.A4, §112

230 Cornwall - Inspector’s Report (CD A6) paragraph §1879

231 CD.E1. See also the comments in the Decision Document (CD.E2, p.18 and 91).
recycling except where they are contaminated and otherwise destined for landfill. The EP also contains a pre-commencement condition under which the waste acceptance procedure must be agreed by the EA prior to the commencement of operations. CW has also offered to accept a planning condition governing waste acceptance procedures, albeit that for the reasons outlined we submit that such a condition is not necessary. Indeed, no party at the conditions session raised this issue.

Policy Considerations

149. The Government makes it clear in national policy that it does not consider there to be a conflict between high rates of recovery and high rates of recycling. Indeed, in the GRWP it is said:

“Energy recovery is an excellent use of many wastes that cannot be recycled and could otherwise go to landfill. It can contribute secure, renewable energy to UK demand for transport, heat, biomethane and electricity and is generally the best source of feedstocks for UK bioenergy needs. Our horizon scanning work up to 2020, and beyond to 2030 and 2050 indicates that even with the expected improvements in prevention, re-use and recycling, sufficient residual waste feedstock will be available through diversion from landfill to support significant growth in this area, without conflicting with the drive to move waste further up the hierarchy” (our emphasis).

150. And most recently:

“Energy from waste can and should support, not compete, with effective recycling.”

151. This position has been reflected in many appeal decisions. This should be of no surprise as it merely reflects the relative economics of recycling, recovery and landfilling. If income can be made from selling recyclate then those responsible for the collection of waste and/or companies that are seeking to manage their waste as part of their business are unlikely to pay for residual waste treatment or disposal. Likewise, increases in landfill tax have now made EfW competitive with landfilling. As landfill tax continues to rise (next year it will be £80 per tonne) this will only increase the competitiveness of EfW facilities.

232 CD.E1, C2.5 and Schedule 1, Table S1.4 and PO5.
233 CD.U24, chpt.5, p.77 – 78, §22 – 23 and see figure 7.1.
234 CD.U23, §214.
235 CD.U32, §56.
236 See, for example, Rufford (CD, A18 §1212), Cornwall (CD.A6, §1887) or Eastcroft (CD.A21, §343).
JB explained that, whilst he could not predict whether there would be further landfill tax rises after 2014, he and the industry expect at the very least increases in line with inflation. Hence there is a commercial driver for local authorities and companies to seek to recycle or recover value from their waste rather than relying on landfill. The market therefore reinforces the operation of the waste hierarchy.

152. Moreover, it reflects the evidence from Europe which suggests that high rates of recycling can and do sit alongside higher rates of recovery.237 DEFRA recently stated that:

“Experiences in Europe show that high rates of recycling, composting and energy from waste can and do coexist. In 2010 Austria achieved 70% recycling (including composting) alongside 30% waste which was incinerated; Germany achieved 62% recycling alongside 38% incineration; while Belgium achieved 62% recycling alongside 37% incineration. This compares to the UK with 39% recycling and 12% incineration. While some EU countries are currently experiencing overcapacity in energy from waste, it would seem that rather than reducing recycling rates, this has led to the importation of material for energy recovery from other states with insufficient recovery capacity, diverting even more waste from landfill across the EU as a whole.”238

153. Accordingly, neither policy nor practice supports the concern that the Willows may crowd out recycling. Furthermore, the Government itself has carefully reviewed the proposal against criteria which include the promotion of recycling and the waste hierarchy in the context of the award of the PFI Credits and concluded that the Contract complied with the criteria.239 The lawfulness of this decision was upheld by the High Court when it rejected the BC’s challenge.

154. Finally in this context we have to deal with Dr.H’s suggestion that the Willows should not be permitted now as there is a prospect of more recycling/reuse/minimisation in the future. This is a wholly impracticable approach and, contrary to the waste hierarchy, in circumstances where he agreed (as did JH) that diverting waste from landfill was to move the management of waste up the waste hierarchy. In any event, it is nothing but a recipe for delay and inaction: it would prevent any proposal for waste management facilities below the very top level of the waste hierarchy (in the face of development plan policies requiring

237 CD.U24, p.79, figure 7.1 and U15, p.80, chart 3.
238 CD.U32, §58.
239 CD.J6, Criteria 2 and 5.
the provision of recovery capacity) for fear of displacing a possibility at some indeterminate stage in the future of something higher in the hierarchy. There could be no better example of the best being the enemy of the good. The clear emphasis in Government waste policy is on diverting waste from landfill for which the Willows would certainly achieve. Moreover, the Government has transposed the rWFD in such a way that there is no duty on individual applications to demonstrate compliance with the waste hierarchy. Compliance is to be achieved by means of the waste strategy. As we have sought to demonstrate, this proposal complies with the WCS and that is sufficient in terms of the waste hierarchy. Dr.H accepted as much in XX.

155. For these reasons, we submit that the Willows will not disincentivise recycling and that it complies fully with the waste hierarchy. The diversion from landfill that it would achieve should be accorded very significant weight.

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240 See WS2007(CD.U24) p.11 § ix where three of the five key objectives concern diverting waste from landfill. See also GWPR(CD.U23) § 240: clearly wrong that we still send so much material to landfill.
241 C84, §2.29
Flood risk and the sequential test

156. The BC statement of case raises three concerns in relation to flood risk. First, in relation to the sequential test ("ST"); secondly, that the proposed flood mitigation works will have an impact on off-site receptors; and thirdly, that there is no suitable emergency plan in place.\textsuperscript{42} There was no reference to on-site consequences of flooding although this point has been pursued in evidence by Jon Robinson ("JR") and was referred to in the BC’s email of 10 January 2013 in response to a request for clarification.\textsuperscript{43} As JR agreed, the BC has not carried out their own modelling or flood risk assessment ("FRA") to support their concerns in relation to on and off-site impacts.

157. National policy on flood risk is now contained in the NPPF and its Technical Guide. The PPS25 Practice Guidance remains relevant. It was not cancelled by the NPPF. As Derek Armitage ("DA") explained, it remains a key document used by the profession to assess flood risk. It is clear from national policy that it is actual flood risk\textsuperscript{244} which is to be used to inform strategic planning decisions. Actual flood risk is assessed based upon information and mapping provided by strategic flood risk assessments ("SFRAs"). Environment Agency Flood Zone ("EA FZ") Mapping is only to be used where there is no SFRA.\textsuperscript{245}

158. Here, there is a SFRA: the King’s Lynn and West Norfolk SFRA.\textsuperscript{246} It was undertaken by a reputable and experienced firm of consultants on behalf of the BC and, as JR agreed in XX, it has been agreed by the EA. JR did not criticise it. It is more than a level 1 assessment and contains flood risk and hazard mapping and models overtopping and breaches. The King’s Lynn and West Norfolk SFRA expressly states that it will provide the BC with an informed basis on which to make both strategic and site-specific planning

\textsuperscript{242} BC Statement of Case, §2.5.
\textsuperscript{243} C51, App.4, §5.
\textsuperscript{244} Actual flood risk is tidal or fluvial flooding taking into consideration the effect of existing flood defences (over the lifetime of development for up to and including the design flood criterion). Residual flood risk is either from extreme events with exceptionally high return periods (i.e. in excess of the design flood criterion) overtopping existing defence infrastructure or from unpredictable events that may arise from defence failures.
\textsuperscript{245} CD.U1, §101, CD.U2, §4, CD.U11, §2.22. NPPF paragraph 101 states in relation to the application of the ST: “The Strategic Flood Risk Assessment will provide the basis for applying this test”
\textsuperscript{246} CD.G50.
decisions.\textsuperscript{247} The 2012 Protocol further confirms that the SFRA should be used in preference to the EA FZ Mapping.\textsuperscript{248} As did the 2009 Protocol before it.\textsuperscript{249} 

159. Policy CS08 of the KLCS also provides that the SFRA will be used to guide planned growth and future developments away from areas of high flood risk.\textsuperscript{250} Policy CS01 recognises that development may be required in areas at risk of flooding. Policy CS08 deals with, \textit{inter alia}, development in areas of high flood risk. Even if the Willows was deemed to be in such an area, it complies with policy CS08 for the facility is appropriate to the level of flood risk – we deal with the vulnerability classification below and conclude that the Willows is appropriate with regards to flood risk.

160. Residual flood risk is typically considered and assessed in order to inform the formulation of appropriate flood mitigation as well as to inform the assessment of safe evacuation routes.

\textit{Defences}

161. The whole purpose of using SFRAs as opposed to EA FZ maps is to enable defences to be taken into account in recognition of the fact that actual flood risk may be greatly reduced in defended areas.\textsuperscript{251} JR suggested that it was unusual for an SFRA to take account of defences. That is not so. First, as set out above policy is clear that it is actual flood risk that is to be assessed and SFRAs are to be used in doing so. Second, DA points out a number of examples of East Coast SFRA’s that take the same approach.\textsuperscript{252} 

162. The King’s Lynn and West Norfolk SFRA states:

\begin{quote}
\textit{The PPS25 flood risk zones gives a broad indication of flood risk. However, most areas which fall within the High Probability Zone (Zone 3) are on fluvial or tidal floodplains and many such areas already enjoy a
\end{quote}

\textsuperscript{247} CD.G50, §9.5 and 10.2.
\textsuperscript{248} CD.G53 which states: \textit{“For development and planning purposes the SFRA maps and Tidal River Hazard Mapping should be used to identify flood risk to your property/site...This mapping should be used rather than the EA’s interactive online flood map.”}
\textsuperscript{249} CD.G54 which stated: \textit{“As the SFRA is the most up to date, for the consideration of individual planning applications, the SFRA flood risk assessment maps – Climate Change maps will be used and NOT the Environment Agency’s Flood Map.”} The 2009 Protocol has been superseded by the 2012 Protocol.
\textsuperscript{250} CD.D3, p.33.
\textsuperscript{251} CD.G50, §2.16.
\textsuperscript{252} C53, §2.2.2 – 2.2.9.
substantial degree of protection from established flood defences. The actual degree of flood risk to which these areas are subject may well be significantly less than that implied by their PPS25 classification, provided that those defences are maintained at their current standard.”

163. The King’s Lynn and West Norfolk SFRA has carefully assessed the condition of the local defences. As JR conceded, he did not consider the matter in his proof of evidence. The defences are in good condition with only minor defects that will not reduce their overall performance. The probability of their failure is less than 1 in 1000 years. JR doubted that one could place a number on the probability of failure but accepted that it was “incredibly unlikely.” With regular maintenance and assuming a lifetime for the development of 75 years, the EA estimates that the standard of protection offered by the existing defences is likely to remain above a 1 in 200 year event throughout the lifetime of the development.

164. As to the probability of the defences being maintained, the EA document the Great Ouse Tidal River Strategy (September 2009) states that the preferred strategy includes the ongoing maintenance of existing flood defences. The Great Ouse Catchment Flood Management Plan (July 2010) (another EA publication) applies policy 4 to King’s Lynn and South Wootton. Under policy 4 further action (i.e. this is more than simply maintaining the existing defences) to sustain the current level of flood risk into the future will be taken (accounting for climate change and future development). In coming to that decision the EA had regard to the fact that King’s Lynn has been identified as a key area for growth as well as a cost-benefit analysis of sustaining the current level of flood protection as compared to increasing it under policy 5. There can, therefore, be considerable confidence that this policy will be implemented. There is certainly no evidence that continued maintenance is not possible or not likely. JR is, accordingly, wrong to suggest that there is no evidence before the Inquiry that the defence standards

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253 CD.G50, §2.6.
254 In accordance with Government advice (CD.U11, §3.58).
255 CD.PA11, Tab 9, email dated 21 October 2011 (last page of Tab 9).
256 CD.G50, p.37, §7.39.
257 N13, App.3.
258 CD.E11, p.9.
259 C5. See also The Wash Shoreline Management Plan 2 (August) 2010 (C51, App.2) and DA’s proof (C50, §3.11.6 – 3.11.8).
260 C5, p.750 – 751.
261 As is the BC’s closing §132
in the locality will be maintained over the lifetime of the development. Moreover, even without maintenance, JR accepts that there is a very low probability of breach (in XX he said “incredibly unlikely”).

165. Having regard to the growth status of King’s Lynn and the major development that has been consented already and the further development that is being planned in the vicinity of the application site, it is inconceivable, as DA emphasised, that the defences will not be retained and maintained. We submit, therefore, that there is a very high probability that the EA will continue to maintain the existing defences. Further, there is a strong likelihood that the current level of defences will also be sustained by taking additional mitigation measures to combat the effects of climate change when required, not that that is - over the lifetime of the development - actually required to ensure its acceptability.

Hazard mapping

166. The 2012 Protocol is clear that for the purposes of assessing development proposals, the SFRA climate change maps are to be used. In addition where there is tidal river hazard map (“TRHM”), as the most up to date and accurate information, it should also be used to inform the flood risk assessments for both applications and allocations. The purpose of TRHM is to address residual as opposed to actual risk and to inform mitigation and evacuation plans, i.e. to ensure the development is safe. It is clear that, contrary to what JR states in his proof, TRHM does not replace or supersede a SFRA. Neither does it affect the FZ classification of the site or the vulnerability categorisation of the development – which JR accepted in XX. Rather it is a supplementary layer of technical information to assist with emergency planning and the assessment of the residual risk in 2015. It is also plainly directed towards more vulnerable development (i.e. residential) as can be seen from the specific design guidance included in the 2012 Protocol. There is no equivalent design guidance for less vulnerable development.

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262 K22, §3.2.12 and 7.1.4. This is also an answer to third party concerns about fauna causing damage to soft flood defences. DA address this concern in his proof, C50, §7.4.6 – 7.4.9.
263 K23, §2.2.2.
264 CD.G53.
265 See CD.U11, §7.13 in this regard and also the EA letter dated 13 July 2011 (K33, App.1).
266 K22, §3.2.8, 3.2.14 and K23
267 The revised Protocol (2012) is clear that TRHM should be considered where applicable to inform the application of the ST but is not to be used in preference (CD.G53).
269 C53, §2.3.5 and C54, App.7.
Site specific modelling and the lifetime of the development

167. The 2012 Protocol provides a clear mechanism for challenging the published mapping where an applicant disagrees with it, a provision which remarkably both JR and Dr Campbell (“Dr.C”) failed totally to mention in their written evidence. In such circumstances, it advises applicants to undertake their own modelling. In this case, site specific modelling was undertaken as part of the FRA and, in particular, to assess residual risk and flood hazard over the lifetime of development. Dr.C expressly agreed in XX that CW was entitled to undertake its own modelling if it considered that a different period was appropriate having regard to the lifetime of the development. Contrary to the BC’s closing §126, CW has not simply “re-drawn” the maps: it disagreed with the modelling on which the map was drawn, i.e. modelling at 2115 and, therefore, in accordance with the protocol remodelled the map to reflect the lifetime of the plant.

168. JR accepted in XX that it is important to consider carefully the appropriate design life of individual developments in any FRA (and policy recognises as much). This contrasts with the position in his written evidence. Dr.C agreed the same and said that the objective of an FRA is to ensure that the development is safe from flooding throughout its lifetime and not over a longer period.

169. According to the British Standard specific to flood risk, the lifetime of non-residential development should typically be defined as 75 years. Further, the EA suggested 75 years in their scoping response. Dr.C agreed that the BC did not dispute this as the appropriate lifetime for the Willows. The typical lifetime of an EfW facility of 15-30 years should not be forgotten in this analysis (Dr.C said he was not aware of any Government Guidance which indicated a lifetime of more than 35 years for an EfW facility). This demonstrates that a 75-year period is itself very precautionary. There is plainly no point assessing the impact of climate change over a period beyond which the development will have ceased to exist. The SFRA climate change mapping is to 2115. A 75-year lifetime takes the Willows

270 K22, §3.2.2. See CD.U11, §3.100.
271 CD.U1, §102, CD.U2, §9, CD.U10, §E2, CD.U11, §3.4, §3.90, §3.100 – 103, C51, App.1, §4.6
272 C51, App.1, §4.6.
273 C80, §7.2.9.
274 CD.U31, p.154 (20-25 years), CD.U32, p.7 (20-30 years) and CD.U34, p.39 (15-30 years).
275 A 60-year lifetime of development was deemed appropriate for the EfW facility in Shrewsbury (see C53, §2.3.3). Dr.C was in charge of the ES at Shrewsbury. No-one there disputed the lifetime.
to only 2090. It is that period which is appropriate to assess. If the Inspector and the Secretary of State thought it necessary to do so a condition limiting the lifetime of the development could be imposed.276

170. The Applicant’s FRA demonstrates that the existing defences would not be overtopped by a tidal flood event up to and including a 1:200 year event, incorporating climate change impacts, to 2090. CW’s remodelling has never been challenged by the BC or its witnesses.

**FZ classification and categorisation**

171. The parties agree that the FZ categorisation of the site is to be determined by the SFRA. There is no dispute that the application site now lies in FZ1277 (that is to say it lies in an area at the lowest risk of flooding with less than 1:1000 annual probability of flooding) nor that the Applicant’s FRA and modelling demonstrates that it will remain in that FZ at 2090. That being so, there is absolutely no requirement for a ST. Even were the Willows within FZ2 or 3, it is classified as ‘less vulnerable’ development278 and, as a result, the Willows remains ‘appropriate’ development.279 Less vulnerable development is appropriate in all FZ categories save 3b (functional flood) plain. Assessed to 2115, ignoring the proper lifetime of the development, the Willows falls within FZ3a.280

172. The purpose of flood risk policy is to avoid inappropriate development in areas at the highest risk of flooding.281 The aim should be to keep all development out of medium and high flood risk areas “where possible.”282 The Willows is neither inappropriate development nor is it proposed in area which is at the highest risk of flooding as defined in the NPPF Technical Guidance.283 It follows that, even if for some reason it was not accepted that the proposed development site was and would remain in FZ1 for the entirety of its lifetime, the development would not be contrary to the purpose behind flood risk

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276 C80, §7.2.10. Such a condition has now been proposed and agreed by the parties (see C9C - condition 65).
277 CD.M3, p.31 and K22, §3.1.6.
278 CD.U2, Table 2, p.7. Avonmouth confirms EfWs should be classified as ‘less vulnerable’ development (CD.A7, §260). The BC also accepted that this was the case: CD.M5, p.18.
279 CD.U2, Table 3, p.8. JR refers to the fact that the proposed development is classified as less vulnerable (K22, §3.3.4) but fails to grapple with the implications – that the proposed development is appropriate development in FZ1, 2 or 3. We also note that the classification of the proposed development as ‘less vulnerable’ in Table 3 is without qualification and, therefore, it is fair, contrary to what JR says (K23, pp.2.5.2) to say the proposed development is ‘entirely’ appropriate. The SoS has explicitly endorsed EfW facilities as being ‘less vulnerable’ development (see CD.A7, §260).
280 CD.U2, Table 3, p.8.
281 CD.U1, §100 and see CD.U2, §2.
282 CD.U11, §4.5.
283 CD.U2, §2, 1st bullet.
policy. In XX by NCQC, JR agreed that policy did not prohibit development in areas of high risk, it sought to steer it away from such areas and that the ultimate question is whether the development proposed is safe.

**On-site mitigation**

173. Flood risk is properly mitigated through the design and engineering of the facility. Appropriate mitigation and resilience measures have been designed into the Willows including: the elevation of finished floor levels to 2.54m AOD; ensuring all the critical infrastructure has been designed to be well above the maximum flood levels (electrical switchgear, for example, is at 4.3m AOD); there are ample places of safety within the main buildings (for example, there are offices and amenities at 24m AOD) and the access to the waste bunker has been elevated (to approximately 9m AOD). It is correct that the maximum breach level is above the finished floor levels but this is a maximum breach level that is extremely unlikely to occur (the assumptions are described below). The worst-case breach level would be 3.12-3.23m AOD and, therefore, a maximum of 69cms above the finished floor levels. This was a design decision taken having regard to likelihood and the significance of the residual flood risk and after applying appropriate professional judgment. The EA was obviously satisfied with this approach. Moreover, there is nothing in national policy that says flood risk has to fully mitigated (rather it must be taken into account and managed).

174. The Applicant has proposed at times when a risk of flooding is predicted the deployment of concrete barriers across the entrances to the elevated, three sided IBA storage bins in response to local concerns relating to washout of IBA material (this was not required by the EA). DA explained why even during the highly exceptional residual risk scenario there would be no material detrimental impact on water quality.

175. The FRA demonstrates that the development remains safe as the application site is defended from tidal flooding over the lifetime of the development. Highly unlikely residual

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284 CD.PA10, p.191, Table 9.2.
285 BC’s closing §175(c) suggests there is no evidence of any real consideration of raising the floor levels above the maximum flood level. This is quite wrong: DA in XX by NLQC confirmed it was a “sensible judgment” not to raise the floor levels further having regard to a variety of factors (see also C53 §2.6.5) and DS in XiC explained that the matter had been discussed at a team meeting and it was decided that it was not appropriate to go any higher.
286 See DA’s summary of these policies: C53, §2.6.2 – 2.6.4.
287 C50, §4.5.1 – 4.5.3.
risks have been minimised by elevation of built development and critical infrastructure and provision of safe refuge well above the predicted breach flood levels over the lifetime of development.

**Off-Site flood risk impacts**

176. JR suggests that no assessment of the risk of flooding to vulnerable off-site receptors has been carried out. However, the FRA does, in fact, assess the effect of ground raising and the presence of structures on the application site on off-site receptors. Again, the EA were plainly satisfied with the assessment. Indeed, the EA said that the Applicant’s own breach assessment undertaken as part of the FRA shows the worst case event and represents the best available information for the assessment of hazard at the application site.

177. That was an apt description of the breach scenario – an extreme assumption depicting a snapshot of the moment when a 1 in 200 year flood event in 2090 is allied with a catastrophic breach in defences, at the closest and most damaging location for the application site where there would be an unimpeded flow of water and at the moment when the breach water level would be at its highest. If such circumstances were ever to arise, the water would spread throughout and be contained in what is a very extensive flood cell and would, in any event, rapidly subside. The breach itself is largely unpredictable but the breach modelled requires an exceptionally high extreme tidal storm surge event. Such an eventuality would be predictable well in advance. In King’s Lynn and West Norfolk, there are flood-warning systems in place with proposals to enhance them. The onset of the flooding is not particularly rapid: for example, C55 demonstrates that from the breach occurring it would take over 20 minutes for the flood water to reach the Police Investigation Centre (“PIC”).

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288 K22, §4.1.5 – 4.1.8.
289 C54, App.7.
290 C54, App.11, p.19 explains that the National Storm Tide Forecasting Service monitors tidal levels and weather conditions throughout the North Sea and along the East coast. Flood warnings for tidal areas are typically issued 11 hours in advance as a minimum.
291 CD.G50, §4.35.
292 CD.E11, p.9.
178. The breach assessment demonstrates that the proposed development will have no effect on the PIC.\textsuperscript{293} This is a complete answer to Mrs Franklin’s concerns. DA demonstrates the same with regards to the travellers’ site.\textsuperscript{294}

179. As to cumulative impacts, DA has now assessed these in response to JR’s concerns in relation to this issue.\textsuperscript{295} As DA explains, owing to the limited footprint of development compared to the sheer scale of the flood cell, detailed consideration of cumulative impact was not deemed necessary by RPS, nor was it a concern raised by the EA or the BC at the time of the application.\textsuperscript{296} Both the Centrica and Palm Paper developments are located upon the generally higher ground adjacent to the flood defences and, therefore, flood depths would be expected to be low. DA explains that he does not consider that the minor uplift in water level attributable to the Willows (3mm) upon an already flooded area\textsuperscript{297} would be perceptible in flood risk terms and no material detrimental cumulative effect would result.

180. JR also states that the modelling demonstrates an increase in flood hazard along Poplar Avenue as a consequence of the development. It is correct that there is a highly localised uplift in hazard category. However, it is plain that this uplift in category has little or no effect upon access and egress along Poplar Avenue for any emergency vehicles would have to pass through areas of similar hazard in order to arrive at the increased hazard area on Poplar Avenue (note emergency vehicles would not in any event use Poplar Avenue to access the Willows as was suggested a number of times during the course of the Inquiry). Moreover, it is unclear what the suggested need for emergency vehicles would be – as already identified an evacuation plan could be imposed by condition,\textsuperscript{298} there is an advanced warning system in place and anyone still remaining on site could simply move to a place of safety within the facility. Furthermore, Poplar Avenue only provides access to Palm Paper, areas of which remain dry during the assessed flood defence breach.

\textit{Evacuation plan}

\begin{itemize}
\item \textsuperscript{293} CD.PA11, App.9. Compare Figures 9.1 - 9.3 with Figures 9.4 - 9.6.
\item \textsuperscript{294} C54, App.8.
\item \textsuperscript{295} K22, §4.1.9.
\item \textsuperscript{296} C53, §2.5.3.
\item \textsuperscript{297} C50, §5.6.1.
\item \textsuperscript{298} Such a condition has been proposed and agreed by the parties (see C64, C9C).
\end{itemize}
181. The information from the FRA is to be used as the basis on which to design an evacuation plan. There is, however, no stipulation that an evacuation plan has to be prepared before the grant of planning permission. There is no statutory requirement on the EA or the emergency services to approve evacuation plans.²⁹⁹ The EA was plainly content so long as a condition to secure appropriate mitigation was imposed. Indeed, the BC did impose such a condition on the PIC which, unlike the Willows, is highly vulnerable development. As DA confirmed in XIC, in his experience it is quite normal for evacuation plans to be dealt with by condition.

BC’s approach

182. We have already touched upon the general purpose behind flood risk policy – to aim to steer development away from the areas of highest flood risk where possible and ensure development is safe. We have identified that both FRAs and STs involve a degree of professional judgment and must always be proportionate to the degree of flood risk involved.

183. It is difficult to reconcile the BC’s position on this given the planning permissions that it or the Secretary of State have recently granted for major development near to the application site (we refer to Palm Paper, Centrica B and the PIC). Moreover, the BC is promoting major employment development (in the form of EMP1 and 2) close by and in locations at equivalent flood risk to the application site.

184. The reality is that the BC is perfectly happy – indeed is encouraging – major development in the area and what the BC have attempted to do is to use the ST as a device to try to exclude the proposed development from this location. There is no basis for contending that the proposed development would be unsafe or contravene the purpose behind flood risk policy.

185. BC’s approach is to be contrasted with that of the EA who, in their role as the Government’s statutory advisor on flooding issues, are satisfied that the Proposal is appropriate and sustainable in flood risk terms. We submit that substantial weight must be

²⁹⁹ CD.U11, §7.31.
given to the EA’s views. Indeed, it is inconceivable that the EA would have withdrawn their objection if it had any concerns about the safety of the Willows in the event of a flood. In any event, the BC did not ever actually allege it would be unsafe.

Approach to the sequential test

186. The general principle that the assessment of flood risk should be proportionate to the risks involved applies equally in this context. The ST is a simple decision-making tool designed to ensure that areas at little or no risk of flooding are developed in preference to areas at higher risk (i.e. FZ3 and perhaps FZ2). As agreed by Dr.C, it should not be applied in a rigid, prescriptive or overly formulaic manner and requires an element of professional judgment. The ST certainly should not be used as a tool to knock out applications or sites. Unfortunately this has been precisely the approach of the BC. The ST has been alighted upon as a means to bring alternative sites into consideration.

187. The reality is that the ST/ flood risk policy is but one of numerous spatial planning issues to be considered in the determination of this application. Failure to comply with the ST cannot be determinative of the application. Rather any departure from it should be weighed in the planning balance. It is clear from the BC’s opening statement that it, at least, accepts this proposition. As policy – and not legislation – the ST should be applied having regard to the purpose behind the policy. The NPPF explains that its purpose is to steer new development to areas with the lowest risk of flooding. As demonstrated already, the Willows site is both today and for the entirety of the plant’s projected lifetime properly to be regarded as lying within an area with the lowest risk of flooding: there is, therefore, no conflict with the purpose behind the ST.

300 We note that contrary to what JR says at K22, §3.3.7, the Applicant did provide the EA the information it required which JR sets out at §3.3.5 a) – d). This is explained by DA in his rebuttal (C53, §2.4). The EA formally removed its holding objection by letter dated 17 February 2012 (CD.S2) and stated that it was satisfied that the proposal satisfied the ST and that it was acceptable in respect of flood risk. Furthermore, there has been no suggestion whatsoever that the EA somehow misdirected itself, misapplied policy, failed to take into account any relevant material consideration or otherwise exceeded its statutory authority. It is inconceivable the EA would have withdrawn its objection if it considered that the development would be unsafe or expose others to unacceptable risks.

302 CD.U11, §4.4.
303 CD.U10, §7.
304 K1, §2.
305 CD.U1 §101
188. The evidence required for the application of the ST is likely to include: the SFRA, any site-specific FRA, the availability of other reasonably available sites in an area of lower flood risk for the development proposed within the area of search, the vulnerability classification of the proposed development and a demonstration that the proposal would be safe and that residual flood risk can be overcome to the satisfaction of the EA.\textsuperscript{306}

189. A proposal may pass the ST in a number of ways. First, going through the process of a ST is required only for applications located in FZ2 or FZ3.\textsuperscript{307} As both JH and Dr.C agreed in XX, if the proposal is in FZ1 then the ST is met. As we have already identified, there is no dispute that the application site now lies in FZ1.\textsuperscript{308} The Applicants’ FRA further demonstrates it will remain so in 2090. Dr.C agreed that if the Secretary of State accepts CW’s modelling, there is no need here to apply the ST for there could be no sequentially preferable site.

190. Secondly, there is, again, no need to go through the process of the ST where the site has been allocated through the DPD process. Where it has been so allocated the ST is met. We acknowledge that the application site is not yet allocated but it is well on the way to being so. The emerging plan and the draft allocation of the application site are both plainly a material consideration. In our submission, particularly where the ST is not to be applied mechanistically, it is appropriate to have in mind the advanced stage of the draft allocation of the application site when considering the ST and flood risk. A ST has been carried out in the context of the WSSA to which the BC did not originally object.\textsuperscript{309} As we have said, the Secretary of State is likely to know the outcome of WSSA before he takes his decision on this application. We are confident that WAS65 will be endorsed for allocation and, therefore, under this route there will be, at the time this decision is taken, no need to apply the ST.

191. Thirdly, if the site is not allocated and not in FZ1 then the ST process needs to be applied and the question is whether or not there are reasonably available alternative sites suitable

\textsuperscript{306} CD.U11, §4.27.
\textsuperscript{307} C54, App.12.
\textsuperscript{308} CD.M3, p.31 and K22, §3.1.6.
\textsuperscript{309} Such an objection was only raised in mid 2012. See appendices to CJ proof – N20, App.1-5.
for the development proposed within the area of search and with a lower probability of flooding.\textsuperscript{310}

192. The starting point for the ST, as for flood risk generally, is the SFRA.\textsuperscript{311} JR agreed this in XX.\textsuperscript{312} Further, policy DM4 of the WCS expressly states that the SFRA ought to be used. However, it is suggested by the BC that NCC’s conclusions on the ST are flawed because NCC uses its own countywide combined SFRA. This SFRA is based upon the SFRAs carried out by the individual District Councils and in these each uses its own methodology.

As a consequence, the BC argues that the combined SFRA cannot be used in the application of the ST as the data within it is not provided on a consistent basis across the whole County. The only consistent data set across Norfolk, the argument goes, is the EA FZ maps and so it is these that should be used. However:

(i) This is an argument unsupported by any identified policy. Nowhere, in so far as we can identify, does policy expressly set out the need for consistent methodologies between different SFRAs in the geographic area of search in order to be able to carry out a ST. Indeed, the PPS25 Practice Guidance expressly provides that the aim is for each County to have an SFRA which covers the whole area either from a single SFRA or from aggregated ones carried out by the individual LPAs in the County.\textsuperscript{313}

(ii) In fact, it is the BC’s approach that is wholly contrary to policy. As already identified, both national and local policy is clear that SFRAs should be used in the application of the ST. SFRAs are far more detailed than the EA FZ maps and take into account both climate change and defences. They also distinguish between FZ3a and b. Moreover what is the logic of ignoring the best information available and reverting to the lowest common denominator, in this case the EA FZ maps which expressly ignore actual flood risk, the assessment of which forms the entire basis of national policy. BC’s approach is precisely the mechanistic application of the ST that policy advises against;

\textsuperscript{310} CD.U1, §101. See also CD.U3, §4.4.3 which provides that the relevant alternatives are those of the same capacity and with a realistic prospect of being delivered in the same timescale.

\textsuperscript{311} CD.G50, §10.2, CD.G53, CD.G54.

\textsuperscript{312} See also K32, §4.3.21 – 22, 6.3.3 and 7.3.4.

\textsuperscript{313} CD.U11, §2.27.
(iii) Furthermore, the consistency point goes nowhere: as JR agreed in XX by NCQC the alleged inconsistencies make no difference in this case. He agreed that the only site which was ruled out on flood risk grounds was Gapton Hall (Great Yarmouth) which is, in any event, in FZ3. Moreover the alleged inconsistencies between the King’s Lynn SFRA and those applying in the rest of the County are more illusory than real: where defences exist they have been taken into account. It seems that NCC assumed The Great Yarmouth and Gorleston SFRA is undefended but the reality is that it confirms defended scenarios have been mapped. The Partnership of Norfolk District Councils’ SFRA states all existing defences are taken account. Breckland has no defences in the district; and

(iv) By implication the BC approach would also require the TRHM to be ignored, again contrary to plain planning policy. The 2012 Protocol provides that the TRHM must also be considered where applicable to inform the application of the ST (although not in preference to the SFRA). TRHM designations do not affect the FZ categorisation. As explained above, TRHM should be used to ensure the development is safe. The relevance of such information demonstrates that policy does not intend the ST to be applied in a mechanistic way of ignoring anything which does not apply uniformly across the whole County.317

193. The Combined SFRA did not include a breach assessment given the less vulnerable nature of the development contemplated in the WCS but noted the need for site specific FRAs at the planning application stage. Accordingly, as DA concluded, the level of detail within the Combined SFRA is appropriate and proportionate to assessing the flood risk of the proposed development.

314 C54, App.3, p.4 - 11 and Table A3.  
315 C54, App.4, §5.2 of the Subsidiary Reports.  
316 C54, App.5, §4.2.  
317 Moreover, we note the approach of Dr.C: at K34, §7.3.4 he adopts the use of the SFRA as the starting point for the BC revised ST. He states that the method of comparing Flood Risk is by use of the local authority SFRA maps. In the case of King’s Lynn and West Norfolk the Climate Change Maps in the SFRA are used in accordance with the protocol agreed between the Environment Agency and the Borough Council.  
318 G15, p.4 and 5.
194. JR’s suggestion that the precautionary principle should be applied, the defences ignored and the site, consequently, designated as FZ3 is wholly unsound. It cannot be a sensible or proper approach to advocate that no account is taken of existing flood defences, which can radically change the actual flood risk of a site, their condition and the future strategy for their maintenance all of which are well understood. Moreover, JR’s approach essentially advocates the use of EA Flood Maps contrary to the BC’s own Protocol and SFRA, and the NPPF.

*Policy in relation to flood risk*

195. Policy DM4 of the WCS addresses flood risk and stipulates the use of the Borough Council’s SFRA as the basis for assessing risk. This is the approach that has been adopted by CW. A flood risk assessment must be carried out for all development in flood zones 2 and 3 and for sites greater than 1 hectare. A Sequential Test must also be applied where required by PPS25 (now superseded by the NPPF). Both a ST and FRA have been undertaken in this case.

196. Policy CS08 of the KLWNCS also addresses flood risk and again highlights the requirement to consider flood risk based upon the Borough Council’s SFRA. It seeks to guide planned growth and future development away from areas of high flood risk, whilst acknowledging that some development may be required within flood risk areas to meet regeneration objectives and to maintain the sustainability of local communities. Development within high flood risk areas will be required to demonstrate, inter alia, that the type of development is appropriate to the level of flood risk or that flood risk is fully mitigated through appropriate design and engineering solutions. It is plain from the use of the word ‘or’ that these criteria are to be read disjunctively.

197. For the reason set out above and in the evidence of DA and RM, it is clear that:

(i) The site lies within flood zone 1 based upon the SFRA current flood map and the Applicant’s own modelling for 2090;
(ii) Even ignoring the presence of flood defences, contrary to the approach adopted within the SFRA, it has been demonstrated through the Sequential Test prepared by NCC that there are not sites sufficient to meet the requirements of policy CS4 that are both within a lower flood risk zone and are appropriate and reasonably available having proper regard to all relevant criteria;

(iii) The development is classified as ‘less vulnerable’ and is therefore appropriate within all flood zones excepting zone 3b, functional flood plain. Even in 2115 the application site does not fall within flood zone 3b and hence it is appropriate to accommodate the use proposed; and

(iv) Flood risk is fully mitigated through the design and engineering of the facility.

198. The proposal therefore complies fully with Policy DM4 of the WCS and Policy CS08 of the KLWNCS in respect of flood risk.

Conclusion

199. Even if the application site is deemed to fail the ST and is regarded as being located in FZ3, the proposal remains appropriate as less vulnerable development. The EA is content the Willows is safe and the risk to the development is plainly very low. Risk is a product of the probability of a breach and the consequences of a breach. The probability of a breach is here low given the defences, their good condition and the policy intention to see them maintained. The consequences too are low: there will be no material impact on neighbours and all the essential infrastructure within the Willows to be elevated above the level of flood waters in the worst case scenario. The significance of any such deemed failure in light of the purposes of flood risk policy would be very low and would in the end be only a factor to be weighed in the planning balance. The significant point is that the Willows is plainly safe over its lifetime from flood risk.
Alternative sites

200. There is no general planning requirement to consider alternatives or to establish that the proposal is the best option. Planning is concerned with what is acceptable. The question is not whether there are any more appropriate or better sites nor whether the proposal represents the ‘optimal’ arrangement of WMFs in the County.

201. There are only a limited number of situations where there is a legislative requirement to consider alternative sites, for example, under the Habitats Regulations where a development will harm a protected species – consideration will have to be given to the likelihood of NE granting a licence to disturb the relevant species which in turn requires the question of whether there are no suitable alternatives to be considered. There is no such legislative requirement in relation to flood risk. The EIA Regulations stop short of imposing a requirement on developers to identify alternative sites but simply requires the developer to outline the main alternatives considered and the reasons for the choice made taking into environmental effects.

202. However, we accept that in this case alternatives are relevant by reason of the ST. Dr.C accepted in turn in XX that should the Secretary of State conclude that the application site is properly to be considered in FZ1 then his evidence would be rendered irrelevant. He also accepted that the result would be the same if the application site was allocated before the Secretary of State’s decision on this application.

203. The ST test and consequent need to look at alternatives is a policy rather than a legislative requirement. It follows, as Dr.C agreed in XX, it should be approached in a proportionate manner and having regard to whether there is conflict with the purposes behind the policy. As we have already demonstrated, in this case there is no such conflict with the purposes behind the FR policy and the ST as part of it. Further, the application of policy is

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320 CD.U3, §4.4.1.
321 CD.A4, §144. See also the Salford decision in which the Inspector said there was force in the submission that if the development is acceptable in land use terms then it should gain planning permission irrespective of whether a better site exists and Ince Marches, CD.A22, §11.94.
322 CD.A22, §124.
323 CD.L11, Regulation 53(9).
324 CD.L3, Schedule 4, Part 1, §2 and Part 2, §4. We note that the best practice guidance on EIA does, however, advise that it is prudent to consider the main alternatives to demonstrate how decisions have been taken and if such an assessment is undertaken (as here) it may be a material consideration.
discretionary and so, even if the ST were failed, this would not necessarily lead to rejection of the proposal.

204. Where alternatives are relevant EN-1 states that, given the level and urgency of need for new energy infrastructure, decision-makers should be guided by the following principles:

“– the consideration of alternatives to comply with policy should be carried out in a proportionate manner;

– whether there is a realistic prospect of the alternative delivering the same infrastructure capacity (including energy security and climate change benefits) in the same timescale as the proposed development;

– the IPC should not reject an application for development on one site simply because fewer adverse impacts would result from developing similar infrastructure on another suitable site, and it should have regard as appropriate to the possibility that all suitable sites for energy infrastructure of the type proposed may be needed for future proposals;

…

– alternatives which are vague or inchoate can be excluded on the grounds that they are not important and relevant to the IPC’s decision.

– …where an alternative is first put forward by a third party after an application has been made, the IPC may place the onus on the person proposing the alternative to provide the evidence for its suitability as such and the IPC should not necessarily expect the applicant to have assessed it.”

(our emphasis)

205. Furthermore, where alternatives are to be considered, they must be alternatives to the development proposed – as Dr.C agreed – and not some fraction of it. The development proposed includes the IBA facility. Whilst Dr.C was reluctant to agree this, he did accept it was part of the planning application which is surely determinative of the matter. Dr.C further agreed in XX that, in the light of the principles set out above, an alternative would need to provide the same infrastructure capacity in the same timescale and that none of his sites could deliver that capacity in the same timescale. That, in itself, is we submit enough to dispose of the ST issue in favour of the development.

325 CD.U3, §4.4.3.
326 CD.U1, §101 and CD.U11 §4.25.
206. Alternatives to the application site have been considered in detail over a number of years both through the plan-making process and this application. We deal with each in turn.

WSSA

207. Policy WAS65 of the submission version of the WSSA allocates the application site for a range of potential uses including thermal treatment. In making the draft allocation NCC undertook a sequential test based on the combined SFRAs for Norfolk which demonstrated that there was no in principle flood risk issue with the allocation of the application site.

208. The application site is one of only three sites that have been identified through the site allocations process for the accommodation of a major/strategic thermal treatment plant. Importantly, several such facilities will be required to meet the need for residual waste treatment capacity within the WCS.

209. There are no alternatives to the three sites that are currently identified within the submission draft or that are being actively proposed by objectors. It is not as if objectors have not had the opportunity to identify alternative sites for the WSSA has been through four consultation exercises (Issues and Options (2008), Further Issues and Options (2009), Revised Issues and Options (2011) and Pre Submissions (2012)).327 The allocation of the application site for, *inter alia*, thermal treatment has been a consistent feature in WSSA throughout the process.

210. The BC has been less consistent. The BC did raise some concerns about the potential environmental effects of a thermal treatment plant on the site (ecology, air quality and the need for health matters to be properly assessed – on which issues the BC is now satisfied) but it expressly stated that the site would support the waste hierarchy and the proximity principle as well as recognising the site’s CHP potential.328 We now face precisely the reverse arguments from the BC today. The first time the BC raised a concern about the suitability of the site for thermal treatment was in response to the Revised Issues and Options paper in May 2011 following, it is to be noted, the Local Poll in February 2011. By then the indicative capacity had increased from 150ktpa in the Further Issues and

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327 See CD.G30, p.4 on. As to the number of consultation responses see CD.G26, §3.3 – 3.5. RM provides a detailed analysis of the site’s progress through the various stages of the WSSA (C80, §6.1-6.2).

328 CD.G28, p.154-155.
Options (2009) to 250ktpa and the application had been submitted to NCC. The objections at that stage to WSSA reflected the fact that the application had been submitted: prior to then the number of objections had been very modest. They raised a variety of potential environmental impacts but, importantly, did not suggest alternative sites that were better placed to accommodate thermal treatment.

**WSSA EIP**

211. As identified above, no alternatives to WAS65 or the other sites were advanced by either the BC or third parties. The plan making procedure is designed to be front-loaded. In the circumstances, it is not now open to the BC properly to rely on alternatives sites as it has attempted at this inquiry to do. The only issue at the WSSA EIP was whether the individual sites were suitable for the indicated range of WM activities and not the principle of whether the sites were suitable for WM per se. As noted already, JH in XX accepted that the application site was suitable for thermal treatment.

**Call for sites**

212. Dr.C asserts that the WSSA has not been prepared in accordance with good practice as recommended in *Planning for Waste Management Facilities* and has, therefore, underestimated the number of sites which are reasonably available for residual WMFs. The BC has never previously objected on the ground that NCC’s ‘call for sites’ was a flawed approach. The claim is made for the first time in Dr.C’s evidence. However, the call for sites has been extensive and made to industry, landowners and agents over the four consultation exercises. As indicated in the Strategic Housing Land Availability Assessment Practice Guidance, a site which is not promoted by industry or the landowner is not likely to be available: the attitude of the landowner is critical in terms of deliverability. This may be thought to apply with particular force to waste management proposals which usually do result in forceful reactions from the proposed host community.

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329 URS’ representations to the WSSA EiP did actually refer to alternative sites, but it was explained these were put forward as examples of “windfall” sites which might come forward.
330 The BC’s suggestion that reliance may be placed on windfall sites defeats the whole purpose of WSSA which is to allocate sufficient sites to enable the requirements of policy CS4 to be met.
331 K32, §2.2.7.
332 CD.U31.
333 K32, §3.3.1.
334 CD.G26, §3.2.
335 See CD.G30, p.4 on. As to the number of consultation responses see CD.G26, §3.3 – 3.5.
336 C84, appx.2
213. Another of Dr.C’s main concerns was that there was no systematic consideration of employment and industrial land. However, the Mott McDonald report (commissioned by the WDA and not the WPA) did this\textsuperscript{337} and identified a number of sites that the WPA was invited to investigate further. More importantly, the applicant’s revised ASA considers employment and other potentially suitable land in considerable detail,\textsuperscript{338} as Dr.C accepted. His criticism is at best confined to NCC’s work. Dr.C was content to rely on the sites that are contained in CW’s revised ASA for his consideration of alternatives.

214. Therefore, despite the bluster over alternative sites, the fact is that all three sites Dr.C has put forward were extensively covered in the applicant’s assessment and he has identified no others and, moreover, despite Dr.C’s criticism of the approach of NCC, he only puts forward two additional sites (a total of three including Harling Road, Snetterton, which was already in WSSA) that he states are preferable to the application site – Land West of William Frost Way, Costessey and the Broadlands Business Park. Both these sites were included in the Applicant’s ASA (as Sites 14 and 8 respectively). We address each of these site below. As will be clear from our earlier submissions, although Dr.C claims that these sites are sequentially preferable in terms of both the sequential test and the proximity principle, the Willows is properly to be regarded as zone 1 and, therefore, there can be no sequential preference for these sites. Further, for the reasons set out already, he has we submit misapplied the proximity principle.

215. As RM concludes, the WSSA process alone provides a high degree of certainty on the suitability and, importantly, the availability and deliverability of the site in comparison to alternatives. However, CW and RM have undertaken their own alternative sites assessment.

ASA

216. The objective of the ASA was to assess at a high level (an approach which was never suggested as inappropriate by Dr.C) the potential suitability of a range of sites to determine those that are likely to possess the greatest potential to accommodate an EfW facility of

\textsuperscript{337} K33, App.A.
\textsuperscript{338} CD.PA11, App.4, p.4-5.
comparable scale to the Willows and within the requisite timeframe.\textsuperscript{339} As such, it mirrors, to a degree, the work undertaken by NCC on the preparation of the WSSA. The fact that the conclusions align closely, particularly in respect of the suitability of the application site, supports the position that significant weight can properly be attached to the allocation of the Site within the emerging WSSA.

217. The ASA identified a long list of 142 sites drawn from an evidence base agreed with NCC and which included the preparatory work for WSSA as well as other existing and proposed allocations. The long list criteria were appraised against seven exclusionary criteria (which Dr.C agrees comply with the guidance in Annex E of PPS10).\textsuperscript{340} Dr.C believes the criteria were applied fairly save for the criterion relating to the open countryside. He does not suggest that it was an inappropriate criterion but that a site in the open countryside does not amount to an insurmountable barrier to the development of an EfW and that the criterion was applied restrictively to the Snetterton Employment Expansion Site. However, there can be no doubt at all that there is a strong policy presumption against development in the open countryside which is reflected in the WCS\textsuperscript{341} and many recent appeal decisions – it was part of the reason for refusing Rufford\textsuperscript{342} and Middlewich\textsuperscript{343} and weighed heavily against the proposal at Rookery South.\textsuperscript{344}

218. From the 142 sites 16 were shortlisted for more detailed assessment. The shortlisted sites were then assessed in more detail against 13 criteria in order to compare the opportunities and constraints of each site (not as Dr.C has suggested to exclude sites). Dr.C agrees that the methodology used to assess the shortlisted sites was suitable for a high level assessment generally \textsuperscript{345} but complains that the Applicant had failed properly to consider mitigation and had been overly proscriptive in the applying the criteria.

219. Consistency is important in undertaking an assessment of alternative sites. If prospective mitigation measures are to be taken into account, they would need to be assessed for all criteria not simply one or two where more obvious mitigation measures could be

\textsuperscript{339} CD.PA11, App.4, §4.1.1.
\textsuperscript{340} K32, §4.2.2.
\textsuperscript{341} CD.D1, polices CS6 and CS8. See also the NPPF (CD.U1, §17, 5\textsuperscript{th} bullet) and PPS10, Annex E (CD.U5).
\textsuperscript{342} CD.A18, DL, §13.
\textsuperscript{343} CD.A14, DL, §30.
\textsuperscript{344} CD.A10, §6.25.
\textsuperscript{345} K32, §4.3.5.
considered. To do so a preliminary design would be required for each site as well as a
detailed assessment of the potential environmental impacts. Such a level of assessment is
simply not proportionate or practicable in the context of a high level ASA.

220. Six sites were identified as being unlikely to be available or deliverable by 2020 (the
period the ASA considered)\(^{346}\) and were therefore discounted. Two further Sites were
identified as having potentially significant constraints that could call into question their
future potential and were similarly discounted.

221. The remaining eight sites were broadly grouped into three geographical areas. Two sites,
including the application site, were within King’s Lynn, two within the general area of the
A11 at Snetterton and four within or adjacent to the Longwater Employment Area at
Costessey. As RM explained in evidence, taking account of the quantitative and locational
objectives of the WCS, it is likely that sites will be required in all three broad locations.

222. The ASA concluded that of the two sites in King’s Lynn the application site was less
constrained and preferable having regard to access, the potential impact upon Air Quality
Management Areas and the potential for the development of CHP.\(^{347}\) Dr.C agrees with that
conclusion.\(^{348}\)

**Deliverability**

223. In its second OR, the BC carried out a detailed critique and rescoring of the ASA. In doing
so, the BC eliminated a number of factors that had been considered in the ASA – including
key factors such as deliverability (an exercise that Dr.C does not now pursue in evidence).
That exercise concluded there were three sequentially preferable sites (Site 6 (Thetford),
Site 13 (Land East of William Frost Way, Costessey) and Site 14 (Land West of William
Frost Way, Costessey)). However, Dr.C now rejects that conclusion. Of those sites, he
relies only on Site 14. He also relies on Site 1 (Harling Road, Snetterton) and Site 8
(Broadlands Business Park).

\(^{346}\) CD.PA11, T4, §2.7.34.

\(^{347}\) CHP potential is a key factor. We have dealt with this issue elsewhere in these submissions. The potential of this
site to provide CHP should be given considerable weight. If the CHP potential of the application site is judged to be
greater than other sites this would, of itself, provide strong justification for the grant of planning permission,
whatever the outcome of the FRA categorisation or ST outcome.

\(^{348}\) K32, §4.3.40.
224. It is extraordinary that the BC sought to discount deliverability given the importance placed on that factor in both national and local policy. Deliverability is especially important in a County where there is currently no residual waste treatment capacity and large quantities of waste continue to be landfilled and, further, where this need is recognised in a policy WCS4 as requiring the delivery of 370ktpa recovery capacity by 2015 and a further 333ktpa by 2020. In identifying land for WMFs waste planning authorities are advised to avoid unrealistic assumptions on the prospects for the development of individual sites having regard, in particular, to ownership constraints. The Inspector in Cornwall concluded, given the urgency of diverting waste from landfill in Cornwall – a situation which applies equally in this County – that “the ready availability of sites is a factor that should be given very substantial weight.”

225. The PPS10 Companion Guidance advises that in demonstrating that the stock of allocated land does provide sufficient opportunities in line with the core strategy, consideration should be given to any identified constraints to site deliverability including the marketability of sites to the waste management industry and with respect to ‘lead in’ times and, further, states that only sites with a high likelihood of coming forward should normally be allocated.

226. The NPPF states that to be deliverable a housing site should be available now, offer a suitable location for development now and be achievable with a realistic prospect of delivery within five years. As RM explains, advice on the deliverability of housing sites is equally applicable for WMF sites (albeit the period in which land must be available may differ). The Strategic Housing Land Availability Assessment Practice Guidance provides further detail:

“A site is considered available for development, when, on the best information available, there is confidence that there are no legal or

349 CD.U5, §18.
350 CD.A6, §1909.
352 CD.U6, §7.28. The Inspector in Cornwall expressly said that there was little point in pursuing sites that are unlikely to become available and that this was particularly relevant where there was an urgent need to divert waste from landfill: CD.A6 §1908.
353 CD.U1, p.12, fn.11.
354 C80, §7.2.62. The Practice Guide to PPS25 also makes it clear that the concepts of ‘developable’ and ‘deliverable’ as defined in PPS3 are relevant to the application of the sequential test (CD.U11, p.89, fn.7) and that ‘reasonably available’ sites can be identified from the evidence base for LDDs such as Strategic Housing Land Availability Assessments as required by PPS3 (CD.U11, §4.30).
ownership problems, such as multiple ownerships, ransom strips, tenancies or operational requirements of landowners. This means that it is controlled by a housing developer who has expressed an intention to develop, or the land owner has expressed an intention to sell. Because planning applications can be made by persons who do not need to have an interest in the land, the existence of a planning permission does not necessarily mean that the site is available. Where problems have been identified, then an assessment will need to be made as to how and when they can realistically be overcome."

227. The NPPF is also clear that deliverability is a key determinant in judging whether a development plan document is sound\(^3\) and this will be a question for the WSSA Inspector. But perhaps the clearest exposition of the importance of deliverability is contained in local policy and policy CS4 in particular which states that 370ktpa of residual treatment capacity will be delivered in the period 2010 – 15 and a further 333ktpa by 2020 – the period looked at by the ASA. Deliverability is then a key factor. The deliverability of the application site is assured. Moreover, there are no applications or even proposals for thermal treatment on the other WSSA sites or, indeed, any of Dr.C’s alternative sites.

**Proximity**

228. Dr.C also states that the ASA fails to recognise that potential sites will have to comply with the proximity principle.\(^4\) In this regard he confirmed that he relies on JH and that he looked at no factor other than waste miles. Dr.C concluded that all three of the sites he identified as equally suitable for the thermal treatment of waste were preferable in terms of the proximity principle.\(^5\) We have already addressed JH’s approach to the proximity principle elsewhere and demonstrated that it is flawed. For current purposes, we reiterate that there is no policy requirement to show that a site will minimise transport distance. It is but one of many factors to be taken into account. Nor is there any requirement for a facility to be located centrally in a waste planning authority’s area.\(^6\) In short, JH’s errors in relation to the proximity principle invalidate Dr.C’s conclusions on the ASA.

\(^{355}\) C84, App.2, §39.
\(^{356}\) CD.U1, §182.
\(^{357}\) K32, §4.4.11.
\(^{358}\) K32, §5.5.
\(^{359}\) CD.A14, DI, §16. Furthermore, none of these sites are being promoted and we refer back to what we said was the irony underlying the BC’s arguments on the proximity principle: any benefit in waste miles from the development of a more centrally located site would be wiped out almost immediately by the delay caused to the diversion of waste from landfill by the refusal of planning permission for the Willows.
229. We turn now to deal with the individual sites.\textsuperscript{360} We note before doing so Dr.C’s acceptance that he provided no evidence to indicate a willing landowner in relation to any of the sites or any industry/operator interest in any of them. Given the centrality of deliverability that we submit is a very considerable failure.

\textit{Snetterton}

230. The Harling Road, Snetterton site is allocated within the WSSA for thermal treatment. However, the WSSA provides an indicative capacity for the site of only 100ktpa reflecting the comparatively constrained size and configuration of the site. Furthermore, as Dr.C recognises, the site is not of sufficient size to accommodate an IBA processing facility. The site does not, therefore, offer an alternative for the ‘development proposed.’ The application relates to both the EfW plant and the IBA treatment plant and so, whatever the position my be at many existing EfW plants, both elements must be taken into account and indeed they are inextricably linked and have not come together simply for the purpose of “expediency” as BC surprisingly suggest. There has been and could be no suggestion that the IBA facility has been included just to frustrate the ST. It is important to remember that for the purpose of the ST assessment CW adopted a site area of 3.8ha to reflect both elements of the proposal\textsuperscript{361}, rather than 2.4 ha. as shown in the ASA.

231. The attempt by Dr.C to demonstrate that the site could house the Willows indicates a certain desperation to establish an alternative as well as a belated recognition that to do so requires a demonstration that it can accommodate a plant of the same scale.\textsuperscript{362} The exercise put forward in K35 (first supplied after Day 18 of the inquiry and nearly 6 weeks after the relevant CW witness, JB, had completed his evidence) of superimposing the Willows layout on a totally different site is crude to say the least – it is not a development designed for the site and fails for reasons set out in CW’s note to the inquiry.\textsuperscript{363} Not least, because: the exercise only confirms that an IBA facility cannot be incorporated on the site; the accuracy of the plan is questionable and suggests that there may be potential trespass into the neighbouring landfill – this is important given the tolerances shown; the area assumed

\textsuperscript{360} The Snetterton Employment Expansion Area was included on the long list but excluded from further consideration due to a conflict with the open countryside criterion. Dr.C criticised this approach (K32, p.18 on). The criticism goes nowhere as Dr.C himself does not put forward the site as reasonably available (see his Table 7.1, K32, p.70). Nonetheless RM deals with the point comprehensively in his rebuttal (C83, §2.2).

\textsuperscript{361} PA11 appx.10 p.10-10 footnote

\textsuperscript{362} K35.

\textsuperscript{363} C18. The BC’s response to this K37 does not add to the analysis – if anything it only highlights the unsuitability of the site and the lack of thought that went into K35.
for parking is unavailable – it is leased to Lafarge; there would be no room for landscaping whatsoever and no account has been taken of the cost and practicality of developing the site – there would be a need for a landfill gas migration barrier (the relationship of an actively gassing but uncontained LF site and a combustion plant placed immediately alongside could hardly be more inappropriate) and, in the second layout, which unusually puts forward a ground level tipping hall, to dig out the waste bunker. Further, there would be a lack of operational flexibility given the extremely tight fit. For example, if there is a need for any repairs to the circulation road it would in all likelihood require operations to cease whereas on the application site such works can be accommodated without affecting adversely the operations.

232. The revised ASA concludes that the site is far less suitable than the application site having particular regard to the more rural location of the site; potential impacts on the natural and historic environment; the relationship of a residential property to the main site access and the general absence of significant CHP potential.364

233. Dr.C suggests that the grant of planning permission for the Iceni Biomass plant at a nearby site indicates that the location is generally suitable for thermal treatment. The point, of course, adds nothing given the allocation of the site in WSSA. The important point is that a development of similar scale and nature to that proposed could not be accommodated on the site. However, we do reject the notion that the application proposal and the Iceni plant are, to use Dr.C’s words, ‘very similar.’365 The Iceni turbine hall is 25 m high and the stack 60 m high. The proposed development at the Willows is for a building of 51 metres in height with a stack of 85 metres. It is more than twice the height of the permitted Iceni building. In the circumstances, it is hard to see how the two can be regarded as very similar.

234. Lastly, as Dr.C accepted, there is no evidence that the landowner is willing to sell the land for the development of an EfW facility. Indeed in a letter dated 19 April 2013 the landowner confirmed that the site was not available for this development and that part of it is currently lease to Lafarge Ltd until March 2024.366 In its further letter of 24 April 2013

364 See C73, Table 1 in which SA concludes that there are ‘limited’ opportunities for CHP.
365 K32, §4.3.42.
366 SUP/2.
Norse has reconfirmed the appropriateness of the estimated recovery capacity of the site of 100ktpa in view of the site’s physical constraints, ownership and leasehold boundaries and its own proposal to establish a WTS.

Costessey

235. The land West of William Frost Way, Costessey is neither allocated in the WSSA (and cannot now be included in it) nor has the site ever been advanced or promoted by either its owners or industry. As SA explained in evidence, the CHP opportunities are inferior to the application site. Moreover, the site is surrounded by sensitive uses. Whilst these surrounding sensitive uses do not automatically preclude a large-scale thermal treatment plant from being developed, in our submission it makes it far less likely. Moreover, the fact is that to date the landowner has elected not to respond to the extensive call for WMF sites in relation to this site. As RM explained in answering questions from Mr Wilkie, the owners – R G Carter and associated companies – are the same as those who did not allow WRG to develop a site close by for an EfW facility. WRG, we can be sure as Dr. C agreed, would have tried every which way to obtain a replacement site in this area but failed. This was helpfully confirmed by Mr Wilkie and his email. Importantly, Caroline Jeffery further explained in XX and Re-X that the owners of the site had been contacted in the call for sites (on no less than 4 occasions) and had responded but did not put forward this site, as Dr. C accepted. There is no reason why the same owners should have a different view today. Finally, Dr. C’s reported but undocumented conversation with Richard Hollidge at FCC to the effect that there was simply no time to remove the restrictive covenant does not fit with the facts – there was at least an eight month period in which to address this matter.

236. So on the evidence, there is no indication that the landowner would release this site for TT; indeed, there is every indication that he would not: that was his attitude in relation to WRG and he has not responded on this site to the several consultation exercises despite having been written to on no fewer than 4 occasions. It would have been simple for the

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367 See C73, Table 1 in which SA concludes that there are ‘some’ opportunities for CHP.
368 See C84, App.5.
369 Which he produced on 3 April 2013 (Day 13). It is an email from Cllr Tim East in response to a question Mr Wilkie emailed to him. In his reply Cllr East confirms that: “WRG could not acquire land for their plant as no local land owners would sell/ lease or rent to an incinerator company.”
370 NCC received letters from R G Carter and associated companies in 2008, 2009 and 2011 (see CD.G30, p.9, 26 and p.40) and in 2012 (CD.G31, p.8).
371 See C81, App.11, F3.
BC to approach Carters direct had they wanted to establish the availability of the site. The fact they have not done so - or at least not communicated the response had they done so - is very significant.

237. The site is also located within 1.4kms of the River Wensum SAC and SSSI. In this regard it is important to note that a neighbouring site (WAS31) was excluded from WSSA for thermal treatment following objections from the EA and a Habitats Regulations Assessment carried out by NCC which concluded that there was the potential to give rise to significant harm through nitrogen deposition. There was no challenge from the owner of WAS31 to that conclusion. The failure to object to a removal is significant – as Dr.C agreed, such an allocation would have significant beneficial consequences for the value of the land – and any landowner would seek to protect that value. Dr.C agreed with the exclusion of WAS31 for thermal treatment (albeit he made clear not for ecological reasons). Land West of William Frost Way is situated on the same industrial estate and is broadly equidistant from the River Wensum SAC/ SSSI and should therefore rightly be excluded on the same basis. Dr.C further agrees with the exclusion of the SPC Atlas Site on the basis of its proximity to the River Wensum SAC/ SSSI.

238. In the circumstances it is difficult to understand Dr.C’s reliance on land West of William Frost Way. Dr.C’s reference to the Shrewsbury EfW is unsound. In comparing the two sites, Dr.C takes no account of: the proposed capacity of the two developments (90,000tpa at Shrewsbury as compared to 275,000tpa at the Willows); the location of the designated sites relative to the Shrewsbury and Costessey sites and the prevailing wind direction at each; or the sensitivity of the designated habitat to nitrogen deposition or its current condition. These latter points were, however, taken into account in the EA’s assessment of the Costessey site.

239. Finally, RM explains that the Costessey site is the subject of a restrictive covenant which may make its development for thermal treatment less likely. Even if, the restrictive

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372 See CD.G26, p.79 and CD.G42, p.2-22. See also the EPR briefing note which concludes that the EA objection to WAS31 for thermal treatment and the NCC decision to exclude the site on that basis was sound (C84, App.4).

373 Conversely the failure to object to an allocation is of no import. First, the allocation would provide value and that is no bad thing for any owner. Secondly, if the owner did not want to develop the site he would not have to do so.

374 K32, §3.2.6.
covenant does not itself prevent the proper operation of a modern EfW plant, there is still the potential for a beneficiary of the covenant to argue that the covenant does so apply.\footnote{C83, §2.3.32 and C84, App.5.}

**Broadland Business Park**

240. The BBP comprises a prestige, high quality business park (with which proposition Dr.C agreed at least in part), the vision and objective for which is:

“To reflect its prime location the business park should be of the highest quality. Development must be well designed, at low density and well landscaped. The overall intention is to provide a parkland setting for the buildings, producing an attractive environment for people to work and visit, and which will relate well to adjacent countryside and residential areas.” \footnote{C83, §2.3.10 and see §7.17 of the Broadland District Local Plan (Replacement) in May 2006.}

241. It is occupied predominantly by large modern office blocks and with an element of more general B1 development, retail, leisure and distribution uses.\footnote{See the recent marketing brochure (K84, App.4).} The only plot available for development is to the north east of the BBP. It lies 160 metres from the main residential areas to the east of Norwich and under 1.0 km from the Broads National Park as well as immediately adjoining open countryside. The plot has not been allocated in WSSA and cannot now be so allocated. Neither has it been promoted by its owners.

242. Moreover, it cannot properly be considered to be available. The basis on which Dr.C considered availability was that there was no planning application in relation to the land.\footnote{K33, §3.5.1.} That was wrong. Broadland Council resolved to grant planning permission subject to the completion of a section 106 agreement for a major mixed use development as an expansion to Norwich which incorporates housing and employment uses. As Dr.C agreed, residential land values are high and any landowner would want to protect his land value and that it was highly unlikely that a landowner would allow development which might discourage take up of housing. You only need to look at the third party response to the Willows in an area with very little housing to see that could well be the case. Why would the landowner...
want to switch horses at this stage? There is absolutely no evidence that the landowner is interested in doing so. It is plainly not available – even on Dr.C’s terms.379

243. Further, proposed condition 14 limits the height of the proposed buildings to 15 metres “to ensure an appropriate development.”380 This is a reflection of the low level development currently on site and an illustration that the proposed development (a building of some 51m in height with a stack of 85m) would not be acceptable. Dr.C accepted – as he had to – that there was nothing of that height at BBP now.

244. Again, Dr.C draws comparison with the Shrewsbury case where he states that a height restriction was overcome “by good design”. However, direct comparisons given the site specific nature of such a consideration are at best difficult to make and at worst meaningless. In any event, the two facilities are in no way comparable with the Shrewsbury plant having a maximum height of 28m where the surrounding buildings were up to 19m tall (which compares to 51m and approximately 12m).381

245. Moreover, as RM explained, the height restriction was imposed at Shrewsbury on an outline permission which related not to the appeal site but to adjoining land and had since lapsed prior to proposals for the Shrewsbury EfW being advanced. The Inspector in that case, therefore, gave no weight to it for that reason.382 The contexts of the two sites, therefore, are not comparable in any meaningful way.

Coltishall

246. The site at RAF Coltishall was raised by Mr Wilkie when asking RM questions. RM has addressed this site in detail in a note to the inquiry.383 As has NP.384 RM states the site was not included within the long list assessment for two principal reasons: first, it is not allocated or otherwise identified in any of the source documents that were used to identify potentially suitable sites in the alternative sites assessment and, secondly, it lies outside the Norwich Policy Area and is not within a 10 mile radius of the three other named settlements of Great Yarmouth, King’s Lynn or Thetford so that the site is not

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379 K33, §3.5.1.
380 N45.
381 C83, §2.3.17.
382 CD A4 Shrewsbury decision paragraph 26
383 C88.
384 N14.
'well related' to the four main centres as defined within WCS Policy CS5. Accordingly, the identification of RAF Coltishall would, therefore, have been contrary to Policy CS5 of the WCS. RM nonetheless analyses the site against the long list criteria and concludes that it would have been excluded from further consideration on the grounds of failure to meet criteria relating to planning policy, open countryside, cultural heritage and transport and access. Not least because the whole site is a Conservation Area and includes important World War II and Cold War artefacts and, therefore, there would be major heritage asset issues. An EfW with a 85m stack is hardly a compatible use on a former airfield recognised as an important heritage asset. Further, the site has a very poor access on minor roads and which passes through a residential area. In short, it is not a suitable alternative site.

Conclusion

247. What this all demonstrates is a high degree of consistency between the conclusions of the ASA and the WSSA in respect of site suitability for the accommodation of a strategic thermal treatment facility. The suitability of the application site has been demonstrated within both the Applicant’s ASA and throughout the WSSA process. Whilst another site at King’s Lynn and a site at Snetterton have emerged as draft allocations in WSSA for thermal treatment, the KL Technologies site is agreed by Dr.C to be less suitable than the Willows and Snetterton plainly is not large enough to represent a genuine alternative. In any event, the real question is whether the application site is suitable in land use terms not whether there are other equally suitable, still less other more suitable sites.

248. For all Dr.C’s claims that a number of sites were wrongly excluded from the assessment carried out by NCC, he failed to identify any site that was not considered in the Applicant’s ASA (with a single exception that Dr.C agreed was correctly excluded). Dr.C’s three preferred sites were all included in the Applicant’s shortlist of sites and, moreover, at no stage does Dr.C suggest that (flood risk and proximity issues aside) these sites are preferable to the application site, only that they are ‘equally suitable.’

385 NP’s note (N14) includes a plan which sets out the extent of the Conservation Area.
386 See, for example, K31, §3.2.4, 3.3.2, 3.3.3 and K32, §5.1.3 and 5.4.1.
Further, if this application is refused then substantial delay will be caused with major ramifications for sustainable waste managements in Norfolk. There is no application in relation to any of Dr.C’s three proposed sites and no likelihood of any.
**KLWIN**

**Carbon footprint**

250. In its third OR dated 30 April 2012 the BC resolved that NCC should ensure that the carbon assessment submitted with the application was “robust and provides a credible assessment of potential carbon savings if any” and, further, if this was not demonstrated or the carbon savings were much reduced on review, to object on the ground that the Willows is contrary to the aims of the WCS and the NPPF which both seek to reduce GHGs.  

251. In the event, the BC did not simply wait for NCC to satisfy itself. Instead, they instructed Eunomia and Dr.H specifically to review both the RPS Carbon Assessment and SA’s WRATE analysis and to identify key arguments for refusing planning permission. The issues raised in Eunomia’s report with regard to the carbon assessment of the Willows are the same as those put forward in Dr.H’s evidence. However, they were evidently not accepted by the BC or otherwise not thought appropriate to pursue. Despite the BC’s resolution in April 2012, the expense of instructing an external consultant and a preliminary report in which it was claimed that there were flaws in the carbon assessment, the BC decided not to pursue an objection. We remind the inquiry what JH agreed in XX: where the BC abandoned grounds of objection it plainly did so because it judged they were unsupportable. We know that the BC – which JH agreed was keen to establish grounds on which to object – did not pursue its original objection on carbon footprint. Clearly, it saw no proper basis on which to do so.

252. Nonetheless, despite his advice having been rejected by the BC, Dr.H, together with Richard Burton ("RB") make the same highly technical points on behalf of KLWIN. In opening we suggested that these points were not only fundamentally flawed, as the evidence of SA and Dr.B explains, but are of no real significance to the determination of this application.

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387 CD.M7, p.10.
388 CD.R8, §1.
389 CD.R8, §1. The instructions are clear: the 2nd task for Eunomia was to identify “the key arguments to put forward such that planning permission may be refused.”
253. 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 CO₂e.\textsuperscript{390} This has been confirmed in various recent appeal decisions.\textsuperscript{391}

254. Moreover, as we have already set out, the Government is neutral in terms of technology choice – it is a matter for the market.\textsuperscript{392} The need for new renewable energy infrastructure – which RB accepted in XX that the Willows would be – is so urgent that a comparison between the relevant carbon merits of the technologies is not necessary. Indeed, the Government states that a mix of technologies will be required to meet its targets.\textsuperscript{393} These technologies will have different carbon-intensities, as well as other relative advantages and disadvantages. As noted already, the Government firmly supports EfW and anticipates a considerable increase in energy output from EfW. This inquiry is not about establishing whether the application site is the best or whether there is another process with a lesser carbon impact, but rather whether the application site is suitable and whether any harmful impacts can be properly mitigated. The answer to both these questions is, we suggest, an emphatic yes.

255. At Lostock the Secretary of State gave explicit consideration to the matter of technology choice in the context of carbon emissions. He recognised the articulation of the urgent national need for renewable energy in EN-1 and EN-3 and the role that waste combustion can make in meeting that need. He said that this type of facility was not incompatible with the emphasis placed on sustainability in the NPPF\textsuperscript{394} and concluded:

\textit{“It is apparent from the NPSs, however, that the kind of technology to be used by the proposed Development is not to be ruled out as contrary to the objectives of developing low carbon energy sources. Whilst it may be true that there are other technologies that may be superior from a purely low carbon point of view, it should be noted in response to this and a number of other representations made by objectors that the role of the section 36 process is not to ask whether there is a better way to generate the electricity a proposed generating station will generate, or a possible better use of the proposed Development site, but to consider whether the impacts of the Company’s proposal would be (or can be made) acceptable in planning terms. From a carbon emissions point of view,}
the Secretary of State sees no reason to depart from the analysis and conclusions of the Inspector.”

256. In any event, the EA are satisfied that the Willows represents BAT both in terms of technology choice and in terms of global warming potential (“GWP”) even ignoring the avoided methane as a result of landfill diversion. Furthermore, DECC recognises EfW with CHP as a ‘highly efficient’ renewable technology that offers ‘considerable’ carbon savings and explicitly exempts waste fed generators from the need to meet and report on sustainability criteria required for other generators with an output greater than 1MW. EfW proposals have consistently been held by Inspectors and the Secretary of State to comply with climate change policies.

257. RB’s concern was that the Willows is not properly speaking low carbon – as a result of his comparative analysis to the predicted carbon intensity of the grid over the life of the development (which we explain above is not required). He goes on to say that, therefore, the Willows does not comply with the NPPF. It is only KLWIN that makes this point. JH on behalf of the BC expressly agreed in XX the Willows would be a low carbon development.

258. In any event, RB accepted in XX that if he was wrong in his interpretation of policy (and he conceded that he was not a planning expert) and that EfW was as a matter of policy to be considered low carbon, his objection must fall away. It is clear that policy treats renewable energy as low carbon. The Guide to the Debate states that EfW plants provide valuable low carbon energy. The Energy White Paper includes energy from waste in a

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395 CD.A12, SoS DL, §7.9. The Secretary of State is also clear that there is no requirement to demonstrate that an individual application is the best overall environmental outcome (CD.A14, SoS DL, §24).
396 CD.E2, p.54. Regard should also be had here to the advice in PPS10 the WPAs should avoid duplication between the planning and pollution control regimes (CD.U5, §26-27). Further, regulation 18 of the Waste Regulations that whilst planning authorities must have regard to Article 16 of the rWFD they should ignore the words “taking into account best available techniques.” Both of which confirm that the consideration of BAT is not principally for the planning authority.
397 CD.E2, p.65.
399 C71, App.N, Summary. Consultees almost unanimously agreed with this decision.
400 See, for example, Lostock (CD.A12, SoS DL, §7.6 and 7.9); Hartlebury (CD.A11, SoS DL, §19), Severnside where the Inspector concludes that the plant would help combat climate change by reducing reliance on fossil fuels and by cutting emissions from landfill. He called these savings ‘high’ and ‘significantly greater’ than any produced by optimizing the location of the development (CD.A19, §224 and 241); Shrewsbury where the Inspector said that the EfW plant would make ‘a significant contribution to reducing carbon emissions’ and rejected an objector’s argument that the WRATE assessment was flawed (CD.A4, §135); and Middlewich (CD.A14, SoS DL, §23).
401 CD.U32, p.2 (1st §).
list of low carbon distributed technologies. The White Paper on Planning Our Electric Future explains that the Government intends to zero rate biomass under the emissions performance standard since it is regarded as low carbon. It is, therefore, the Government’s policy to treat EfW facilities as low carbon. This is because the Government recognises the dual role performed by these plants, as a result of which they cannot be sensibly compared with facilities whose sole purpose is to treat waste. The Government clearly values and seeks to encourage plants which, in addition to managing waste, generate renewable energy with the added benefits derived from the particular qualities of the energy generated – the 4 ‘Ds’.

259. It follows that the Willows is low carbon development as defined by policy and RB’s concerns must fall away. In any event, in so far as he relied on the NPPF, nearly every paragraph he relies on encourages both renewable and low carbon energy (see, for example, paragraphs 93 and 97). There is no dispute between the parties that the Willows would generate renewable energy. So that even if it were not low carbon, the Willows would still engage the policy encouragement for renewable energy in the NPPF. It is difficult to see in the circumstances why there is any policy conflict.

260. Furthermore, as RB accepted in XX, he made no attempt whatsoever to quantify or otherwise explain the harm he said arose from his calculation that the Willows in electricity-only mode would have a marginally larger carbon footprint than landfill.

261. With regard to the only development plan policy he cited (CS13 of the WCS), RB accepted that the Willows complies with the wording of that policy. He said that the policy was out of date following the publication of the NPPF (which we refute for the reasons just set out). Even if he is right, all that means is that less weight should be attributed to that policy and the proposal’s compliance with it. That is a long way from suggesting that the development proposed does not comply with the development plan.

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402 Y37, Table 3.1, p.86.
403 CD.U38, §2.4.30.
404 We note that RB made no attempt to grapple with the presumption in favour of renewable energy development contained in §98 of the NPPF (CD.U1). Further in so far as the NPPF defines low carbon technologies as those that reduce emissions as compared to fossil fuels (p.55), RB accepted in XX that he had not done this (he has compared the Willows to a future mix of generation capacity). It follows that he has made no attempt to establish that the Willows is low carbon in those terms.
405 See Table 7.1, W-000, p.13.
CW’s carbon assessments

262. Whilst not required, RPS nonetheless conducted a carbon assessment as part of the application and SA carried out a further assessment of the Willows’ environmental impacts, including the transport impacts, using the EA’s life cycle assessment software – WRATE. WRATE is a software tool specifically developed for appraising the carbon performance of waste management systems. Its use is recommended by DEFRA. SA’s WRATE assessment employed the default parameter values in the software (save a conservative amendment on conversion efficiency).

263. The RPS carbon assessment estimates that the Willows will result in a reduction in GHG emissions of between 88,000 and 96,000 tonnes of CO$_2$e per annum in electricity-only mode. This is equivalent to the annual emissions of 85 per cent. of the households in King’s Lynn. Over the expected lifetime of the proposal (assumed to be 25 years for these purposes) the total GHG emissions savings of the Willows in electricity-only mode would be between 2.2 and 2.39 million tonnes of CO$_2$e compared to the current landfilling of waste. In CHP-mode: the annual savings will be between 141,000 and 144,000 tonnes of CO$_2$e and the lifetime savings between 3.53 to 3.59 million tonnes of CO$_2$e.

264. The WRATE assessment also demonstrates that the Willows delivers significant climate change benefits over landfill – a saving of some 86,000 tonnes of CO$_2$e in the year modelled (2015). Using the default WRATE assumptions the saving is 119,000 tonnes of CO$_2$e.

KLWIN’s carbon assessment

265. KLWIN’s case, however, as put by both Dr.H and RB was that the Willows in electricity-only mode will have a carbon footprint that exceeds that of all other modelled alternative waste management routes including landfill so that it is said that the Willows will fail to reduce GHG emissions, will not be low carbon and, furthermore, it is asserted that the Willow’s contribution to renewable energy generation will be insignificant.

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406 PA7, Carbon Assessment, §4.1.
407 PA7, Carbon Assessment, §4.2.
408 PA7, Carbon Assessment, §4.3.
409 W1, §5 and 8.
266. It accepts, however, that in CHP-mode the Willows would make carbon savings over all other management routes Eunomia looked at, save MBT with dual fuel, and so would be preferable in GWP terms to landfill.\textsuperscript{410}

267. The Eunomia carbon assessment uses the functionality of WRATE to appraise alternative waste technologies. In doing so it amends the default parameters such as electricity mix, process performance and waste composition. SA deals with what he considers to be the flaws in Dr.H’s assumptions in his rebuttal.\textsuperscript{411} As SA explained in XIC there should be no methodological uncertainty here. All SA has done is to use the WRATE default parameters. WRATE is, of course, the Government’s recommended tool for the evaluation of waste management systems. Dr.H interferes with the default assumptions. SA explained that he was concerned that the changes in the default assumptions were designed to produce a particular result. Contrary to KLWIN closing §35, W13 does not sanction departing from default parameters, although it recognises that there may be a need to reconsider certain parameters on any update of WRATE. Nor is there any suggestion in the supplementary guidance to the treasury Green Book (W14) that its guidance should be used in preference to the WRATE default values. We turn to deal with each of the principal areas of methodological disagreement.

\textit{Electricity Mix}

268. The benefits of the scheme arise in part because of the avoided need to generate electricity from other sources. In CHP-mode, this benefit increases. In the original WRATE assessment, ERM employed the default assumption within the software, which is that marginal generation is replaced. This equates to those power stations which contribute ‘peakload’: switched on when demand is high; and switched off when demand is low. In WRATE, this marginal generation is a mix of coal and gas power. In the recent cold weather, when demand was high, up to 40 per cent. of electricity generation was coal-based.

269. Since the submission of proofs and rebuttals DEFRA’s \textit{‘Guide to the Debate’} was published and this document settles the issue. As SA explained in XIC it provides that a CCGT plant is the current standard comparator as this is the ‘marginal’ technology if a

\textsuperscript{410} CD.R6, p.53, Table 7.1.
\textsuperscript{411} C73, §16-23.
new power station is proposed.\textsuperscript{412} This is a conclusive rejection of Dr.H’s position. Dr.H tried to rescue his case in XX by relaying to the inquiry a telephone call he made to an acquaintance in DEFRA. However, he has provided no note of that call, despite suggesting that he might do this. There has been no opportunity for other parties to test what was supposedly said and, in any event, the recently published Government policy could not be clearer: it must surely be preferred to an unsubstantiated, informal conversation with a DEFRA employee.

270. SA carried out a further sensitivity analysis changing the default in WRATE to 100 per cent. CCGT in order to reflect the new guidance.\textsuperscript{413} The carbon benefits of the scheme are shown to reduce but the results still indicate a clear preference over landfill in electricity-only mode. It is worth noting that the GWP impacts of landfill increase under this scenario because the benefits of landfill gas recovery is also reduced.

271. The ‘\textit{Guide to the Debate}’ approach is consistent with the advice in the supplementary guidance to the Green Book, Valuation of Energy Use and Greenhouse Gas Emissions on which Dr.H relies. It requires consideration of the counterfactual, i.e. what would happen if this proposal did not come forward. The counterfactual to the Willows is CCGT. If capacity is not provided by the Willows, then the same capacity will instead be provided through new-build CCGT. Thus, the correct comparator for assessing the carbon benefits of the scheme is CCGT and the correct point of analysis is when the proposed facility will come on line.

272. However, Dr.H does not identify a comparator or counterfactual. His approach is to suggest that a direct comparison is made between the carbon-intensity of the scheme and the forecast marginal generation in every year of the Willows’ lifetime, through to 2035 and beyond. This serves to demonstrate the relative performance of the scheme compared with average generation through the lifetime of the development. It is not a realistic comparison to make: the Secretary of State must make a decision now as to whether to provide electricity to the grid through the scheme or whether this capacity will be provided instead through CCGT. He does not have open to him the option of providing in place of the scheme the future grid mix – whatever that might comprise (for example, if the hoped

\textsuperscript{412} CD.U32, p.18, fn.29.
\textsuperscript{413} C75.
for nuclear contribution does not eventuate the mix will be more carbon intensive than presently envisaged).

273. As an average, the marginal mix must be comprised of technologies with carbon-intensities both above and below the mean. Based on DECC’s projections, the future energy mix\textsuperscript{414} includes the significant expansion in EfW which is explicitly encouraged in the national policies we have already identified.

274. Dr.H’s proposition, that the Willows be compared unfavourably with a future mix that already includes hypothetical capacity of this type, cannot be the intention of policy. Taken to its logical conclusion, it contemplates refusing planning permission for any proposal that would have a carbon-intensity higher than the grid average over its projected lifetime. Ironically that would include CCGT and would perpetuate the on-going use of long established coal-fired power stations. In the circumstances, we submit that the Applicant’s carbon assessments should be preferred.

Metals recovery

275. RB asserts that the rates of metals recovery from IBA assumed in WRATE and used in SA’s assessment of the carbon footprint of the Willows are too high. This is based on Eunomia’s report to KLWIN which draws on a single paper to conclude that the rates in WRATE are at the upper end of the range of what is found in practice. However, as SA explained, the WRATE values are nonetheless consistent with the BREF for municipal waste incineration and, of course, the EA has judged the Willows to be BAT.

276. RB also relies on lower metals recovery rates that are referred to in the permit application and used by RPS in its assessment. As SA explained, these were lower simply in order to present a conservative analysis and to be consistent with the position adopted by Cory and Wheelabrator in its bid to the County Council. In practice, metals are valuable and the operator is incentivised to recover as much ferrous and non-ferrous material from the IBA as possible.

\textsuperscript{414} Note the Government explicitly seeks a diverse mix of all types of power generation including fossil fuel generation (CD.U3, §3.3.4).
277. Ballast Phoenix ("BP") – the proposed operator of the IBA facility – indicated to SA that it expects the recovery rate for the metals delivered to it to be 80 per cent. or higher. BP is a highly experienced operator and the leader in this field in the UK. It is extremely well placed to judge. BP informed SA that its analysis reveals that recovery rates can reach 90 per cent. and provided SA with confidential data on the recovery of ferrous and non-ferrous metals from IBA at six sites in 2011 and 2012.\footnote{C73, §32-33.}

278. SA provides further analysis in his rebuttal based on this data from BP and national composition data for residual wastes.\footnote{C73, §33-37 and App.F.}

*Methane capture*

279. A further area of disagreement is the level of methane recovery from landfill. The more methane – a GHG which is around 25 times more damaging than CO\(_2\)\footnote{CD.U32, §35.} – that a landfill site captures the better it performs in GHG emission terms which inevitably reduces the comparative benefits of EfW.

280. As SA explains,\footnote{C73, p.10-13.} RB’s calculations in this regard were flawed in that he assumed that the roughly equal measures of CO\(_2\) and methane that is generally accepted to be produced by landfill was by weight. It is not. Rather it is by volume. Since carbon dioxide is much heavier than methane RB has considerably overstated the mass of methane captured and combusted in landfill gas and his recalculations of the RPS carbon assessment are, consequently, flawed. That RB’s calculations ought to be treated with caution was confirmed by his acceptance in XX by NCQC of a number of points made by Dr.B in rebuttal. It became clear that RB only disagreed with one of the points made by Dr.B (his ‘Assumption 2’)\footnote{N32, p.5.} demonstrating further errors in his approach.

281. It was curious to see RB pushing a rate of 75 per cent. when Eunomia recommended capture rates of zero per cent for landfill sites with no gas extraction, 20 per cent. for those with limited gas extraction equipment and 50 per cent. for the most modern landfills sites.
This recommendation reveals internal differences in the KLWIN team and lends weight to the assumptions employed by RPS.

282. Again, for the reasons put forward by both SA and Dr. B, KLWIN’s position on this issue is unsound which further undermines its position on carbon footprint.

Waste composition

283. KLWIN’s carbon assessment also changes the assumptions of the waste composition. In short it reduces the biogenic content of the waste. This leads again to a lowering of the carbon benefits of the scheme. SA explains why Eunomia’s assumptions in this regard are flawed in detail in his rebuttal.420

284. Of the waste in a typical black bag somewhere between one half and two thirds will contain biogenic carbon.421 The Government expresses a clear preference for the treatment of this waste by EfW over landfill.422 That can be no surprise whatsoever: waste management routes with lower GHG emissions are placed higher in the hierarchy.423 Moreover, the Willows plainly complies with the ‘two rules’ as SA explained in RE-X: first, as the EA confirmed424 the Willows is highly efficient (and has the potential to increase its efficiency through operation in CHP mode) and, secondly, the current biogenic content of the waste is such that EfW is preferable over landfill.425

285. There is no doubt that waste composition may change over time and it is very difficult to make precise predictions of waste composition beyond the near future.426 SA explained in Re-X that CW will have operational flexibility that will allow any future changes in waste composition to be managed. It would be open to CW to preferentially select C&I with a high biomass content. The Government refer expressly to this form of operational

420 C73, §39-46.
421 CD.U32, §37. DEFRA’s Forecasting 2020 waste arisings and treatment capacity February 2020 carries a central assumption of 68 per cent. based on a range of 55 to 75 per cent (CD.U33, §2.4). See also: C73, App.I – which states up to 68 per cent of MSW is biomass; C71, App.AG – DEFRA’s Review of Municipal Waste Component Analyses, Final Report which estimates the biogenic content of MSW to be 67 per cent with a 95 per cent. confidence level; and C71, App.L, p.45 – which confirms the Government’s default assumption for the purposes of the Renewable Heat Incentive is that 50 per cent of MSW is biomass.
422 CD.U32, §43-44.
423 CD.U32, §35.
424 CD.E2, p.20-22.
425 CD.U32, §32.
426 C70, §162.
flexibility to address any future changes in waste composition over the lifetime of an EfW plant.\footnote{SA sets out in some detail why EfW is treated in policy as a supply of renewable energy which is released through the use of fuel from a renewable energy source (i.e. the biomass fraction of waste).} As SA said in Re-X the fact that the Government in February 2013 was using a central assumption of 68 per cent. biomass content\footnote{CD.U32, §44.} should provide considerable comfort. He also said in XIC that the biogenic content was unlikely to fall below the level of 50 per cent. Further, it should not simply be assumed that the biomass content of waste will forever decrease having regard, for example, to the increased use of biopolymers. Moreover and importantly, what the Government does not do is suggest that the better route for treating typical black bag waste now should not be pursued on the basis that the composition of waste may change over time. However, deferring the problem is precisely what KLWIN urge: that is simply not a tenable solution and SA described it as an entirely impracticable way of running things. It is plainly contrary to the clear message pervading Government policy that we have set out already that there is a clear and urgent need for these types of facilities.

The significance of the Willows contribution to renewable energy generation

286. There is no doubt that the Willows will make a significant contribution to the pressing need for renewable energy.\footnote{SA sets out in some detail why EfW is treated in policy as a supply of renewable energy which is released through the use of fuel from a renewable energy source (i.e. the biomass fraction of waste).} In exporting 21.1MW of electricity to the local grid the Willows would make a very material contribution towards increasing regional renewables generation. As JB indicated, the plant would generate sufficient electricity for the domestic needs of circa 36,000 households. One would have thought that was significant in anyone’s view but Dr.H suggested that the Willows would provide only a ‘trivial’ contribution to national targets for renewable energy. This is manifestly the wrong approach. Policy is clear beyond all doubt that even small contributions are highly valued. The NPPF states even small-scale projects make a valuable contribution to cutting GHGs.\footnote{CD.U1, §98.} EN-1\footnote{CD.U3, §2.1.2.} says that a significant amount of infrastructure is required both large and small scale.\footnote{It was Dr.H and RB’s case that national policy statements were not relevant to the determination of this application. However, both EN-1 and EN-3 clearly state that they are likely to be a material consideration (CD.U3, §1.2.1 and CD.U4, §1.2.3). The Chief Planning Officer letter, dated 9 November 2009, also confirms their materiality (CD.U18, Annex A, §16). If further comfort was required, all decision letters on EfW facilities since the publication of EN-1 and EN-3 in July 2011 accept their relevance (see, example, Salford (CD.A9, §37). Moreover, the NPPF – 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. This is determinative of the issue and demonstrates that CW, NCC and the BC were right to agree that these documents are material to this application (see X2 and X3, §12).} It
further emphasises the need for decentralised energy generation and expressly endorses the contribution that can be made even from micro-generation. It states that these technologies can lead to some reduction in demand on the main generation and transmission systems and can offer significant economic benefits where the heat and electricity can be put to commercial use. \(^{433}\) If micro-generation is to be encouraged in the context of a NPS dealing with NSIPs, how can it seriously be suggested that a proposal that would export 21MW is not? Dr.H accepted in XX that he could not point to any policy that suggested a proposal cannot be significant unless it is above the 50MW NSIP threshold nor could he point to a policy that states that weight can only be ascribed to the generation of renewable energy at a certain scale. JH does not endorse Dr.H’s approach – indeed, he could not – he supported the plant at Shrewsbury which would generate about a third of the energy of the Willows\(^{434}\) as complying with the Government’s national energy policies.

287. Moreover, there are numerous recent decisions where Inspectors and the Secretary of State have accepted the need for small-scale energy generation and ascribed significant weight to the generation of substantially less energy than will be produced by the Willows.\(^{435}\) Further, as both Dr.H and RB accepted in XX, it is not just the quantity of energy produced that is significant but also its qualities – that it comprises energy which would meet what we earlier characterised as the four ‘Ds’: diversified, dependable, dispatchable and distributed.

Conclusion

288. The Willows operating with or without CHP would provide significant GWP advantages over landfill. This is a factor which should weigh heavily in favour of the grant of planning permission, not least given the central importance the Government attaches to tackling climate change.

289. The remaining objections may be dealt with more briefly.

\(^{433}\) CD.U3, §3.3.29.  
\(^{434}\) 8MW gross (CD.A4, §20).  
\(^{435}\) See, for example: Shrewsbury (8MW gross) – “a small, but nonetheless significant, contribution” (CD.A4, §20 and §126); Cornwall (20MW gross, 16.6MW net) “the energy benefits of the proposal should attract significant weight” (CD.A6, §64 and §2128); and Avonmouth “the electricity generation in the order of 26.4MW would amount to a significant contribution to the local energy supply” (CD.A7, SoS DL, §15).
Air quality

290. Dan Smyth ("DS") explained that detailed dispersion modelling of the air quality effects associated with the stack emissions has been undertaken on a worst case basis, assuming that the facility will operate continuously, at the maximum throughput, at the WID limits and using the worst case meteorological data. The results of the assessment show that the air quality effects of the Willows during its operation would not be significant.

291. Further, the results of a cumulative assessment shows that the air quality effects associated with emissions from stack, from traffic arising as a result of the development (although any development of the application site will give rise to some traffic) and emissions from Centrica B and the Palm Paper sludge combustor would not be significant.

292. DS also concluded that there is no evidence that traffic generated by the proposal would be likely to result in a material detriment to the local AQMAs or that the Willows would otherwise have a material effect on air quality for local residents.

293. There is a large body of experts who agree with DS’s analysis. Most significantly, the EA has granted the environmental permit.\footnote{CD.E1.} In doing so, the EA endorsed the model used for the air quality modelling.\footnote{CD.E2, p.26, §5.2.1.} Adrian Bramwell ("AB") accepted in XX that the ADMS 4.2 dispersion model was commonly used for regulatory purposes. Not only did the EA approve the model but, through its specialist Air Quality Monitoring and Assessment Unit, it checked the data input files to verify that the results were consistent with those input files and the assumptions and conclusions in the risk assessment. It also carried out a sensitivity analysis. After this thorough process, the EA confirmed that the modelling was soundly based and was an appropriate tool with which to assess the environmental impact of the proposal.\footnote{CD.E2, p.96.} This conclusion was the same as those arrived at by AEA for NCC and by URS and AQ Consultants for the BC (who as JH, Dr.H and AB conceded were looking for reasons to refuse the application). Together with RPS, that is no fewer than five separate expert bodies who agree that the modelling was robust.
Both AB and Simon Hughes ("SH") for KLWIN acknowledged that they were not experts in air dispersion modelling (AB sought to rely on his engineering and gliding experience). Further, they each accepted that they had carried out no modelling themselves nor any other quantitative analysis and, consequently, had no data with which to contradict the conclusions of RPS.

AB complained that he had not been provided with all the information he needed to carry out his own modelling. However, this only exposed his lack of experience in the area: as DS explained in XIC, he was provided with all the data that DS would have needed to recreate the model.

As to AB’s specific concerns about the modelling, DS has addressed them in detail in his rebuttal. We reiterate here only the following points. First, AB accepted that if the Secretary of State determines that the effects of Centrica B were taken properly into account then much of his evidence falls away. Secondly, as to the Centrica B building itself AB accepted in XX that the dominant building was the Willows and that having regard to the dominant building accorded with the modelling guidance for ADMS v4.2. Thirdly, and with regard to the air dispersal units at Centrica B, AB’s evidence relied wholly on his misreading of an email from CERC which he repeatedly stated in oral and written evidence contained a recommendation that the effect of Centrica B should be modelled using a CFD model. It did no such thing. In fact, the email says the precise opposite: CERC state that it was not worth undertaking such an exercise because if anything the effect of the air dispersal units at Centrica B would be to cause greater dispersal. Finally, it is plain that the EA took these matters into account and, importantly, as AB accepted in XX, did so at a time when they had received the correct layout for Centrica B.

The further concerns AB identified in his rebuttal in relation to emissions abatement control (odour and the treatment of fly ash) are all covered by the permit conditions and the environmental management scheme as AB agreed in XX.

439 And see C24, §1.4.
440 C24, §1.1-1.11.
441 N46.
442 See W-206.
443 See CD.E2, p.96 and 101-102.
298. Whilst AB dealt with alleged errors in the modelling, SH dealt with ‘air pollution dispersion.’ Without wishing to be in any way disparaging we found the purpose of his evidence somewhat elusive. Despite having worked for NE for a year in related areas, SH made no attempt whatsoever to provide any quantitative analysis. He fails even to identify the relevant EQS for the habitat of interest nor does he even mention the process contribution of the Willows let alone compare it to the relevant EQS. He fairly conceded that his conclusions were based on no analysis whatsoever of the concentration of pollutants in the environment. He further admitted in XX that he was not even aware that the modelling had been done on a worst case basis and had assumed that the plant operated at WID levels all the time. We submit, in the circumstances, that SH’s evidence should be given no weight.

299. It follows that there is no substance in KLWIN’s attack on the air dispersion modelling.
Ecology

300. An enormous amount of paper work was generated in relation to ecology, far more we suggest than was warranted by the limited nature of the disagreement between the parties. In any event, Karen Colebourn’s evidence deals comprehensively with ecological matters.

301. In closing we make the following points:

(i) Both NE and the EA have scrutinised the proposal and do not object to the Willows. Any ecological objection therefore sets itself against the views of the relevant statutory advisors on this issue to the Government;

(ii) As KC points out, the approach adopted for the assessment of ecological impacts was layered with cautious assumptions. In addition to the wholesale adoption of the precaution built into the air dispersion modelling described above, KC explains that the highest level of background pollutants was used and it was assumed that the maximum calculated process contribution would affect the whole of the designated site. Further the critical load functions ("CLF") for the SAC provided by APIS are very precautionary, as is the screening threshold applied by NE/EA. A PC of <1% of the CLF is regarded as insignificant and not requiring appropriate assessment under the Habitats Regulations. The precautionary nature of that threshold is plain: it is a hundred times lower than the level below which harm would not be caused to the most sensitive species according to present knowledge. If that were not precautionary enough, although CW demonstrated and NCC accepted that this threshold would not be exceeded, NCC nonetheless chose to apply a yet further layer of precaution by carrying out an appropriate assessment. This, together with the further information supplied by KC, has demonstrated that the Willows, either alone or in combination with other projects, will not adversely affect the integrity of Roydon Common.

444 C35, §1.22.
(iii) Mr Boyd ("BB") for the Norfolk Wildlife Trust ("NWT") broke off his cross-examination of KC at a point when an agreement between them seemed likely to be reached. In the ensuing adjournment he and KC agreed a statement of common ground\textsuperscript{445} which, when the inquiry resumed, he confirmed he personally was content with although he could not commit the NWT. As a result he chose not to XX KC any further, the clearest indication that he considered the NWT objection had been resolved. A version of this SoCG was signed much later by BB on behalf of the NWT\textsuperscript{446} but only after changes to and deletions from the version that he had previously agreed were made. The NWT still agreed that CLF for acid on Roydon Common is itself precautionary and that the highest predicted PC affecting the habitat of interest was less than 0.9 per cent. of the CLF assuming the modelling was robust\textsuperscript{447} (but, as BB accepted, he provided no modelling himself and did not XX DS at all). Importantly, BB said that the 1 per cent approach was the "best tool we have" and that some threshold was necessary if development was not to be completely stifled. It follows that the NWT objection which was focussed on acid deposition – although not formally withdrawn – has, in effect, been agreed away. However, in a surprising and unfortunate shift of its position and contrary to what BB had expressly agreed in C37, NWT reintroduced concerns about nitrogen deposition and BB, very belatedly, revised his proof of evidence to focus on nutrient nitrogen deposition. A full response by EPR to NWT’s altered position is contained in C39 in which it is explained that the PC of the Willows would be less than half of the 1% screening threshold and would be rapidly cancelled out by declines in background levels. We submit, therefore, that the NWT’s concerns have been demonstrated to be untenable;

\textsuperscript{445} C37
\textsuperscript{446} X6
\textsuperscript{447} CD.X6.
(iv) Mr Stevenson’s (“CS”) evidence was wholly reliant, as he agreed, on AB’s alleged modelling errors being accepted. He agreed that if AB is wrong, his evidence falls away. For the reasons set out above, we submit that AB’s evidence is unreliable so that CS has no foundation for his own conclusions;

(v) CS accepted in XX that he provided no evidence whatsoever of any impacts on Roydon Common caused by pollutants. Only a single paper he referred to, Jones and Power, relied on measurements/ data taken from Roydon Common itself. However, as he accepted, first, those measurements are not recorded in the paper itself. Secondly, the conclusion is only that ‘many’ heathland ecosystems are affected by ambient levels of nitrogen deposition. CS accepted that the paper said nothing as to whether Roydon Common was one of those ecosystems. Thirdly, in any event, by 2020 the predicted nitrogen deposition rate at Roydon Common as predicted by APIS will be below the range of deposition rates studied in Jones and Power, casting doubt on the paper’s relevance. Fourthly, the paper’s conclusion was based in part on the understanding that nitrogen deposition rates in Europe are unlikely to decline in the next few decades. That conclusion is directly contradicted by APIS. This casts further doubt on the paper;

(vi) Partially on the basis of Jones and Power and in reliance on the Payne et al paper (W-416) (which CS confessed he had not read and had failed to appreciate that it dealt with the critical load itself whereas the focus at this inquiry was whether the emissions were below 1 per cent. of the relevant critical load), CS called into question the levels at which critical loads were set. He explained that he had no objection to the use of critical loads per se only that he felt that the particular levels needed adjustment. CS went on to say that he was not technically competent to advise as to how the critical loads should be adjusted generally or with regards to Roydon Common itself.

448 W-412.
449 Compare W-412, §2 of the Summary (13.3-30.8kg N ha per year) and C34, App.3 (12.88).
450 C34, App.3.
In criticising APIS’s critical loads, CS set himself against BB who demanded that the views of APIS (and NE and the JNCC) are properly respected as expert views;

(vii) CS had to admit in XX that he did not know what the process contribution of the Willows would be. This was a startling admission for someone looking at potential ecological harm arising from the dispersal of pollutants from the development. It only served to underline that CS’s evidence was wholly academic in nature and not site specific. For this reason it can be given little weight;

(viii) AB, SH and CS all accepted that legislative controls in respect of air pollutions have been extremely successful. There is no reason, therefore, to doubt APIS’s predictions of further reductions in relation to sulphur and nitrogen depositions.451 In the case of nitrogen deposition the predicted drop between 2005 and 2020 is 4.62kg (N.B., some 46 per cent. of the critical load) or 31 grams a year. By contrast the process contribution is 3.6 grams a year. As NCQC said, on the basis of the APIS predictions, the drop in nitrogen deposition during the course of this inquiry would outweigh the process contribution of the Willows over a year of operation;

(ix) Further, there is no evidence that plants on Roydon Common are suffering from the effects of air pollution. Contrary, to what CS said, there is not a lack of evidence: the inquiry has the benefit of KC’s evidence (including her Ellenberg analysis which indicated only that the lost species shared a common need for light which can be explained by the lack of grazing/management on Roydon Common until recently), Dr Denyer’s field study and NWT’s evidence as well as CS’s acceptance that the absence of a species did not amount to evidence of deterioration.452 Furthermore, the NE condition

451 See C31, App.7 and C34, App.3.
452 W-426, p.3, §3.1.
assessment, as CS agreed, does not indicate any concerns relating to air quality on Roydon Common. Similarly, the vulnerability box of the Natura 2000 data sheet does not refer to air pollution. Moreover, 95 per cent of Roydon Common is assessed by NE to be recovering. Lastly, KC and NCC agree that NWT’s management of the site will ensure the condition is likely to improve in the future; and

(x) Mr Wilkie and others raised concerns in relation to the potential effects of the proposal in the fauna of the Wash SAC including the harbour porpoise. These issues are dealt with in detail in a note produced by KC. KC concludes that there will be no likely significant effects on the species in the Wash.

302. We submit, in accordance with the conclusions of NCC, NE and the EA, there is no ecological justification for the refusal of this application.

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453 C31, App.4.
454 C31, App.2.
455 C31, App.4.
456 C33, §3.15-3.17 and CD.M1, App.6, §6.20.
457 C38.
Health

303. Perhaps not unexpectedly, there is concern amongst KLWIN and third parties about the effects of the proposal on health. However, it was emphasised at the PIM that any evidence on health at this inquiry should be confined to the framework laid down by PPS10.\textsuperscript{458} However, KLWIN’s and Professor Howard’s (“Prf.H”) evidence stray well beyond these boundaries – especially in Prf.H’s proof of evidence which indulges in a detailed examination of health issues that PPS10 clearly states is inappropriate.

304. The Government is quite clear on the proper delineation between the planning and pollution control regimes. Paragraphs 26 and 27 of PPS10\textsuperscript{459} provide:

“In considering planning applications for waste management facilities, waste planning authorities should concern themselves with implementing the planning strategy in the development plan and not with the control of processes which are a matter for the pollution control authorities.

The planning and pollution control regimes are separate but complementary. Pollution control is concerned with preventing pollution through the use of measures to prohibit or limit the release of substances to the environment to the lowest practicable level. It also ensures that ambient air and water quality meet standards that guard against impacts to the environment and human health. The planning system controls the development and use of land in the public interest and should focus on whether development is an acceptable use of the land, and the impacts of those uses on the development and use of land. Waste planning authorities should work on the assumption that the relevant pollution control regime will be properly applied and enforced.” (our emphasis)

305. Paragraph 30 expressly states that the detailed consideration of waste management processes and its implications on human health is the responsibility of the pollution control regime.

\textsuperscript{458} CD.U5, §26-31.
\textsuperscript{459} CD.U5.
306. The EA has already granted the permit\(^{460}\) (something Prf.H seemed only vaguely aware of) so that the Secretary of State can be assured that the EA is clearly satisfied that CW will operate the plant in accordance with both BAT and the stringent requirements of WID which are designed to avoid any impact on human health. Prf.H agreed in XX that in the circumstances it was plain that the EA was so satisfied.

307. EN-3 at paragraph 2.5.43 requires planning decision makers to assume that there will be no adverse impacts on health where the plant meets the requirements of WID. It follows in the light of the grant of the permit and Prf.H’s agreement on behalf of KLWIN recorded above that national policy requires this inquiry to assume there will be no adverse impacts.

308. PPS10 further advises decision-makers to avoid carrying out their own detailed epidemiological and health studies and that they should instead draw upon Government advice and research as well as consultation with the relevant health authorities and agencies.\(^{461}\) In this case there were no objections whatsoever from any technical consultee on health grounds (including the EA, NHS Norfolk, the FSA and the BC’s Environmental Health Officer). As we have identified above, the statutory consultees had the benefit of multiple air quality experts examining and reporting on this proposal as well as a detailed HIA\(^{462}\) before coming to their conclusions. Further, this is not one of those cases where the local health authorities merely issued a standard response placing reliance on others. Here, the NHS Norfolk involved itself in the detail. In its letter of 23 August 2011 it actively sought further work to be done.\(^{463}\) We note that with regards to health inequalities it is NHS Norfolk’s view that the proposal will be beneficial – this is directly contrary to some of the concerns expressed by third parties.\(^{464}\) In its letter dated 29 February 2012, following the submission of further information that included a response to

\(^{460}\) CD.E1.
\(^{461}\) CD.U5, §31.
\(^{462}\) CD.PA7, Tab 3.
\(^{463}\) N12, App.4, NHS Norfolk letter dated 23 August 2011.
the points raised by the NHS, it stated its comments and concerns had been addressed and no further information or clarification was required.  

309. The statement in WS2007 that there is no credible evidence of adverse health outcomes for those living near incinerators could not make the Government’s position on the matter any clearer. The Inspector at Ince Marshes regarded that statement as a full answer to those arguing against incineration of waste on the basis of the precautionary principle. The HPA, the Government’s statutory advisor on health matters, has said that, whilst it is not possible to rule out adverse health effects with complete certainty, any potential damage to health of those living close-by is likely to be very small, if detectable. Reliance was placed by objectors on the report by the British Society for Ecological Medicine of 2008. However, it has been widely criticised by, inter alia, the HPA and Professor Bridges (“Prf.B”) in a supplementary paper dated 30 March 2013 critically examined its findings, concluding that it has not made any useful contribution to the understanding of possible health risks from modern incinerators.

310. Prf.H’s evidence as we have already identified strays well beyond the proper parameters for the analysis of health in the context of a planning determination. For that reason we do not address it in detail in these submissions. His concerns were threefold: uncertainty in modelling, particulate matter and the approach to monitoring dioxins. These all fall squarely within the province of the EA. Prf.H fairly admitted as much in XX. Prf.B deals with all these points in detail in

465 N12, App.4, NHS Norfolk letter dated 29 February 2012.
466 CD.U24, §22 of Chapter 5.
467 CD.A22, IR, §11.24.
468 CD.H2. Paragraph 30 of PPS10 also states that modern, well-run and well-regulated waste management facilities operated in line with current pollution control techniques and standards should pose little risk to human health (CD.U5).
469 Modelling is plainly a technical matter for the EA. Moreover, Prf.H’s evidence amounts to an attack on accepted practice (as he fairly acknowledged). Both the ADAMs model and the worst-case approach are accepted and endorsed by the EA (as to the latter see, for example, CD.E6, p.7).
470 As to which see, in particular, C61, App.3.
471 Again this is an attack on accepted methodology as Prf.H accepted in XX. The TDI is the basis on which regulators operate. A planning inquiry is not the forum to attack that accepted practice.
his evidence and rebuttal. We note that, as Prf.H accepted in XX, the Inspector at Cornwall preferred the position of the EA to Prf.H’s evidence and that the latest scientific paper on this issue (Reeve et al., BMJ Open Access Paper dated 21 December 2012) – the authors and methodology of which Prf.H spoke very highly in XX – concludes on an analysis of pre-WID incinerators (and therefore plants that were permitted to emit much higher levels of pollutants) that there is “no evidence of elevated risk for individuals living in areas containing an incinerator compared to individuals living in matched areas without an incinerator.” That conclusion we submit is clear and wholly supports the HPA position statement.

311. Third parties have expressed concern about the regulatory performance of Wheelabrator Technologies Inc. in the United States of America. However, this matter has been fully investigated by the Environment Agency and it is satisfied that both Cory Environmental Management Limited and Wheelabrator Technologies Inc. have the necessary expertise to operate the Willows in line with the stringent requirements of EU legislation and that the rigorous conditions on the environmental permit allied to its own approach to enforcement will mean that the environmental permit will be complied with. Again, this is matter for the EA and the EA is plainly satisfied. However, CW has submitted a detailed response to the repeated allegations about Wheelabrator’s allegedly poor performance record in the US and which deals with these concerns.

Perception

312. The public’s concerns or perceptions in relation to health and air quality are themselves capable of being material considerations, whether or not they are objectively justified. However, the weight that can be attributed to those perceptions will depend on whether or not the concerns are objectively held. Further, the Inspector at King’s Cliffe drew attention to the advice in the Annex to

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472 See, in particular, his detailed rebuttal of Prf.H’s evidence (C63).
473 C64, App.5.
474 C16.
the now superseded PPS23 that for perceived risk to be material to a planning consideration there must be a clear demonstration of the land use planning consequences. The substance of that advice is still relevant.

313. Here, there is no reliable evidence to suggest that perceptions of health risk are objectively justified or that there would be any land use planning manifestations arising from those perceptions of health risk.

314. We note that Prf.H said that the public’s concerns were objectively justified but it was not clear on what basis he made that claim. His case was that there are actual health risks but this has never been accepted, at least as representing any material harm. His position is contradicted by AEA, AQ Consultants, URS, RPS, the NHS (here the NHS wrote a whole series of letters and were clearly actively involved in the process and, importantly, concluded that the proposal was likely to positively combat health inequalities in what is a deprived area), the EA, the FSA, the HPA and the BC’s EHO. The public cannot simply turn a blind eye to the conclusions of these bodies. The Inspector’s approach at Ince Marshes is instructive. He said:

“…the position giving rise to doubts in the mind of the public, concern over health effects of incineration of waste, is one that is in direct conflict with a position taken by the Government in a statement of national policy (paragraph 22 of Chapter 5 of Waste Strategy for England). Such a statement will not satisfy everyone but should act to allay anxiety amongst the public at large. My conclusion is that although the proposal raises public anxiety this should not carry great weight in relation to the planning decisions on the proposals before the Secretary of State.”

315. There are significant factors in this case that should ameliorate any concerns the public have. First, as we have already identified, the EA has issued the permit which it could not have done if the proposal was not WID compliant. It must be assumed that the EA will properly apply the pollution control regime. Secondly, the

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476 CD.A24, §7.33.
477 N10, App.4. See the letter dated 23 August 2011, §8.4, in particular.
478 CD.A22, pp.11.28.
public have had full opportunity to express their concerns on this issue, both before and during the inquiry. The Applicant has adduced expert evidence at this inquiry on both air quality and human health in an endeavour to allay concerns and provide assurance that these concerns have been properly evaluated. Thirdly, it is very clear that the public’s views on this issue have been taken fully into account. As Dr.B and NP made clear, NCC considered health issues in detail and were fully aware of the public’s concerns when determining the application. Further, as the Inspector at King’s Cliffe noted the 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. Fourthly, in response to public concerns a section 106 obligation is in place to require the carrying out of additional air quality monitoring in the locality. For all these reasons, we submit that the perception of health impacts should not be accorded any significant weight in this decision.

316. This conclusion wholly accords with recent appeal decisions. The Inspector at Lostock concluded:

“…public perceptions about the health risk from the proposal are capable of being material planning considerations. However, these cannot be considered to be objective on their own and to have any weight, these perceptions need to be justified by objective evidence.”

317. And:

“Where the waste combustion generating station meets the requirements of WID and would not exceed local air quality standards, which have both been shown to be the case in this proposal, then it should not be regarded as having an adverse impact on health. Therefore little weight should be given to this matter.”

479 CD.A12, §16.38.
480 CD.A12, §16.49. See also, for example, Cornwall (which was in another deprived area) (CD.A6, §2097-2098), Shrewsbury (CD.A4, §94) and Hartlebury (CD.A11, §11.70).
Localism and the local poll

318. We recognise that the proposal is intensely unpopular locally (which is not unusual in the context of public inquiries of this nature). However, the fact that many local people object is not, in itself, a proper basis on which to refuse planning permission. Planning decisions are not to be taken on the results of plebiscites or because a proposal has attracted a large volume of objection. As JH agreed in XX, it is not the weight of numbers who object but whether or not there are relevant planning objections. The Costs Circular 03/2009 makes this plain. It provides:

“While planning authorities are expected to consider the views of local residents when determining a planning application, the extent of local opposition is not, in itself, a reasonable ground for resisting development. To carry significant weight, opposition should be founded on valid planning reasons which are supported by substantial evidence.”

Further, the observations of the Inspector at the Wadlow Farm appeal in relation to plebiscites are instructive: he concluded that applications cannot be determined simply on the basis of a poll of numbers in favour and numbers against and that such an approach would thwart many forms of development including many categories of public utilities which are perceived by those affected as unattractive neighbours but are nonetheless necessary for the largely silent wider community. Those remarks are particularly apt here. Although the Willows is objected to by large numbers of local people, its functions are of considerable county-wide significance and the SoS must in reaching his decision have regard to the wider public interest of enabling Norfolk to have the residual waste recovery capacity that it so urgently needs.

319. Moreover, this issue has been addressed at numerous EfW inquiries. In all cases the Inspectors have 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

481 CD.U19, §B21.
482 CD.A23 IR12.16
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. Further, we note that at King’s Cliffe a petition and the results of a local referendum were submitted to the Secretary of State after the public inquiry. Both of these documents strenuously opposed the proposal. The Secretary of State took them into account and concluded that they did not raise any new issue which would affect his decision or require further comment from the parties.

320. Furthermore, the High Court recently 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 role 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 new opportunities afforded to the public through the Localism Act is through the plan making system, not development control.

321. We have already highlighted the unprecedented – in our experience – scope the public has been afforded to give their views and cross-examine our and NCC’s witnesses. We estimate that the public’s questioning of witnesses at least equalled in length that of the opposing main parties. The public could not sensibly or fairly

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483 See Sinfin Lane (CD.A5, §133 and 135-136); Middlewich (CD.A14, §228) in which the Inspector acknowledged that the benefits of a similar proposal were more than local. Furthermore it should be recalled that, here, the application was called in as it was of more than local concern. See also King’s Cliffe (CD.A24, §7.67); Wadlow Farm, (CD.23, §12.16); and Liverpool (CD.A25, §53) in which the Inspector held that public opposition itself is not a material consideration.

484 CD.A12, §7.12 of the Secretary of State’s DL.

485 CD.A24, §5 of the Secretary of State’s DL.

486 Tewkesbury Borough Council v Secretary of State for Communities and Local Government [2013] EWHC 286 (Admin) at [55, 59-60 and 64-65].
now suggest that they have not been afforded the opportunity to participate fully in this inquiry.

322. We said in opening that the BC and KLWIN were sensible to place no reliance in their written evidence on the result of the local poll conducted by the BC in February 2011 (several months before the application). KLWIN in fact pursued the matter at the inquiry. The BC did not – at least with any vigour. As JH confirmed in XX, his evidence was entirely silent on the BC’s own local poll. This disregard of the poll by the BC’s expert planning witness is a telling indictment of its relevance and reliability.

323. JB analyses the local poll in some detail.\textsuperscript{487} It is, of course, not binding. Moreover, there are a number of obvious flaws with the poll which undermine the results. First, it was conducted at a time before CW had begun its comprehensive community engagement programme, before the application had been made and before the EIA assessment completed. The poll was therefore manifestly premature and could not possibly reflect the views of the public on the specific application before this inquiry. Secondly, we submit that the ballot paper was plainly misleading. It characterised the Willows as a ‘mass burn incinerator’ and made no reference whatsoever to its role as a generator of renewable energy. Thirdly, the supporting documentation contained only one side of the argument (for the reasons explained by JB) and was couched in alarmist terms.\textsuperscript{488} In all these circumstances the outcome was wholly predictable and can be given little weight.\textsuperscript{489}

324. Moreover, the proposal is designed to serve the waste management needs of the County, not just King’s Lynn or the BC area. JH agreed in XX that in so far as it was relevant to take into account public opinion, in the circumstances pertaining to this application, it was right to consider the broader position and the views of

\footnotesize{\textsuperscript{487} C10, §7.24-7.40.}
\footnotesize{\textsuperscript{488} C11, App.8.}
\footnotesize{\textsuperscript{489} JB also records the early and vigorous campaign conducted against the proposal even before the local poll by the local newspaper that must also have influenced people’s views.}
residents of Norfolk as a whole and not just those within the BC area. Notably, the Secretary of State for DEFRA has concluded, whilst fully aware of the strength of local opposition within the BC area, that a broad consensus for the proposal exists in the County and, therefore, was able to confirm the award of the PFI credits. This conclusion is supported by the ComRes survey that indicates that (despite the high opposition locally) some 65 per cent of people interviewed from across the County as a whole support the proposal.

325. Finally, we note that in relation to call-in decisions for his own determination, the Secretary of State’s policy is not to intervene in local issues: this application was called in as the proposal was deemed to have regional and/or national significance. If, as we suggest, the issues raised at the inquiry are almost entirely local or, at most, sub-regional in nature, the Secretary of State ought to respect the conclusions of the elected members on the Planning Regulatory Committee who represent the interests of all the Norfolk’s residents. In other words, the local decision was to grant planning permission. We submit that there is no good reason to go against that decision.

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490 CD.J8. Further the Inspector at Shrewsbury concluded that weight could be given to this (CD.A4, §132). 491 ComRes interviewed some 1,751 adults in Norfolk by telephone between 17 and 22 February 2011 (809 of whom were residents in the Borough of King’s Lynn and West Norfolk, the remainder were from the rest of other Norfolk) (CD.PA11). 65 per cent. of the people in Norfolk supported the proposal. Perhaps, not surprisingly, of those within the Borough of King’s Lynn and West Norfolk, 62 per cent. opposed it.
Third parties

326. We have by this stage in our submissions addressed the great majority of third party concerns and, here, respond to only those few that remain.

Landscape and visual impacts

327. Colin Goodrum (“CG”) said in XIC that the lack of objection on this ground was almost unique in his (extensive) experience in the context of development of this nature. JH agreed it was a common ground of objection to proposals such as this. CG explained that the reason no main party has raised a landscape objection to this proposal is due to the present and proposed surrounding land uses and the built form to accommodate those uses. KLWIN’s photographs of their model (W15a and W15b show how well the EfW plant will nestle alongside the permitted Centrica B power station.

328. We have already referred to that fact that the application site and its surroundings are unusually well suited to the development proposed being in an industrial estate already characterised by major industrial and infrastructure uses operating from large-scale buildings and plant and which include a series of chimneys and stacks. Further permissions for like uses and buildings have recently been granted. Moreover, as JH agreed, Government policy recognises that development such as this will inevitably have landscape and visual impacts. We note too that the proposed development would not affect any designated landscapes.

329. It is an objection raised only by third parties. None of the main consultees objects to the development on landscape or visual grounds. Further CABE, the Government’s advisor on design matters at the time of the application, was also supportive of the proposal and of its design.
330. We submit that CG’s evidence is comprehensive and persuasive and should provide the Secretary of State with confidence that he can conclude that the Willows’ landscape and visual impact would be acceptable.

331. CG reviewed the LVIA included in the ES and carried out his own, including an assessment of cumulative impacts. He concludes that the development is acceptable in landscape and visual terms. He also carried out an assessment of effects on residential receptors within 1km of the site, concluding that living conditions in respect of the potential visual effects on residential amenity would not be adversely affected and thus judged the effects to be acceptable on visual grounds.

332. The only other person at the inquiry to provide some form of analysis as opposed to pure assertion in relation to landscape matters was Mr Morrish. However, there are only minor variations in judgments between Mr Morrish and CG. Mr Morrish is very much out on his own and we submit the judgment of CG should be preferred.

333. CG further concludes that the proposed development complies with the relevant development plan policies on landscape.

334. Accordingly, we submit that there is no proper landscape and visual impact basis on which to refuse the Willows.
Adequacy of the Environmental Statement

335. The Environmental Statement was prepared in accordance with Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 as amended and was the subject of full scoping exercise.

336. Following consideration by the WPA and independent advisors retained to evaluate the ES, supplementary information was submitted addressing all the points raised. All requisite administrative procedures were followed in respect of the additional information. The ES is therefore both thorough and correct.

337. With regard to the PIC, this has been appropriately considered within the ES and in supporting information. In particular, it is considered fully in relation to potential flood risk and air quality impacts. The main objection expressed by third parties was that it should be treated as a sensitive residential receptor for the purposes of assessing noise impacts and emissions to air. This is not the case given the short-term nature of the detention arrangements at the facility. This is confirmed in the NCC Officer Report to committee and no objection has been received to this effect from the BC Environmental Health Officer following the review of relevant documentation by independent advisors.

338. The status of the PIC as a worst-case receptor for human health studies was also taken into account by the EA in their decision document. They concluded that the facility would not fulfil the worse case criteria given that individuals are unlikely to spend long periods at these locations continuously. The EA also pointed out that the consideration of maximum ground level concentrations for air quality modelling served to ensure that the risks to human health were properly considered. Mrs Franklin said that the average detention periods were longer than the 6 – 7 hours the EA had in mind. However, the average periods suggested by Mrs Franklin were in

492 CD.L2.
493 CD.E2, p.105.
the order of 9 hours. It is difficult to see how that could affect the conclusions of
the EA or ES in any way.

339. It is well established that a claimant who seeks to quash a planning permission by
reference to the adequacy of an ES faces a high hurdle. In Blewett v Derbyshire
County Council [2003] EWHC 2775 (Admin), Mr Justice Sullivan (as he then
was) dealt with such a case and held that the adequacy of an ES is a matter for the
decision maker (subject to the decision being rational in the Wednesbury sense). He
said:

“Unless it can be said that the deficiencies are so serious that the
document cannot be described as, in substance, an environmental
statement for the purposes of the Regulations, such an approach is in
my judgment misconceived. It is important that decisions on EIA
applications are made on the basis of ‘full information’, but the
Regulations are not based on the premise that the environmental
statement will necessarily contain the full information. The process is
designed to identify any deficiencies in the environmental statement so
that the local planning authority has the full picture, so far as it can
be ascertained, when it comes to consider the ‘environmental
information’ of which the statement will be but a part.”

340. KLWIN’s closing §65 suggests that the environmental information
concerning Centrica B’s air cooled condensors had been incorrect.
However, whatever view is taken of the correctness of the material in the
submitted ES, the inquiry has certainly be provided with the “full picture”
on the relationship between Centrica B and the appeal procedure: see C20
§6.6-20 and C24 §1.1-11. It cannot be said, therefore, that the SoS has been
deprived from taking the full and correct information into account.

494 There was an appeal to the Court of Appeal (See [2005] Env. L.R. 15) but the appeal did not deal with
the EIA issue).
495 At pp.68
Conditions and section 106 obligation

340. In the event that planning permission is granted, the inquiry has a set of agreed conditions. Although KLWIN participated in the inquiry session on conditions, it later submitted a document making further submissions and comments on the agreed conditions. CW has set out its response to these points in a note to the Inquiry and we do not rehearse that material here.\textsuperscript{496}

341. As to the section 106 obligation, this has been executed and submitted to the Inquiry. CW submitted that the obligations it contained were not strictly necessary and so did not meet the tests in the Community Infrastructure Levy Regulations. NCC, however, contended that it did meet the legal tests. Accordingly, the Secretary of State will have to decide whether all or some or none of the obligations are CIL compliant and, to the extent they are, what weight should be accorded to them.

\textsuperscript{496} C92 (amended version).
Benefits

342. The Willows would deliver a number of significant and tangible benefits which we submit should be given substantial weight. We have already covered these benefits in some detail but draw them together here in summary form. The Willows would:

(i) Divert some 275ktpa of residual non hazardous waste from landfill, thereby avoiding the release of substantial quantities of harmful GHGs including methane and making a substantial contribution to combating climate change;

(ii) Directly accord with national energy policy and so help to diversify the supply of energy and provide dependable, dispatchable and distributed energy;

(iii) Provide Norfolk with valuable and much needed recovery capacity, enabling it to meet more sustainably its waste management capacity needs and thereby reduce its dependence on continued extensive landflling in flagrant disregard of the waste hierarchy;

(iv) Represent a substantial saving to NCC in the cost of waste management by some £8-10M each year. Contrary to the BC’s submissions in closing\(^{497}\), this is the direct consequence of recovering waste in the EfW plant rather than continuing with landfill;

(v) Help to reduce the cost of managing waste for local businesses by providing a more competitive method of waste management for C&I waste for which no landfill tax would be payable;

\(^{497}\) NLQC §185
(vi) Export 21MW of renewable and low carbon energy to the local grid providing sufficient power for about 36,000 homes (i.e. more than the number of homes in King’s Lynn which has a population of approximately 40,000);\footnote{C10, §9.8.}

(vii) Be CHP enabled. The Willows could not be more favourably located to exploit CHP;

(viii) Produce some 55ktpa of secondary aggregates from the bottom ash recycling facility which would help reduce the reliance on primary aggregates, husbanding them for future generations, as well as reducing the energy expended in winning such minerals;

(ix) In addition some 5ktpa of metals will be recycled from the IBA;

(x) Provide 40 jobs many of which will be locally sourced. In addition, a significant number – up to 300 – of construction jobs would be created. The facility would also support the local economy and indirect employment through the need for services, supplies etc; and

(xi) Provide a visitor and education centre, up to £100,000 per annum for a community fund to be used to support community led projects and a further £100,000 a year for the Waste Awareness and Education Programme (through the Contract).
Implications of refusal

343. Should this application be refused there will be major repercussions for the sustainable management of waste in Norfolk. The implications of a refusal should be viewed in light of the Government’s recognition of how pivotal the planning system is to the adequate and timely provision of required infrastructure and the positive role the planning system has in delivering sustainable waste management, as well as the Government’s emphasis on early delivery.

344. There are at present no residual waste treatment facilities operating within the County. As RM explains there are no long-term sustainable waste management plans in place in the absence of the Willows. There are only short-term contracts in place which expire in 2015 or 2016.

345. If the application is refused Norfolk’s residual waste will either need to continue to be landfilled or to be exported for treatment or landfilling out of County. The irony given the BC’s concerns about waste miles is that by 2015 over 85 per cent. of Norfolk’s remaining landfill capacity will be at two sites in the BC’s area (Blackborough End and Feltwell) so that, in the event of a refusal, the waste is likely to be transported to King’s Lynn in any event.

346. If it is to be out of County it is likely to be transported over a considerable distance – outside even of the East of England. RM demonstrates in his needs analysis that the capacity in the surrounding counties would be insufficient to take Norfolk’s

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499 CD.U5, §1.
500 CD.U5, §2.
501 DEFRA set up WIDP precisely for this purpose.
502 RM explains that there are a number of short-term contracts in place. One in relation to the MBT facility in Waterbeach, Cambridgeshire until 2015 but this facility was closed in September 2012 following a mechanical fault and is not expected to be re-commissioned until December 2013 (see C81, App.5). There is also an agreement in place until 2015 to transport some MSW to the Allington EfW in Kent (see C80, §3.4.4). These short-term contracts are only to be in place for a few years and in no way could be seen as a potential alternative to the Willows or other long-term solution.
503 C80, §3.4.5.
waste. And, of course, NCC is currently transporting waste to Kent. This is indicative that RM’s analysis is right.

347. Developing alternative strategic residual waste treatment facilities within the County will take considerable time. In planning terms a considerable number of steps will need to be taken: the identification and acquisition of an alternative site; the detailed design for the new facility; the scoping and carrying out of an environmental impact assessment; consultation with relevant consultees and with the local community; the preparation and submission of a planning application; its determination including the potential for an inquiry; the discharge of pre-commencement conditions; and the construction and commissioning of the facility. In RM’s experience and excluding any requirement for an inquiry to be held, such steps would be likely to require a minimum period of six years. This is entirely without consideration of the need to either revise the Contact or a re-procurement – and as JB explains this could take a considerable period of time (and cost a significant amount).\(^{504}\)

348. It follows that the earliest date that an alternative residual waste treatment facility of comparable capacity to the Willows could be operational will be beyond the end of 2018.

349. A refusal of planning permission would also have an adverse effect on businesses in Norfolk by the removal of an opportunity to have a cheaper and more sustainable means of residual waste management.

350. At Cornwall, the Inspector considered the implications of refusal and placed weight on both delay and increased costs. He said:

> “Some of the implications of not proceeding with the CERC proposal have already been touched upon in the part of the conclusions of the report concerned with need. These conclusions point to the urgent need

\(^{504}\) C81, App.11, J5, §7: the cost of procuring the Contract was £3.570m to November 2012.
to meet targets in diverting waste from landfill and to manage waste further up the waste hierarchy, thereby meeting national targets and complying with European, national and local policy...

It is noted that the Inspector in his conclusions on the Belvedere EfW appeal attached considerable importance to the WDA’s evidence in that case on the financial penalties that would be incurred if the scheme did not go ahead. He concluded that the prospect of significant cost to the public purse from further delays if the contract had to be re-tendered had not been given the weight it merited. He went on to say that the uncertainty that would follow if the contract was re-tendered should be accorded considerable weight by the decision maker. I share this view and consider that in this case the financial repercussions of the CERC proposal not proceeding and the contract having to be re-tendered should be given very substantial weight.

Support for this view is provided by WS2007. In chapter 5, the document stresses the importance of reducing the costs of waste management. In addition, the establishment of the WIDP by DEFRA was done to improve investment and procurement by local authorities and to ensure cost effective and timely delivery of major elements of waste management infrastructure. It is clear from this that financial considerations are deserving of weight.”

351. The Secretary of State explicitly endorsed the Inspector’s conclusion on this issue and said that the financial implications of rejecting the appeal should be accorded substantial weight alongside the consequences of failing to meet targets, of not diverting waste from landfill and not managing waste in a more sustainable manner. Now, of course, s.70 of the Town and Country Planning Act 1990 has been expressly amended to make local financial considerations a matter that must be taken into account in the determination of planning applications. The fact that DEFRA has awarded NCC a substantial amount of PFI credits (now known as waste infrastructure credits) to enable the contract between it and CW to go forward is of great significance and section 70 now requires the decision-maker to take that into account. It should be accorded considerable weight, especially given the particular scrutiny this project received from DEFRA on account of the large

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505 CD.A6, §2105, 2110, 2111. See, generally §2105-2123.  
506 CD.A6, SoS DL, §27.
volume of objections and the fact that this project survived a previous cull of PFI projects deemed not worthy of continued support.

352. Here, the WDA estimate the cost of delay in this case as being between £8-10 million per year based upon existing waste management arrangements.\textsuperscript{507} This constitutes a material consideration which should be taken into account and accorded substantial weight\textsuperscript{508}.

\textsuperscript{507} C81, Appendix.11, J1-J5.
\textsuperscript{508} See,e.g. Cornwall CD.A6 IR2110 and DL27.
Planning balance

353. None of the issues raised by the BC is determinative of this application in its own right. Rather they are issues that must be weighed in the balance (insofar as they have any substance). This is an exercise that the BC has not properly carried out. JH purports to carry out such an exercise but the arguments in favour of the development are not properly assessed. JH brushes over energy and climate change policies, whereas 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 energy - to the contribution of decentralised, home grown, dispatchable energy which assists in energy security and resilience. Neither does JH appear to give the compelling and urgent need for the proposal any particular weight. Moreover, as he acknowledged in XX by NCQC, the “significant harm” he identifies almost exclusively relates to policy issues rather than to actual harm on the ground. The Applicant submits that, properly analysed and taking into account the benefits we have identified above, the planning balance falls decisively in favour of the grant of planning permission.
Conclusion

354. In submissions that are already lengthy, we shall here be brief. The Willows positively addresses three global policy aims and the urgent need for infrastructure to achieve them: first, the provision of urgently needed residual waste recovery capacity critical for the diversion waste from landfill; secondly, providing much needed renewable energy with excellent potential for exploitation of CHP, thereby increasing energy security and contributing to renewable energy targets; and, thirdly, displacing the carbon dioxide that would otherwise be emitted to generate energy and avoiding the harmful methane emissions that arise from landfilling with consequent climate changes benefits.

355. All these benefits would be delivered on a site that is admirably suited to this form of development. It would be operated by CW who have already obtained the necessary permit from the EA and who are jointly and successfully operating the biggest EfW plant in the UK in one of the most densely populated parts of the country.

356. Furthermore, this application enjoys a number of presumptions in favour of the development being granted permission: first, it accords with the relevant provisions of the development plan and therefore enjoys the statutory presumption in favour of planning permission; secondly, the Willows is sustainable development and accordingly benefits from the presumption in favour of such development under the NPPF; thirdly, it enjoys the presumption in favour of renewable energy development contained in paragraph 98 of the NPPF; fourthly, the proposal enjoys the presumption in EN1\(^\text{509}\) to grant planning permission for an energy generator which accords with the policies set out in that NPS; and fifthly, the Willows is deserving of the favourable treatment required by paragraph 24 of PPS10 in relation to proposals on unallocated sites as a result of its compliance with that paragraph’s requirements.

\(^{509}\) CD.U3, §4.1.2.
Accordingly, we submit that this is an application that the Secretary of State should clearly approve and should do so in the shortest possible timescale in view of the urgent and pressing need for the Willows to commence operations.

RICHARD PHILLIPS QC
MARK WESTMORELAND SMITH
17 May 2013

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