

# ISSUES IN AN APPLICATION FOR PLANNING PERMISSION FOR ENERGY

## RECOVERY FACILITIES

Stephen Morgan

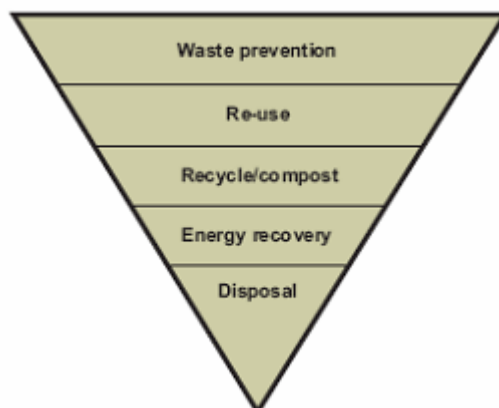
LANDMARK CHAMBERS

### 1. BACKGROUND TO WASTE APPLICATIONS

- 1.1 Waste is of course an enormously important issue. Indeed the issue itself of what waste is has occupied decision makers and the courts on numerous occasions. I will not delay for too long on this aspect. However, I will explore it in terms of the issue of whether a facility is a county matter or not.
- 1.2 Developing different strategies of waste management and control has become one of the most daunting challenges facing the United Kingdom with an average of nearly 500 million tonnes of waste produced annually.
- 1.3 The range of waste is wide (from domestic to agricultural and industrial) as is the range facilities to deal with this waste; from domestic bins to energy recovery facilities.
- 1.4 Energy Recovery Facilities (ERFs or EFW) are of course an important element in the range of waste management facilities opted for by many Waste Disposal Authorities under the PFI contract regime. They are often and are best seen as an integral part of the overall package of such facilities.
- 1.5 A good starting point for considering what those facilities have to provide is the waste hierarchy:

WASTE STRATEGY FOR ENGLAND 2007 (WSE 2007):

## The waste hierarchy



### THE NEW WASTE FRAMEWORK DIRECTIVE 2008 (WFD 2008):

#### Article 4

##### **Waste hierarchy**

1. The following waste hierarchy shall apply as a priority order in waste prevention and management legislation and policy:

- (a) prevention;
- (b) preparing for re-use;
- (c) recycling<sup>1</sup>;
- (d) other recovery, e.g. energy recovery; and
- (e) disposal.

2. When applying the waste hierarchy referred to in paragraph 1, Member States shall take measures to encourage the options that deliver the best overall environmental outcome. This may require specific waste streams departing from the hierarchy where this is justified by life-cycle thinking on the overall impacts of the generation and management of such waste.

Member States shall ensure that the development of waste legislation and policy is a fully transparent process, observing existing national rules about the consultation and involvement of citizens and stakeholders.

Member States shall take into account the general environmental protection principles of precaution and sustainability, technical feasibility and economic viability, protection of resources as well as the overall environmental, human health, economic and social impacts, in accordance with Articles 1 and 3.

Thus disposal is at the bottom of the pile<sup>2</sup>. Historically The UK has favoured landfill as the main method disposal and up to 80% of waste used to be disposed of in that

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<sup>1</sup> Policies in relation to separate collection of waste: Part 2 of Schedule 1 to the Draft Regulations:

8. Measures to promote high quality recycling including the setting up of separate collections of waste where technically, environmentally and economically practicable and appropriate to meet the necessary quality standards for the relevant recycling sectors

<sup>2</sup> See Annex I of the 2008 WFD which lists "Disposal Operations"

way. Recycling and re-use strategies achieved relatively little success with only 12% of waste falling under that umbrella.

## 1.6 Under the Draft Waste (England and Wales) Regulations 2011:

### **Duty in relation to the waste hierarchy**

**12.—(1)** An establishment or undertaking which imports, produces, collects, transports, recovers or disposes of waste, or which as a dealer or broker has control of waste must, on the transfer of waste, take all such measures available to it as are reasonable in the circumstances to apply the following waste hierarchy as a priority order—

- (a) prevention;
- (b) preparing for re-use;
- (c) recycling;
- (d) other recovery (for example energy recovery);
- (e) disposal.

(2) But an establishment or undertaking may depart from the priority order in paragraph (1) so as to achieve the best overall environmental outcome where this is justified by life-cycle thinking on the overall impacts of the generation and management of the waste.

(3) When considering the overall impacts mentioned in paragraph (2), the following considerations must be taken into account—

- (a) the general environmental protection principles of precaution and sustainability;
- (b) technical feasibility and economic viability;
- (c) protection of resources;
- (d) the overall environmental, human health, economic and social impacts

1.7 There are two themes that can be identified as shaping the current waste regime in the UK and help to understand the implications of the WFD 2008 and the Draft regulations transposing that Directive. Firstly, there have been strong centralising tendencies within the UK, but nonetheless local government powers and responsibilities for waste management have been retained. There have been many new structures and management arrangements that have been intended to transform the role of local authorities. These include public contracts and private finance initiatives.

- 1.8 The second theme is the overarching influence of the EU. In 2003 for example the municipal waste market in Europe came to 248 metric million tonnes. The UK alone in 2005 produced over 550 kg per person per year of municipal waste, but only ranked 8<sup>th</sup> in the European League of municipal waste production. Reusable resources and recycling have become a central part of EU strategy to manage waste. Landfill has diminished, matched by a concomitant rise in waste treatment activities such as incineration and recycling. The Waste and Emissions Trading Act (2003) provides the legal framework for the Landfill allowance trading scheme (LATS) and for the allocation of tradable landfill allowances to each waste disposal authority in England (to assist in seeking the targets set down in the Landfill Directive 1999). These allowances convey the right for a waste disposal authority to landfill a certain amount of biodegradable municipal waste in a specified scheme year. Incineration, especially when used for energy recovery has thus increased in importance, but is usually linked to waste sorting activities and the recycling of a variety of material.
- 1.9 With regard to the previous trend of centralisation, the current Coalition Government is promoting and legislating for the opposite. The Localism Bill promises many significant changes which will directly and indirectly impact upon the provision of waste management facilities. Precisely how this will happen is still uncertain, given the Bill is still passing through the Committee stage and much of the detail of how the various provisions will actually work will be incorporate within Regulations the content of which is not yet known.
- 1.10 Against that brief background I would now like to address in the following sections four themes in relation to the making or determining of planning applications for waste facilities, and in particular ERFs, namely:
2. Make sure you understand what you are dealing with;
  3. Make sure that you understand the full policy context;
  4. Be equipped to deal with extensive public consultation;
  5. Think ahead to what differences localism might make.

## 2. THE NATURE OF THE BEAST: WHAT YOU ARE DEALING WITH

### Is it a County Matter?

- 2.1 Paragraph I of Schedule I to the Town and Country Planning Act 1990 (the TCPA 1990) defines those matters which are “county matters” and to be determined by the County Council in areas where there is a District Council. Pursuant to paragraph 1(1)(j) of Schedule I, the Secretary of State has made the Town and Country Planning (Prescription of County Matters) (England) Regulations 2003 (The 2003 Regulations). These provide:

**The following classes of operations and uses of land are prescribed for the purposes of paragraph 1(1)(j) of Schedule 1 to the Town and Country Planning Act 1990:**

**(a) (i) the use of land;**

**(ii) the carrying out of building, engineering or other operations; or**

**(iii) the erection of plant or machinery used or proposed to be used,**

**wholly or mainly for the purposes of recovering, treating, storing, processing, sorting, transferring or depositing of waste;**

**(b) the use of land or the carrying out of operations for any purposes ancillary to any use or operations specified in paragraph (a) above, including the formation, laying out, construction or alteration of a vehicular access to any public highway.**

- 2.2 The term waste is not defined in the 2003 Regulations. However, by paragraph 11 of Schedule 4 to the Waste Management Licensing Regulations 1994 it is provided:

**In the Town and Country Planning Act 1990, the Town and Country Planning (Scotland) Act 1972, Part II of the Control of Pollution Act 1974 and Chapter II of Part III of the Water Resources Act 1991, any reference to "waste" shall include a reference to Directive waste**

Under the TCPA 1990 section 336 waste is defined as follows:

**"waste" includes anything that is waste for the purposes of Directive 2006/12/EC of the European Parliament and of the Council on waste, and that is not excluded from the scope of that Directive by Article 2(1) of that Directive**

The new Waste Framework Directive 2008/98/EC dated 19 November 2008, which is not yet transposed into UK law, defines waste as:

*“..any substance or object which the holder discards or intends or is required to discard”* (article 3.1)

*“waste holder”* means *“the waste producer or the natural legal person who is in possession of the waste”* (article 3.6)

*“waste producer”* means *“anyone whose activities produce waste (“original waste producer”) or anyone who carries out pre-processing, mixing or other operations resulting in a change in the nature or composition of this waste”* (article 3.5)

European case law indicates that the terms “discards” “covers” or “includes” disposal or recovery within the terms of what is now Annexes I and II of the new Directive (*Inter-Environment Wallonie ABSL v Region Wallonne* [1997] ECR 1-7411 at para. 27; and *ARCO Chemie Nederland v Minister Volkshuisvesting* [2002] QB 646 at para. 47). However, the fact that a substance is treated by one of the methods described in the Annexes to the Directive does not lead to the necessary inference that it is waste (see *ARCO* at paras. 48-9).

- 2.3 PPS10 (in Annex A) advises that subject to the definition in the 1994 Regulations the term “waste” in the 2003 Regulations assumes its normal and natural meaning.
- 2.4 ERF plant applications are thus normally determined by a County Council. Issues sometimes arise over the use of Solid Recovered Fuel (SRF), which is a type of Refuse Derived Fuel (RDF). The Environment Agency has considered it to be waste and remains waste until it is burned as fuel and the energy is recovered. RDF intended for use in this way can be stored for up to 3 years under the terms of a waste management licence. An issue might also arise where an industrial operator wishes to build an energy plant burning “waste” products from its on-site activities: the waste might be the single fuel used or it could be used alongside a fossil fuel. Is that a county matter?

2.5 With regard to environmental assessment category 10 of Schedule I to the EIA Regulations provides for:

- 10. Waste disposal installations for the incineration or chemical treatment (as defined in Annex IIA to Council Directive 75/442/EEC under heading D9) of non-hazardous waste with a capacity exceeding 100 tonnes per day.**

**Is it recovery or disposal?**

2.6 Before exploring the intricacies of the difference between disposal and recovery, it is worth pausing to highlight why that matters. After all both recovery and disposal of waste fall with the ambit of a “county matter”, as seen above.

2.7 A good starting point is the waste hierarchy as set out above. Thus disposal is the last resort method. It has often been argued by objectors that incineration is not recovery but disposal under European Law. That is not an argument consistent with Government policy or adopted by Inspectors or the Secretary of State.

2.8 Under the original Waste Framework Directive (2006/12/EC):

- “recovery” defined by reference to Annex IIB
- Recital (5): “The recovery of waste and the use of recovered materials as raw materials should be encouraged in order to conserve natural resources”
- Art 3: “appropriate measures” to be taken to encourage “(i) the recovery of waste by means of recycling, re-use or reclamation or any other process with a view to extracting secondary raw materials; or (ii) the use of waste as a source of energy”

2.9 The new WFD 2008 and draft Regulations include these definitions:

*“recovery” means any operation **the principal result of which** is waste serving a useful purpose by replacing other materials which would otherwise have been used to fulfil a particular function, or waste being prepared to fulfil that function, in the plant or in the wider economy*

*“disposal” means any operation which is not recovery even where the operation **has as a secondary consequence** the reclamation of substances or energy [emphasis added]*

WFD Annexes I & II have (non-exhaustive) lists of (respectively) disposal and recovery operations

2.10 WFD Annex II lists 13 “recovery operations”, including

*R1 Use [of waste] principally as a fuel or other means to generate energy (\*)*

*(\*) This includes incineration facilities dedicated to the processing of municipal solid waste only where their energy efficiency is equal to or above:*

*- 0,60 for installations in operation and permitted ... before 1 January 2009*

*0,65 for installations permitted after 31 December 2008*

*[calculated in accordance with a given formula]*

2.11 *R3 Recycling/reclamation of organic substances which are not used as solvents (including composting and other biological transformation processes) (\*\*)*

*(\*\*) This includes gasification and pyrolysis using the components as chemicals*

– This process would count as energy recovery since it produces liquid and gaseous outputs or residues which can be combusted to generate electricity

### 3. **HOW EFW IS VIEWED BY THE POLICY MAKERS**

3.1 Energy recovery is much favoured:

(1) **WSE:**

iii. Our aim must be to reduce waste by making products with fewer natural resources. We must break the link between economic growth and waste growth. Most products should be re-used or their materials recycled. Energy should be recovered from other wastes where possible. For a small amount of residual material, landfill will be necessary.

- 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.



xv. The main elements of the new strategy are to:

- incentivise efforts to reduce, re-use, recycle waste and recover energy from waste;
- stimulate investment in collection, recycling and recovery infrastructure, and markets for recovered materials that will maximise the value of materials and energy recovered; and
- using PFI, and, where appropriate, Enhanced Capital Allowances, and/or Renewable Obligation Certificates (ROCs) to encourage a variety of **energy recovery technologies (including anaerobic digestion)** so that unavoidable residual waste is treated in the way which provides the greatest benefits to energy policy. Recovering energy from waste (EfW) which cannot sensibly be recycled is an essential component of a well-balanced energy policy.

**Energy from waste is expected to account for 25% of municipal waste by 2020 compared to 10% today which is less than the 34% by 2015** anticipated in 2000; and

7. By further reducing landfill and increasing the amount of waste that is recycled, composted or has energy recovered, there is considerable scope for reducing greenhouse gas emissions from the waste we produce.

Further, WSE 2007 acknowledges that a vigorous energy from waste policy is compatible with high recycling rates

Technologies:

### **Box 5.1: Energy from waste technologies**

Anaerobic digestion

Direct combustion (incineration)

Secondary recovered fuel (an output from mechanical and biological treatment processes)

Pyrolysis

Gasification

Plasma arc heating

25. The electricity derived from the energy recovered in anaerobic digestion is eligible for Renewable Obligations Certificates. The WIP New Technologies Programme is also funding demonstration project(s). Plants have been situated successfully in light industrial estates within towns, and there is scope for using food wastes derived from both household and business sources. Defra has established an Anaerobic Digestion Policy Network to take forward work on anaerobic digestion and maximise the synergies between the different markets for it.

27. Subject to what is said in paragraph 25 above, the Government does not generally think it appropriate to express a preference for one technology over another, since local circumstances differ so much. Those making investment decisions should consider the 'summary guidance on energy from waste technology', and other similar information such as that which WIDP can supply – and make their own decisions. It is not helpful to rule out a particular technology – such as incineration – in advance, since this unnecessarily restricts options and threatens to raise costs.

(2) PPS 1 Supplement on Climate Change – 2007:

**KEY OVERRIDING POLICY:**

Where there is any difference in emphasis on climate change between the policies in this PPS and others in the national series this is intentional and this PPS takes precedence.

**Renewable and low-carbon energy** (from the Glossary)

Includes energy for heating and cooling as well as generating electricity. Renewable energy covers those energy flows that occur naturally and repeatedly in the environment – from the wind, the fall of water, the movement of the oceans, from the sun and also from biomass. Low-carbon technologies are those that can help reduce carbon emissions. Renewable and/or low-carbon energy supplies include,

but not exclusively, those from biomass and energy crops; CHP/CCHP (and micro-CHP); waste heat that would otherwise be generated directly or indirectly from fossil fuel; energy-from-waste; ground source heating and cooling; hydro; solar thermal and photovoltaic generation; wind generation.

(My emphasis)

See also paras: 19, 20, 39 & 40

19. In developing their core strategy and supporting local development documents, planning authorities should provide a framework that promotes and encourages renewable and low carbon energy generation. Policies should be designed to promote and not restrict renewable and low-carbon energy and supporting infrastructure.

20. In particular, planning authorities should:

- not require applicants for energy development to demonstrate either the overall need for renewable energy and its distribution, nor question the energy justification for why a proposal for such development must be sited in a particular location;
- ensure any local approach to protecting landscape and townscape is consistent with PPS22 and does not preclude the supply of any type of renewable energy other than in the most exceptional circumstances<sup>20</sup>;

- (3) Draft PPS: Planning for a Low Carbon Future in a Changing Climate (March 2010): This consultation document brings together the Planning and Climate Change supplement to PPS 1 with the 2004 PPS 22 on Renewable Energy into a new draft PPS on Planning for a Low Carbon Future in a Changing Climate. This new PPS will replace the 2007 and 2004 PPS and it is proposed that it will become a consolidated supplement to PPS 1. This will support and provide an overarching framework for PPS 25 on Development and Flood Risk and emerging planning policies on green infrastructure (to be consulted on separately).
- (4) Draft NPS: Revised Draft of the Overarching NPS for Energy (EN-1) and for Renewable Infrastructure (EN-3)<sup>3</sup>. Although drafts, these documents show the Government's current thinking on these matters. It is made clear within them that the NPSs are likely to be material to planning applications, as well as applications for development consent<sup>4</sup>. The approach set out in those documents should be given significant weight as it is consistent with existing guidance in WSE 2007 and PPS10. Indeed in many ways the Revised Draft NPSs strengthen the role of energy from waste, which is clearly categorised and treated as renewable energy where it

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<sup>4</sup> Para. 1.2.1 of Revised Draft EN-1, CD85A, and para. 1.2.3 of Revised Draft EN-3, CD86A.

includes a biomass element<sup>5</sup>. As is stated in paragraph 3.3.10 of EN-1 the Government is committed to dramatically increasing the amount of renewable generation and

“...in the short to medium term, much of this new capacity is likely to be onshore and offshore wind, but increasingly it may include plant powered by the combustion of biomass **and waste** and the generation of electricity from wave and tidal power.”

This is echoed in Revised Draft NPS EN-3.

(5) Consistent with this, PPS10 advises that it is only necessary for an applicant to demonstrate that the proposed facility will not undermine the waste planning strategy through prejudicing movement up the waste hierarchy in the case of disposal facilities<sup>6</sup>.

(6) This approach is re-enforced in Revised Draft NPS EN-3 which states:

- **Energy from Waste – the principal purpose of the combustion of waste, or similar processes (for example pyrolysis or gasification) is to reduce the amount of waste going to landfill in accordance with the Waste Hierarchy and to recover energy from that waste as electricity or heat.....<sup>7</sup>**

#### 4. LOCAL OBJECTIONS

##### Grounds of Objection

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<sup>5</sup> See e.g. para. 3.4.3 on p.26 of Draft EN-3.

<sup>6</sup> CD26 at para. 25.

<sup>7</sup> CD86A at para. 3.4.3 on p.26, which refers to the Waste Hierarchy as set out in Article 16 of WFD 2008.

- 4.1 There is often much opposition to waste facilities, depending upon their precise nature. However energy from waste facilities (as the promoters call them) or incinerators (as the opponents insist on calling them) are particularly contentious and spawn many similar acronyms for opposition groups:

NAIL – Nottingham Against Landfill and Incineration

RAIN- Resident Against Incineration

PAIN – People Against Incineration

SSAIN - Sinfyn, Spondon and All Against Incineration

UKWin – UK Without Incineration Network

- 4.2 Reasons that are commonly relied upon by local objectors and lpas for refusing planning permission are:

- Hugely variable and very often site specific
- Virtually none due to failure to comply with waste or energy policy
- Traffic & highways
- Landscape and visual
- Site selection
- General impacts on residential amenity
- Health

### **Analysis of Determinations**

(See Nick Roberts’s presentation for full details, which I summarise below)

- 4.3 A recent analysis of decisions on EfWs (based on 56 identified UK EfW decisions Sept 08 – March 11) (\* Source: Waste Planning & Let’s Recycle)

- Approved with officer recommendation for approval – 25 applications (8 wood only)
- Refused with officer recommendation for approval – 10 applications (1 wood only)
- Refused with officer recommendation for refusal - 5
- Section 36 approved without Inquiry – 2
- Section 36 approved with Inquiry – 1
- Approved then quashed by JR – 1
- Called in – 3 of which 2 have been approved and 1 decision pending
- Resolved to grant awaiting decision on S of S referral – 1

#### 4.4 Appeals determined before 1 March 2011:

- Allowed: 6 (2 wood only), Dismissed: 2
- Excluding wood only EfWs – of 38 decisions, 19 approved without appeal, call-in Inquiry or subsequent JR (50%)
- Excluding wood only EfWs – of 38 decisions, only evidence of 2 ultimate refusals to date (5%), although some Council refusals may not be appealed
- 2 refusals at appeal:
  - Derby (Sinfin – PFI related gasification proposal)
  - Shore Road, Perth (reserved matters only)

### **The Cause of Much Opposition**

4.5 The opposition is in reality often led by a fear of the health impact of such facilities. However, this fear is fuelled by action groups (including Friends of the Earth). Friends

of the Earth and similar groups challenge the “renewable” and carbon emissions of energy from waste facilities, especially incinerators. This can lead to very detailed analysis (and highly complex and difficult to follow arguments) at both the application and appeal stages. The local planning authority often seek additional guidance from the Environment Agency on this.

4.6 They often rely upon scientific papers based on incinerators operating in a totally different legislative climate to that which now applies, certainly in Europe. Much of this can be very emotional with reference to birth defects, contaminated food, impact on brain development etc.

4.7 However, it is widely accepted in the UK that such a facility operating under the EP regime is most unlikely to cause health problems. As WSE 2007 states:

22. Concern over health effects is most frequently cited in connection with incinerators. Research carried out to date shows no credible evidence of adverse health outcomes for those living near incinerators. The relevant health effects – primarily cancers – have long incubation times, but the available research demonstrates an absence of symptoms relating to exposures twenty or more years ago, when emissions from incineration were much greater than they are now. Very demanding EU standards for dioxin emissions now apply. The Health Protection Agency has published a short position statement on the health impacts for municipal waste incineration which reaches similar conclusions.

4.8 So the refuge of the Objectors is increasingly becoming to rely upon the perception of fear.

#### **Relevant Decisions and Judgements on the Perception or Fear of Health Risks**

(Please refer to the Technical Paper Relating to Public Perception as a Material Planning Consideration from Nick Roberts of Axis, the Conclusions from which are set out below)

4.9 There are strong Government statements that that is no quantifiable health risks from modern EfW facilities. Public perception of the risk to health (or other risks) is a material planning consideration that features in a number of appeal decisions. However, in the case of EfW proposals:

- It would probably **never** be used as a reason to withhold planning permission in its own right;
- It would only ever carry any significant weight if there was hard evidence to show why, in a particular situation, the perception was real and justified;

- Even if there was evidence supporting a real perception issue, it would only be one of several factors that would need to be balanced in the planning determination process.

4.10 There is nothing in the Sinfin decision that suggests there has been a shift in the way the decision maker handled 'perception' issues. As such the decision does not increase the planning risk to other EfW proposals.

## 5. THE FUTURE: BYE BYE CENTRALIST TARGETS.....HELLO LOCALISM?

### The Headlines

5.1 The Bill, as currently worded proposes:

- Wide ranging legislation - Part 5 covers Planning
- Infrastructure Planning Commission abolished, but separate consent system for major infrastructure projects remains
- Regional Strategies abolished
- LDS system retained including examination of LDDs by an Inspector. LPA more power & Inspector's report not binding
- County matters development excluded from Neighbourhood Development Orders and Neighbourhood Development Plans
- Legal requirement for pre-application consultation and duty for applicants to take account of consultation responses
- CIL maintained albeit with changes

- Full nature and extent of provisions will not be understood until subsequent orders/regulations are or amended

### **Nationally Significant Infrastructure projects**

5.2 Section 36 of the Electricity Act 1989 required consent to be obtained under the Act for generating stations whose capacity exceeded 50 megawatts:

- Under the Planning Act 2008:
  - Nationally Significant Infrastructure Projects include the construction or extension of a generating station (section 14(1)(a))
  - a generating station is an NSIP if it is an onshore station generating more than 50 MW, or an offshore station generating more than 100 MW (section 15(2), (3))
- Therefore s.36 Electricity Act 1989 is effectively redundant
- Applications under 2008 Act will, following the enactment of the Localism Bill (clause 107), be determined by the Secretary of State; **the non-decision making functions of the IPC will be transferred to the new Major Infrastructure Planning Unit**
- Any applications for waste recovery including electricity generation which fall under the 50 MW threshold will continue to be made under TCPA 1990

### **Neighbourhood Planning**

5.3 Neighbourhood planning includes:

- (1) Neighbourhood Development Orders (NDOs); and
- (2) Neighbourhood Development Plans (NDPs)



- 5.4 These are promoted by the local community (Parish Council, Neighbour Forum or Community Organisation in respect Community Right to Build Orders, a type of NDO).
- 5.5 Neither NDOs nor NDPs can provide for “excluded development” which is defined (by clause 61I of the Bill) to include:
- (1) Any county matter within paragraphs 1(1)(a) to (h) of Schedule 1 to the TCPA 1990;
  - (2) Development that consists of the carrying out of any operation, or class of operations prescribed under paragraph 1(j) of that schedule (waste development) but that does not consist of development of a prescribed description (under clause 61I(f)).
- 5.6 However, that would not appear to preclude an NDP designating areas in a way that would preclude development, including waste development. A NDO is a plan which sets out policies in relation to the development and use of land in a particular neighbourhood.

### **Abolition of Regional Strategies**

- 5.7 The critical change in the Localism Bill is found in clause 89, which provides for the abolition of regional strategies by repealing sections 82(1) and 83 of the Local Democracy, Economic Development and Construction Act 2009 (effect of regional strategies) and the remaining provisions of Part 5 of that Act (regional strategy).
- 5.8 So the issue arises as to what will be the reference point and guidance for determining what new waste management facilities are required given that under the current position we have:
- Regional background data
  - Regional targets for recycling, recovery and landfill diversion
  - Apportionment by sub-region

- Capacity shortfalls for recycling, recovery & landfill etc

5.9 Some guidance has been provided.

**Steve Quartermain Letter to Chief Planning Officers 6th July 2010:**

***16. How do we establish the need for waste management without Regional Strategy targets?***

*For the transitional period this will continue to be the data and information which has been collated by..... bodies who currently form the Regional Waste Technical Advisory Bodies. We intend for this function to be transferred to local authorities in due course.*

**Steve Quartermain Letter to Chief Planning Officers**

**10th January 2011:**

*The EU Waste Framework Directive requires all waste planning authorities to have in place waste management plans, and for those plans to contain specific information.... the Government will shortly lay regulations to ensure its effective transposition.....*

*Waste plans should already have reached publication stage. In cases where more progress is needed, Ministers expect to see every effort being made to ensure that waste plans are put in place as quickly as possible.....the Government has included a power in Part 2 of the Localism Bill to pass on some or all of any fines from the European Court of Justice to any authority which caused the UK to be in breach of its obligations under the Directive.....*

5.10 There are some examples of the approach adopted in the context of renewable energy schemes:

**Yelvertoft Wind Farm (APP/Y2810/A/10/2120332) Inspector's report (20th July 2010):**

*Notwithstanding that the regional targets are no longer applicable....., It is common ground that the proposal would contribute to the national objective of promoting renewable energy technologies.*

**Darrington Wind Farm (APP/X4725/A/09/2101120)**

S of S's decision letter (22nd June 2010):

*Although the weight the Secretary of State affords this matter is tempered to a limited extent by the fact that he affords less weight to the targets for renewable energy generation set out in the RS than formerly.....*

**Fullabrook Down Wind Farm (BERR reference GDBC/003/00024C)** S of S's decision letter :

*The fact that a target [indicative sub-regional target] has been reached should not be used in itself as a reason for refusing planning permission for further renewable projects. "In his view, so long as the area has the capacity in spatial, planning and environmental terms then **the question of achieving a target is not a relevant matter for his consideration.***

**Sober Hill (APP/E2001/A/09/2101421)** S of S's decision letter:

*.....the indicative local target for East Riding should be regarded as a floor rather than a ceiling.... He therefore also agrees **that setting the bar of acceptability at a different level for this area or case would be contrary to the thrust of paragraph 3 of PPS22***

## 6. CONCLUDING COMMENTS

6.1 As seen above, two key influences on the provision of waste facilities in the UK have been the centralization of powers and the role of the EC. The latter shows no sign of waning. Indeed European legislation on waste, including its use for the generation of electricity, evolving in the form of the new WFD 2008, which should have been transposed into domestic legislation by 12 December 2010.

6.2 The outcome of the current review on Waste Policy should be known soon. That Review was on the basis:

Energy recovery is about extracting, through various technologies, Energy from Waste. Energy from waste (EfW) processes include direct combustion (incineration), gasification, pyrolysis, anaerobic digestion and others. EfW can be an effective waste management option. It avoids methane emissions from waste that would otherwise rot in landfill and using waste as a fuel can replace fossil fuels such as oil, coal or gas – both of these factors deliver climate change benefits. The technology used choice depends on the type of waste available, local circumstances and finance. The Government has therefore not made recommendations on technology type, but has supported the provision of infrastructure through the Waste Infrastructure Delivery Programme. The exception is Anaerobic Digestion which, in England, has been encouraged for separately collected food waste because it meets a number of environmental objectives, such as: reducing greenhouse gas emissions; producing renewable energy for heat, power and transport fuel; recycling nutrients back to land; and reducing air and diffuse water pollution). The Coalition has committed to a huge increase in energy from waste through Anaerobic Digestion. Energy from waste has a key role in the government's commitment to working towards a zero waste society and being the greenest government to date.

6.3 With regard to the outcome of the localism agenda, Lord Taylor of Holbeach (DECC spokesman) on the question *"What happens to your localism agenda if your locals say no to everything?"* by stating:

*"based on the fact that communities generally know what's in their interest..... I think scale is one of the most important things. Most communities realise that if they produce waste they need a way of dealing with it. Much opposition [to plants] often relates to the freighting in of waste".*

**STEPHEN MORGAN**

LANDMARK CHAMBERS

180 FLEET STREET

LONDON

EC4A 2HG

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