19 May 2011

Bond Pearce
3 Temple Back East
Bristol
BS1 6DZ

Dear Sir,

TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL BY SITA CORNWALL (LTD)
AT LAND AT ROSTOWRACK FARM AND LAND AT WHEAL REMFRY AND
GOONVEAN AND PARKANDILICK DRYERS, ST DENNIS, CORNWALL PL26 8DY
APPLICATION: REF 08/00761

1. I am directed by the Secretary of State to say that consideration has been given to the
report of the Inspector, Mr A D Robinson, BA(Hons) DipTP MRTPI, assisted by
another Inspector, Mr Clive Sproule BSc MSc MRTPI CENV, who held a public local
inquiry, which opened on 16 March 2010, into your client's appeal against a decision
of Cornwall Council ('the Council') to refuse planning permission for the erection of
waste to energy plant and ancillary development, including a bottom ash facility,
bulking up facility, chimney stack, administrative and visitor facilities, gatehouse and
weighbridge, vehicle refuelling area, cooling units, parking and circulation areas,
security fencing, drainage and landscape works, pipework for heat transfer to existing
china clay driers, and other ancillary works, together with site access road, private
haul road and bridge river crossing, junctions with existing highways and diversion of
footpath at Rostowrack Farm and land at Wheal Remfry and Goonvean and
Parkandillick Dryers, St Dennis, Cornwall PL26 8DY, in accordance with application
number 08/00761, dated 20 March 2008.

2. On 9 October 2009, the appeal was recovered for the Secretary of State's
determination, in pursuance of section 79, and paragraph 3 of Schedule 6 to, the
Town and Country Planning Act 1990. The reason for the recovery was that the
appeal proposals are for development of major importance having more than local
significance.
Inspector's recommendation and summary of the decision

3. The Inspector recommended that the appeal be allowed and planning permission granted, subject to conditions. For the reasons given below, the Secretary of State agrees with the Inspector’s conclusions and recommendation. A copy of the Inspector’s report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

Procedural Matters

4. In reaching this position, the Secretary of State has taken into account the Environmental Statement which was submitted under the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, as well as the additional environmental information submitted in response to the Council’s Regulation 19 request (IR8). For the reasons given by the Inspector at IR2139-2142, the Secretary of State is satisfied that the Environmental Statement, including the additional information submitted in response to the Regulation 19 request, complies with the above regulations and that sufficient information has been provided for him to assess the environmental impact of the proposal.

Matters arising after the close of the inquiry

5. The Secretary of State has taken into account the following late representations that were not seen by the Inspector: email from Mike Martin dated 5 November 2010, emails from Elizabeth Hawken dated 8 October 2010 and 14 February 2011 and emails from Rod Toms dated 12 February, 21 February and 31 March 2011, as well as a representation from Jackie Salmon, dated 12 April 2011. The Secretary of State also took into account representations from Lord Matthew Taylor, dated 10 & 26 February 2011, from Stephen Gilbert MP, dated 14 February, 9 March and 7 April 2011, from Ken Rickard dated 6 April 2011, from Alec Robertson, dated 7 April 2011, from Ken Holden dated 12 May 2011, from Cllr Fred Greenslade dated 12 May 2011, and from Patricia Blanchard dated 15 May 2011. As all these representations raised either matters considered at the Inquiry or matters that would not affect his decision, he has not considered it necessary to circulate them to parties. Copies of these representations can be made available upon written request.

6. The Secretary of State has had regard to the fact that the parties’ closing submissions were made in the light of his decision to abolish Regional Strategies (RS) (IR16). However, following the judgement of the Court on 10 November 2010 in Cala Homes (South) Ltd v Secretary of State for Communities and Local Government and Winchester City Council [2010] EWHC 2886 (Admin), the Regional Planning Guidance for the South West is part of the development plan and is material to this case. The Secretary of State has considered the Inspector’s remarks at IR16 and he has taken account of parties’ comments on the implications of that judgement on their cases.

7. The Secretary of State has made it clear, following that judgment, that it is the Government’s intention to revoke RSs, and the provisions of the Localism Bill which is now before Parliament reflect this intention. While the Secretary of State has taken this matter into account in determining this case, he gives it limited weight at this stage of the parliamentary process. Accordingly he does not consider it necessary to refer back to parties seeking their views on its implications before reaching his decision.
Policy considerations

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

9. In this case, the development plan comprises the Regional Planning Guidance for the South West (RPG10), published in 2001, the Cornwall Waste Local Plan (WLP), adopted in 2002, the Cornwall Minerals Local Plan (MLP), adopted in 1997, saved policies of the 2001 Restormel Borough Local Plan (RBLP) and saved policies of the 2004 Cornwall Structure Plan (SP). The Secretary of State considers that the development plan policies most relevant to the appeal are those set out by the Inspector at IR30 – 42.

10. The Secretary of State has taken account of the emerging development plan documents referred to by the Inspector at IR43 - 45. He has had regard to the draft RS but, given that he considers it unlikely that the draft will progress to publication, he has accorded its policies little weight. For the reasons given by the Inspector at IR1823, the Secretary of State has attributed limited weight to Cornwall’s Waste Development Framework Submission Stage draft document.

11. Other material considerations which the Secretary of State has taken into account include: the national waste policy and national planning policy documents referred to by the Inspector at IR46 – 56; Circular 05/05: Planning Obligations; Circular 11/95: The Use of Conditions in Planning Permission; and the Community Infrastructure Levy (CIL) Regulations, which came into force on 6 April 2010.

12. In determining the appeal, the Secretary of State has had regard to the impact of the proposed development on the settings of the listed buildings referred to by the Inspector at IR1992 – 2005. In accordance with section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990, he has paid special regard to the desirability of preserving the listed buildings or their settings or any features of special architectural or historic interest which they may possess.

Main issues

13. The Secretary of State considers that the main issues in this case are those listed by the Inspector at IR1809.

Development plan, emerging policy and the national policy framework

14. The Secretary of State agrees with the Inspector’s reasoning and conclusions, as set out at IR1811 – 1835, with regard to the relevant policies of the development plan, the weight to be given to emerging policy and the relevant national planning policy framework.

Need and weight to be given to alternative technologies and sites

15. The Secretary of State agrees with the Inspector’s reasoning and conclusions at IR1836 – 1939 with regard to the need for the plant and the weight to be given to alternative technologies and alternative sites. He agrees that, notwithstanding that national waste and energy policy do not require need to be demonstrated, the
existence of need is an important element in this case which has to be weighed against any harm or adverse impacts that the proposed development may give rise to (IR1840). He also agrees that the importance of diverting waste in general, and MSW (Municipal Solid Waste) in particular, from being landfilled, and the importance of promoting the generation of electricity from renewable and low carbon sources are significant factors in determining how proposals for the management of waste should be considered (IR1847).

16. The Secretary of State has had regard to the Inspector’s conclusion that existing landfill sites in Cornwall have limited capacity for taking the County’s residual MSW and C&I (Commercial & Industrial) waste beyond the next few years, and he agrees with the Inspector that the shortage of landfill capacity within Cornwall makes the task of bringing in alternative means of managing waste a matter of great urgency (IR1862). Having had regard to the Inspector’s analysis at IR1864 - 1888, the Secretary of State is satisfied that the proposed facility is not oversized and that it would not act as a deterrent to the recycling of either MSW or C&I waste (IR1889). The Secretary of State agrees that the appraisals of alternative sites undertaken by the WPA (Waste Planning Authority) and the Council provide a reliable appraisal of alternative EfW (Energy from Waste) sites within the CCAS (Central Cornwall Area of Search) and that these site searches should be given weight (IR1911). He also agrees that this contrasts with the absence of any firm evidence from the Council or others as to the existence of alternative sites, whether for EfW plants or other waste treatment technologies (IR1912).

17. Having given careful consideration to the Inspector’s assessment of alternative technologies (IR1913 – 1935), the Secretary of State agrees with his conclusion that, whereas the appeal proposal is capable of becoming operational within three years, the period for bringing forward an alternative strategy with different technologies is likely to take much longer (IR1935). He also agrees with the Inspector’s conclusion that there is a compelling need for the appeal proposal to be in place in good time to address Cornwall’s pressing waste problem (IR1939). Accordingly, like the Inspector, he accords great weight to the need for the proposed development and little weight to the arguments advanced as to alternative sites and alternative technologies (IR1939).

The proposal and wider sustainability objectives

18. The Secretary of State agrees with the Inspector’s reasoning and conclusions on the relationship of the proposal to wider sustainability objectives, as set out at IR1940 – 1959. Like the Inspector, he is not persuaded that the appeal proposal is in conflict with wider sustainability objectives (IR1959).

Effect upon nature conservation interests

19. The Secretary of State agrees with the Inspector’s analysis at IR1960 – 1980, with regard to the effect of the proposal upon nature conservation interests. He is satisfied that, in respect of assessing the impact of the appeal proposal on the Special Areas of Conservation in the vicinity of the site, the Environment Agency through the environmental permitting system is the competent authority (IR1975). Given the conclusions reached by the competent authority in the permit as to the likelihood of the development having no significant effect upon protected habitats or species, the Secretary of State agrees with the Inspector’s conclusion that the proposal would not give rise to harm to acknowledged nature conservation interests (IR1980).
Effect upon the historic environment and listed buildings

20. The Secretary of State agrees with the Inspector’s reasoning and conclusions on the effect of the proposed development on the County’s historic landscape and listed buildings, as set out at IR1981 – IR2005. He has taken account of the comments made by English Heritage (EH), and has had particular regard to the listed structures in the locality, including the Grade II* listed Parkandillick Engine House and St Denys Church from which clear views could be gained of the proposed plant (IR1992). Having given careful consideration to the Inspector’s analysis (IR1992 – 1996), the Secretary of State agrees that the setting of the Engine House has been substantially modified by the scale and extent of the industrial development that has taken place since the 1940s, and that the change has been so substantial that if the appeal development was to go ahead, the immediate functional setting of the listed building would remain (IR1996). He further agrees, for the reasons given by the Inspector (IR1997 – 1999), that the positioning of the proposed development would preserve much of the setting of St Denys Church, but not all of it (IR1999). The Secretary of State sees no reason to disagree with the Inspector’s conclusion that the settings of the designated features in the locality would be substantially preserved and that unacceptable harm would not occur to the other heritage assets (IR2005).

Impact on enjoyment of public footpaths

21. For the reasons given at IR2006 – 2014, the Secretary of State agrees with the Inspector that when the impacts of the proposed development are considered within the context of the footpath network in the locality, the change that would occur would be in keeping with the wider character of the area and the noise impacts would not be so sufficiently great and prolonged to be unacceptably harmful to users of the public rights of way network (IR2014).

Impact on enjoyment of public footpaths

22. For the reasons set out by at IR2006 – 2014, the Secretary of State shares the Inspector’s view that, when the impacts are considered within the context of the footpath network in the locality, the change that would occur would be in keeping with the wider character of the area and the noise impacts would not be so sufficiently great and prolonged to be unacceptably harmful to users of the public rights of way network (IR2014).

Effect on landscape character and visual impact of the proposal

23. The Secretary of State agrees with the Inspector’s reasoning and conclusions at IR2015 – 2041 with regard to the effect of the proposed development upon landscape character and the visual impact of the development. For the reasons given by the Inspector, he does not consider that the landscape character of this area precludes the development of the proposed EfW plant (IR2026). He further agrees that, despite the mitigating separation distances between the site and most residential development in the locality, the visual impact of the stack and, to a lesser extent, the proposed buildings, would have an adverse visual impact on near views from vantage points in St Dennis and Treviscoe as well as from properties in parts of the Fal basin (IR2038). Notwithstanding the high quality of the design of the proposed buildings and the ability of the landscape of this part of Cornwall to absorb large scale development, the Secretary of State shares the Inspector’s conclusion that the visual impact of the stack
and, to a lesser extent, the buildings would have an intrusive and harmful impact on some shorter distance vantage points (IR2041).

**Effect upon Residential Amenity**

24. With regard to the effect of the proposal on residential amenity, the Secretary of State agrees with the Inspector’s reasoning and conclusions at IR2042 – 2064. Like the Inspector, he concludes that noise from the construction and operation of the proposed facility would add to that already experienced in the locality around the appeal site, but that on-site management of noise within the areas that include the main buildings and the haul road would be expected to minimise the emission of noise (IR2064). However, he also agrees that, at La Mount corner, the resultant external noise levels would be significant and would adversely affect the amenity of those living in the properties at this location (IR2064).

**Impact upon regeneration of China Clay communities**

25. For the reasons given at IR2065 – 2085, the Secretary of State agrees with the Inspector’s conclusion that there is no evidence that the proposal would adversely affect the regeneration of the China Clay communities by deterring economic investment or that it would impinge upon the County’s tourist trade, agriculture or food processing industry (IR2085).

**Impact upon health**

26. The Secretary of State agrees with the Inspector’s reasoning and conclusions with regard to the impact of the proposal on health, as set out at IR2086 – 2104. He agrees that there is nothing arising from the evidence in this case to justify taking a different view from national policy that the use of the type of incineration technology proposed for the CERC facility would affect the health of those living in the locality and that there is nothing in the evidence to warrant an intervention in a matter which is properly to be dealt with by another regulatory regime, that of the permit (IR2104).

**Implications of not proceeding with the development**

27. With regard to the implications of not proceeding with the proposed development, the Secretary of State agrees with the Inspector’s reasoning, proposed weightings and conclusions at IR2105 – 2123. He agrees that the financial implications of rejecting the appeal proposal is a matter that should be accorded substantial weight along with the other consequences of failing to meet targets, that of not diverting waste from landfill and not managing waste in a more sustainable manner (IR2123).

**Benefits of the proposal**

28. The Secretary of State agrees with the Inspector’s reasoning and conclusions in respect of the benefits of the proposal, as set out at IR2124 – 2135, and the weight which he assigns to each of the listed benefits.
Adverse impacts of the proposal

29. The Secretary of State agrees with the Inspector’s reasoning and conclusions with regard to the adverse impacts of the proposal, as set out at IR2136 – 2138, and the weight which he assigns to each of the listed adverse impacts.

Conditions

30. The Secretary of State has considered the proposed conditions at Schedule 2 of the Statement of Common Ground, the Inspector’s assessment of these at IR1769 – 1800 and the policy tests set out in Circular 11/95. He considers that the conditions set out at Annex B of this letter are reasonable and necessary and comply with the provisions of Circular 11/95.

Obligation

31. The Secretary of State has had regard to the planning obligation as executed by the applicant and made by Agreement under s106 of the Town and Country Planning Act 1990, the Community Infrastructure Levy (CIL) Regulations 2010, and Circular 05/2005. He agrees with the Inspector’s assessment of the Agreement as set out at IR1801 – 1808 and is satisfied that the obligations within the Agreement comply with Circular 05/2005 and the tests set out in Regulation 122 of the CIL regulations.

Overall Conclusions

32. The Secretary of State agrees with the Inspector’s overall conclusions at IR2143 – 2148. He considers that the proposal would have an adverse visual impact when seen from a number of short distance views and would adversely affect the amenity of those residing in the two properties at La Mount corner. He considers that, in respect of these harms, the appeal proposal is in conflict with the development plan and he has gone on to consider whether the benefits of the scheme outweigh these harms.

33. The Secretary of State considers that the benefits of the scheme include diversion of waste away from landfill, the movement of waste up the waste hierarchy, the avoidance of a waste management problem in Cornwall and the related substantial cost to local taxpayers, generation of electricity from a renewable source, the use of generated heat, and the creation of much-needed jobs. He concludes that these benefits are substantial and compelling and outweigh the harm by way of visual impact, the effect of traffic noise on two properties at La Mount corner and conflict with the development plan.

Formal Decision

34. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector’s recommendation. He hereby allows your client’s appeal and grants planning permission for the erection of waste to energy plant and ancillary development, including a bottom ash facility, bulking up facility, chimney stack, administrative and visitor facilities, gatehouse and weighbridge, vehicle refuelling area, cooling units, parking and circulation areas, security fencing, drainage and landscape works, pipework for heat transfer to existing china clay driers, and other ancillary works, together with site access road, private haul road and bridge river crossing,
junctions with existing highways and diversion of footpath at Rostowrack Farm and land at Wheal Remfry and Goonvean and Parkandillick Dryers, St Dennis, Cornwall PL26 8DYM, in accordance with application number 08/00761, dated 20 March 2008, subject to the conditions set out at Annex B to this letter.

35. An applicant for any consent, agreement or approval required by a condition of this permission for agreement of reserved matters has a statutory right of appeal to the Secretary of State if consent, agreement or approval is refused or granted conditionally or if the Local Planning Authority fail to give notice of their decision within the prescribed period.

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

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

Right to challenge the decision

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

39. A copy of this letter has been sent to Cornwall Council and Rule 6(6) parties. A notification letter has been sent to all other parties who asked to be informed of the decision.

Yours faithfully

Christine Symes
Authorised by Secretary of State to sign in that behalf
ANNEX A

LIST OF AGREED PLANS AND DRAWINGS

Key to documents (right hand column)
1. Planning application drawing submitted in March 2008
2. Drawing contained in Transport Assessment submitted in March 2008
4. Drawing in Additional Information folder submitted in December 2008
5. Drawing in Regulation 19 response submitted in December 2008
7. Drawing in Landscape Proof of Evidence by Gary Coulson, February 2010
8. Drawing submitted to the Planning Inspectorate

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LIST OF AGREED PLANNING CONDITIONS

Commencement of development

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

Development in accordance with plans

2 The development hereby permitted shall be carried out and completed in accordance with the submitted documents and plans as set out in Annex A of this letter (the "Approved Plans").

Phasing of development

3 Prior to the commencement of development a phasing schedule shall be submitted to and approved in writing by the local planning authority. The phasing schedule shall divide the construction of the development hereby permitted into the following phases:

   (i) Phase 1 to include the haul road (including the bridge provided in accordance with condition 9) and the access road; and

   (ii) Phase 2 to include the CERC development.

4 No development shall commence on Phase 2, with the exception of the diversion of utility services and the stripping of top and sub soil and earthworks, until Phase 1 has been completed in accordance with the scheme approved in Condition 3. The completion of Phase 1 shall be taken as the provision of the haul road and the access road to a minimum standard that has previously been agreed in writing by the local planning authority.

Removal of permitted development rights for buildings not shown on the Approved Plans

5 Notwithstanding the provisions of Part (4) of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995 (as amended), no buildings, fixed plant or machinery shall be located on site without the prior approval in writing by the local planning authority of details of their siting, design and external appearance.

External finish of buildings

6 Notwithstanding the details shown on the Approved Plans, the erection of buildings or structures hereby permitted shall not commence until details or samples of the external materials to be used in their construction, including details of finishes, colours and treatment, have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details or samples.

Highways and associated works
No development hereby permitted shall commence until a scheme detailing the preparation works, design and construction of the haul road and access road has been submitted to and approved in writing by the local planning authority. The haul road and access road shall be constructed in accordance with the approved scheme.

No development hereby permitted shall commence until details of the highway works shown on the following drawings have been submitted to and approved in writing by the local planning authority:

(i) 30707-GA-203 Rev C;
(ii) 30707-GA-204 Rev A;
(iii) 30707-GA-102 Rev F;
(iv) 30727-GA-103 Rev D; and
(v) 30727-GA-104 Rev B

The highway works shall be completed in accordance with the approved details before any waste is brought to the CERC.

No development hereby permitted shall commence until a scheme detailing the preparation works, design and construction of the bridge over the River Fal has been submitted to and approved in writing by the local planning authority. The submitted scheme shall include the following details:

(i) The bridge deck with soffit levels set 600mm above the 1 in 100 year flood level;
(ii) Abutment and pier designs (to provide allowance for the potential future meandering of the channel);
(iii) The approach embankments and associated culverts;
(iv) A construction method statement including details for the prevention of pollution of the watercourse; and
(v) Measures for the protection and reinstatement of the floodplain during and following construction.

With the exception of bridge piers no part of the bridge shall be constructed within the area determined as flooding in a 1 in 20 year flood event.

The bridge shall be built in accordance with the approved scheme.

No development hereby permitted shall commence until a scheme detailing traffic management measures on the haul road and the access road and within the CERC site has been submitted to and approved in writing by the local planning authority in respect of each phase of the development. The submitted scheme shall include details of all signage, road markings and street furniture and other traffic management measures including details of measures to maximize segregation and minimize conflict between operational and non-operational vehicles, cyclists and pedestrians and measures to restrict the use
of the haul road by non-CERC traffic. The scheme for each phase shall be implemented in accordance with the approved scheme.

**Water, drainage and associated works**

11 No development hereby permitted shall commence until surveys of existing and proposed finished ground levels which demonstrate that there will be no land raising within Flood Zone 3 (as defined in Schedule 2) have been submitted to and approved in writing by the local planning authority. The area of Flood Zone 3 around the haul road and beneath the bridge shall be maintained at or below the approved ground levels during the operation of the development.

12 No development of the access road or the CERC hereby permitted shall commence until details of the culverting of the Bodella Stream have been submitted to and approved in writing by the local planning authority. The submitted details shall include:

   (i) Provision for a self maintaining natural bed to form within the culvert;

   (ii) Sufficient headroom above the natural bed to allow safe access for maintenance and inspection;

   (iii) Approach embankments and associated headwall; and

   (iv) Construction method statement including details for the prevention of pollution of the watercourse.

The culverting of the Bodella Stream shall be carried out in accordance with the approved details before the access road is brought into use and, within 2 months of the completion of these approved works, a report and “as built” drawings demonstrating that the culvert has been constructed in accordance with the approved details shall be submitted to the local planning authority.

13 No development hereby permitted shall commence until a scheme for the provision of surface water management has been submitted to and approved in writing by the local planning authority in respect of each phase of the development. The approved scheme for each phase shall be implemented in accordance with the approved details and retained thereafter.

**Construction works**

14 No development of each phase of the development hereby permitted shall take place until details of the following matters in connection with the construction of each phase of the development have been submitted to and approved in writing by the local planning authority;

   (i) A construction travel plan, including: the number of daily and peak hour construction vehicle movements, construction operation hours, construction vehicular routes to and from the site, construction delivery hours, car parking for contractors, methods to encourage public transport use, and methods to restrict large construction related vehicles using the strategic road
network and its associated junctions during weekday peak periods;

(ii) A plan showing the location of the contractor’s site storage area/compound;

(iii) The number, size (including height) and location of any contractors’ temporary buildings;

(iv) Temporary means of enclosure and demarcation of the site operational boundaries, to be erected prior to the commencement of construction operations in any part of the site and retained for the duration of construction operations;

(v) The means of moving, storing and stacking all building materials, plant and equipment around the site;

(vi) Measures to ensure that dust emissions are minimized;

(vii) Details of external floodlighting installed during the construction period including hours of operation;

(viii) Details of any wheel wash facility, use of water bowsers or other measures necessary to ensure that mud and other materials are not deposited on the public highway; and

(ix) A detailed strategy and method statement for minimizing the amount of construction waste resulting from the development. The statement shall include details of the extent to which waste materials arising from the demolition and construction activities will be reused on site and measures for their reuse. If such reuse on site is not practicable, then details shall be given of the extent to which the waste material will be removed from the site for reuse, recycling, composting or disposal.

The approved details for each phase shall be implemented during the construction of that phase of the development.

15 No development of each phase of the development hereby permitted shall commence until the following details in respect of protecting controlled waters during construction of each phase of the development have been submitted to and approved in writing by the local planning authority:

(i) The method of construction associated with all site excavations and foundation works;

(ii) Details of demolition;

(iii) The method of piling foundations;

(iv) The method of controlling groundwater and controlling the discharge to groundwater during construction to avoid pollution of surface water and the underlying groundwater; and
(v) Details of the risk assessments to be undertaken in respect of
groundwater and surface waters associated on and off the site
that may be affected by the above.

The development shall be implemented in accordance with the approved
details for each phase of the development.

**Landscaping and associated works**

16 No development of each phase of the development hereby permitted shall
commence until details of both hard and soft landscape works, including a
programme for implementation, have been submitted to and approved in
writing by the local planning authority and these works shall be carried out as
approved. These details shall include:

(i) Hard Landscaping

- Proposed finished levels or contours;
- Means of fencing and other means of enclosure;
- Trespass resistant fencing to be erected parallel to the railway
  fence;
- Car parking surfacing;
- Other vehicle and pedestrian access and circulation areas
  surfacing; and
- Other structures including bridges and culverts.

(ii) Soft Landscaping

- Site clearance/preparation operations;
- Land moulding including earth mounding and bunding;
- Cornish hedges and surface water features including
  watercourses and ponds;
- Planting proposals which are sensitive to the habitat of
  adjoining sites;
- Protection of existing trees;
- Written specifications (including cultivation and other
  operations associated with plant and grass establishment);
  and
- Schedules of plants, noting species, plant sizes and proposed
  numbers/densities where appropriate;

(iii) Implementation programme
• To include timetable of landscaping/planting and arrangements for a 5 year period of aftercare/post planting management;

• The replacement of any trees or shrubs that, within a period of five years after the initial planting, die, are removed, become seriously damaged or diseased, with similar specimens to those originally approved.

All hard and soft landscaping works shall be carried in accordance with the approved details for each phase of the development.

**Nature conservation**

17 No development shall take place until an environmental management plan has been submitted to and approved in writing by the local planning authority in respect of each phase of the development. The plan shall include the following:

(i) Species specific mitigation plans for all legally protected species with the potential to be impacted upon by the development;

(ii) Removal of translocation of hedges method statement; and

(iii) Control of Japanese Knotweed and Ragwort method statement.

The development shall be carried out in accordance with the approved details for each phase of the development.

**Archaeology**

18 No development hereby permitted shall commence until the applicant has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted to and approved in writing by the local planning authority.

**Control of lighting**

19 Prior to the commencement of development of Phase 2, details of the red aviation warning lights to be placed on the stack shall be submitted to and approved in writing by the local planning authority. The development shall be implemented in accordance with the approved details.

20 Prior to the commencement of development of Phase 2, details of external lighting and internal lighting which will be seen outside the boundaries of the CERC site shall be submitted to and approved in writing by the local planning authority. The details shall include the position, height, type and power of each external lighting, the need for the external lights for security and safety, the circumstances in which external lighting is to be activated, the positioning and operation of internal louvres and the measures to be taken to minimize light pollution. The approved lighting scheme shall be implemented in accord with the approved details. Thereafter, the lighting and the louvres shall be retained in accordance with the approved details.

21 There shall be no lighting on the haul road.
Rights of Way

22 No development hereby permitted shall take place until a scheme detailing the rights of way diversions including measures to ensure the safety, security and convenience of those using the rights of way has been submitted to and approved in writing by the local planning authority in respect of the requisite phase. The development shall be implemented in accordance with the details shown in the approved scheme.

Travel Plan

23 No waste shall be imported to the CERC until a travel plan to reduce reliance on the use of private cars as a means of staff and visitors getting to and from the CERC has been submitted to and approved in writing by the local planning authority. The approved travel plan shall be implemented and thereafter, the approved travel plan shall be retained.

Protection of visual amenity

24 Following the initial receipt of any waste, no storage container, skip, sorted or unsorted waste material or residue of recycled materials or any other items shall be stored outside the building, other than within the designated bays or on operational vehicles.

Protection of residential amenity

25 No loaded lorries transporting recyclable materials or ash shall leave the site unsheeted or otherwise uncovered.

26 No vehicles either delivering waste or other materials or removing waste, recyclables or ash from the facility shall enter or leave the site, including the haul road or access road, except between the hours of:

- Monday to Friday 07:00 to 18:00 hours
- Saturdays 07:00 to 13:00 hours

There shall be no deliveries or removal of waste, recyclables or ash, or any other materials on Sundays, Public or National Holidays.

27 Site construction works, haul route and access road preparation and haul route and access road surfacing shall be restricted to 07.30 to 18.00 hours on Mondays to Fridays and 07.30 to 13.00 hours on Saturdays. Piling and soil moving operations shall be limited to 9:00 to 17:00 hours on Mondays to Fridays. There shall be no site construction or restoration activity at any time on a Sunday, Public or National Holiday.

28 During access and haul route preparation, access route surfacing and earthworks associated with the construction of the CERC, noise levels shall not exceed 70 dB $L_{A_{eq}, 1h}$ (free-field) at the boundary of any occupied residential premises measured at 3.5m from the dwelling façade and 1.2-1.5 m above local ground level, between the hours of 09.00 – 17.00, Monday to Friday and 65 dB $L_{A_{eq}, 1h}$ (free-field) at any other time. The higher noise limit of 70 dB $L_{A_{eq}, 1h}$ (free-field) shall apply for a maximum period of 8 weeks in any calendar
year(1) and the lower noise limit of 65 dB $L_{\text{Aeq, 1h}}$ (free-field) shall apply at all times outside of this period.

(Note: the operator shall notify the local planning authority in writing in advance of the commencement of temporary operations which are to take place within the 8 weeks period)

29 Noise levels arising from construction works at the CERC site shall not exceed 65 dB $L_{\text{Aeq, 1h}}$ (free-field) at any occupied residential premises, measured at 3.5m from the dwelling façade and 1.2-1.5m above local ground level.

30 During the operation of the CERC, the following conditions shall apply to HGV movements.

(a) Between the hours of 07.00-18.00, on the weekday and between 07.00-13.00 hrs on Saturday morning the average $(L_{\text{Aeq,T}})$ shall not exceed the following. Where $T=11$ hours during the weekday and 6 hours during Saturday morning

<table>
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<tr>
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<tr>
<td>Bodella</td>
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31 All doors on the eastern elevation of the ash handling facility shall remain closed when not in use.

32 During the operation of the CERC, the following conditions shall apply to fixed plant installations at the proposed CERC site (not the haul and access roads):

(a) between the hours of 07.00 – 22.00, on any day, noise levels arising from the operations at the site shall not exceed 50 dB $L_{\text{Aeq, 1h}}$ (free-field) at 3.5m from the façade of any occupied residential premises, and 1.2m – 1.5m above local ground level, as measured in accordance with BS4142:1997.

(b) Between the hours of 22.00 – 07.00 on any day, noise levels arising from the operations at the site shall not exceed 45 dB $L_{\text{Aeq, 5min}}$ at the façade of any occupied
residential premises as measured in accordance with BS 4142: 1997.

(c) Noise from the operations at the site shall be free from any discernable characteristics, such as low frequency, tonal or impulsive noise at any occupied residential premises. In the event that these characteristics do occur, an assessment in accordance with BS 7445 Part 2 must be undertaken to determine the prominence of these characteristics.

33 Prior to commencement of work in accordance with this permission, a noise management scheme including a complaints response procedure shall be submitted to the Council for approval in writing. The scheme shall provide for regular attended and unattended monitoring of noise levels through all phases of construction of the development hereby permitted and also for the duration of operations of the development. The scheme shall be implemented as approved.

34 No site based vehicles or other methods of motorised machinery deployed in any operational or landscaping works shall use single pitch reversing bleepers

(Note: this condition does not preclude the use of alternative warning devices needed to secure compliance with Health and Safety legislation).

Routing of Commercial and Industrial Waste

35 Commercial and industrial waste shall not be accepted at the CERC site unless such waste has been transported along the route set out in the Lorry Routing Scheme submitted in accordance with the accompanying Section 106 Agreement (save for the exception of paragraphs 3.1 and 3.3 of Schedule 1 to the Agreement).
RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS;

The decision may be challenged by making an application to the High Court under Section 288 of the Town and Country Planning Act 1990 (the TCP Act).

Challenges under Section 288 of the TCP Act

Decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged under this section. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application under this section must be made within six weeks from the date of the decision.

SECTION 2: AWARDS OF COSTS

There is no statutory provision for challenging the decision on an application for an award of costs. The procedure is to make an application for Judicial Review.

SECTION 3: INSPECTION OF DOCUMENTS

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the report of the Inspector’s report of the inquiry or hearing within 6 weeks of the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.
Report to the Secretary of State for Communities and Local Government

by A D Robinson  BA (Hons) DipTP MRTPI
an Inspector appointed by the Secretary of State for Communities and Local Government

Date:  3 March 2011

TOWN AND COUNTRY PLANNING ACT 1990
APPEAL BY SITA CORNWALL LTD

ERECTION OF ENERGY FROM WASTE PLANT
AND ASSOCIATED DEVELOPMENT
AT ROSTOWRACK FARM AND LAND AT WHEAL REMFRY
AND GOONVEAN AND PARKANDILICK DRIERS,
ST DENNIS, CORNWALL PL26 9DY

Inquiry opened on 16 March 2010

Rostowrack Farm and land at Wheal Remfry and Goonvean and Parkandillick Dryers, St Dennis, Cornwall PL26 8DY

File Ref(s): APP/D0840/A/09/2113075
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Rostowrack Farm and land at Wheal Remfry and Goonvean and Parkandillick Dryers, St Dennis, Cornwall PL26 8DY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by SITA Cornwall Ltd against the decision of Cornwall Council.
- The application Ref 08/00761 [R224(1)], dated 20 March 2008, was refused by notice dated 31 March 2009.
- The development proposed is erection of waste to energy plant and ancillary development, including a bottom ash facility, bulking up facility, chimney stack, administrative and visitor facilities, gatehouse and weighbridge, vehicle refuelling area, cooling units, parking and circulation areas, security fencing, drainage and landscape works, pipework for heat transfer to existing china clay driers, and other ancillary works, together with site access road, private haul road and bridge river crossing, junctions with existing highways and diversion of footpath.

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

Procedural Matters

1. The inquiry sat on 16, 17, 18, 19, 23, 24, 25, 26, 30 and 31 March, 1, 7, 8, 9, 13, 14, 20, 21, 22, 23, 27, 28, 29 and 30 April, 4, 5, 6 and 7 May, 13, 14, 28, 29 and 30 July and 5, 6 and 7 October. Apart from the last three sitting days, the inquiry was held in the Exhibition Hall in Kingsley Village, Penhale, Fraddon. The final three days of the inquiry were held in the Council Chamber of Cornwall Council’s offices at Penwinnick Road, St Austell.

2. The inquiry was in connection with an appeal that had been recovered for determination by the Secretary of State by a direction dated 9 October 2009. The reason given in the direction is that the appeal proposals are for development of major importance having more than local significance.

3. An accompanied visit of the appeal site and its surroundings and also a number of more distant viewpoints took place on 11 and 12 May. An accompanied site visit to various facilities operated by the appellant in Cornwall and a number of sites of possible waste management facilities put forward by others took place on 13 May. These included Connon Bridge landfill site and transfer station, Bude HWRC and sites at Hallenbeagle and on the Moorswater, Callington and Launceston industrial estates. At the inquiry, I was requested to view the lighting at night around the site provided by existing industrial premises, residential properties and street lamps. Accordingly, on 6 October I undertook an unaccompanied visit in the late evening to St Dennis, Treviscoe and the surrounding area to assess night time illumination. (Inspector’s note: see document X/8 for site visit itineraries and plans).

4. Before the inquiry, the Inspectorate had agreed to the requests of the St Dennis Anti Incineration Group, Cornwall Sustainable Waste Network, Transition Cornwall Network and Power of Cornwall to be made Rule 6(6) parties. Throughout the inquiry, St Dennis Anti Incineration Group acted jointly with St Dennis Parish Council.

5. The pre-inquiry meeting arranged for 8 January was aborted because of severe winter weather. Instead, I issued a series of procedural notes. Amongst other
things, these set out the procedures to be followed during the inquiry and a timetable for the submission of proofs of evidence. They also identified the matters on which I wanted to see the proofs concentrate on:

- Whether the proposal complies with the development plan and whether it accords with emerging policies, particularly in respect of the County’s waste management policies;
- Whether the proposal accords with national planning policies, particularly in respect of waste management, sustainable development, development affecting the rural landscape, development affecting nature conservation and historic heritage interests, pollution, noise and renewable energy;
- The effect of the proposal upon landscape character and the visual impact of the development;
- The impact of the proposal upon the County’s historic landscape and on listed buildings;
- The effect of the proposal upon nature conservation interests;
- The impact of the development on the network and public enjoyment of public rights of way in the area;
- The effect of the development on residential amenity during the construction of the development and its subsequent operation by dint of noise and disturbance;
- The relationship of the proposal to wider sustainability objectives, including the reliance on movement of waste by road, the generation of energy from non fossil fuel sources and the production of heat to be used elsewhere;
- The effect of the development upon the regeneration ambitions for the china clay area and the well being of communities within the area;
- The consideration of alternative sites within the County for an energy from waste plant and the consideration of alternative technologies in the management of the County’s wastes, if alternative sites or alternative technologies would give rise to a lower level of environmental impact;
- Adequacy of the submitted Environmental Statement;
- Whether any of the impacts of the proposal are capable of being mitigated by the imposition of appropriately worded conditions or through a planning obligation.

For the most part, the above matters closely reflect the Council’s reasons for refusal. They also take in the appellant’s grounds of appeal and the main arguments raised by the various parties in their appeal statements. These matters have informed the structure of my conclusions to this report. Although the reasons for refusal do not deal with the impact upon nature conservation interests, this was a matter dealt with in proofs of evidence submitted by the main parties. Whilst the relationship of the proposal to national planning policies, adequacy of the Environmental Statement and the applicability of conditions were not matters identified in the reasons for refusal, I consider that these were matters on which the Secretary of State would wish to be informed. (Inspector’s
note: see X/4/1, X/4/2 and X/4/6 for the procedural notes I issued on 14 January, 31 January and 25 February respectively).

6. During the inquiry, I identified a number of other matters on which I specifically wanted the parties to comment on in their closing submissions. These matters concerned specific topics that had arisen during the inquiry:

- The weight to be given to the draft RSS in the light of the Secretary of State’s pronouncements on the abolition of Regional Spatial Strategies;
- The weight to be accorded to the contract between the Council as waste disposal authority and the Appellant;
- The weight to be given to the Council’s site selection process when it was looking at a plant with a 70 metres high stack;
- Whether the Council’s site selection process took account of sustainable transport solutions in the transport of waste;
- The degree to which the proposal would enable other waste management options to be taken up;
- The flexibility in the contract to enable Cornwall’s waste management needs to be dealt with in ways which allow new technologies and opportunities to be taken on board;
- The weight to be given to the views of the Environment Agency and Natural England in making an Appropriate Assessment under the Habitat Regs; and
- The weight to be given to the revised project plan.

(Inspector’s note: with one exception, the matters to be addressed in closing submissions are set out in document X/11. This was circulated to the parties on 13 July. The exception is the weight to be given to the revised project plan. This matter arose later in the inquiry).

7. As submitted, the planning application was accompanied by a supporting statement, design and access statement, consultation statement, transport assessment, alternative site assessment, need assessment, options appraisal report, a report into the number of facilities required, sustainability report, carbon balance assessment, health risk assessment and health impact assessment. (Inspector’s note: these documents are to be found in CD/A1, A2 and A6).

8. The planning application was also accompanied by an Environmental Statement and associated technical appendices. Subsequently, the Council issued a request under Regulation 19 of the Town and Country Planning (Environmental Impact Assessment) Regulations 1999 for additional information to be submitted on a wide range of topics. (Inspector’s note: the Environmental Statement and associated documents are at CD/A7 to A10. The information submitted in response to the Regulation 19 request and the associated correspondence is at CD/A11 to A19).
9. A number of plans and drawings were submitted with the planning application. During the inquiry, the appellant produced a schedule of plans and drawings that included most of the plans that were originally submitted together with plans that were submitted during the inquiry and also plans that were submitted with the additional information provided for the Regulation 19 request. This schedule was agreed by the Council and the appellant as forming the plans and drawings comprising the appeal proposal. (Inspector’s note: the originally submitted plans and drawings are in CD/A3 to A5. The agreed schedule of plans and drawings is at CD/A21. It is incorporated at Annex A of the report).

10. In the interests of brevity and clarity, throughout the remainder of the report I have adopted abbreviations for most of the titles of more commonly cited documents and also terms that are frequently referred to. (Inspector’s note: the list of abbreviations is to be found in Annex C of the report. To avoid confusion between the various waste strategies produced at county, regional and national level, I have used WMS to refer to Cornwall’s waste management strategy, RWMS to denote the South West regional waste management strategy and WS2007 to refer to the national waste strategy published in 2007).

11. In August 2010, the Environment Agency issued a draft environmental permit for the proposal together with a document explaining the decision making process. Although the appellant and at least some of the Rule 6(6) parties had looked at the draft permit and the accompanying document, it was clear during the closing submissions the Council as the waste planning authority and some of the Rule 6(6) parties had not seen it. A copy of the draft permit and the associated document had also not been sent to me. (Inspector’s note: the draft permit is at X/9A and the document setting out the decision making process at X/9B).

12. As not all parties had seen the draft permit and the accompanying document, they were thus unable to comment in their closing submissions on the approach that the Environment Agency had adopted in the draft permit to assess the impact of emissions to air on designated nature conservation sites. Accordingly, I afforded the parties an opportunity after the close of the inquiry to comment on the draft permit and particularly the associated document insofar as they deal with emissions to air from the proposal on the nature conservation sites. (Inspector’s note: the comments on the draft permit from the Council, STIG, CSWN and POC are at CC/0/13, PC-STIG/0/18, CSWN/0/5 and POC/0/6 respectively. The responses from the appellant to these comments are at SITA/0/36 to 39).

13. In December 2010, the Environment Agency issued the environmental permit for the proposed development. This was again accompanied by a document setting out in some detail the Agency’s decision making process. To ensure that all parties were aware that a permit had been issued and to give them the opportunity to comment on it, the parties were notified.

14. Many of the comments related to matters that are the responsibility of the Agency and the environmental permitting regime rather than come within the ambit of the planning system. As such, these are matters for the Agency to deal with. This also applies to the comments received in respect of the assessment carried out by the Agency into the effect of emissions to air from the proposed plant on protected habitats and protected species. The responsibility as to who is the competent authority for carrying out such an assessment is considered in the part of the conclusions in this report which deals with nature conservation.
15. The permitting process contained two rounds of public consultation; when the permit application was submitted and after the draft EP had been issued. The results of the consultative process are set out in the documents accompanying the draft EP and the final issued version of the EP which explain the EA’s decision making process. The comments received as a result of the two rounds of consultation are recorded in these documents. The document accompanying the final issued version of the EP contains a detailed question and answer section dealing with many of the queries put to the EA by members of the public and others. Thus, the parties and members of the public had the opportunity to put their views to the EA during the permitting process and the parties and others would have been aware of the scope and broad content of the EP. The comments received by the Inspectorate following the issuing of the EP in December 2010 have to be seen in this context. (Inspector’s note: the decision making document accompanying the draft EP is at X/9B and the document accompanying the EP is at X/15B).

16. The closing submissions were made in the light of the Secretary of State’s decision to abolish Regional Spatial Strategies. Given the subsequent decision of the Courts in Cala Homes (South) Ltd v the Secretary of State to quash the decision to abolish Regional Spatial Strategies, the Planning Inspectorate wrote to the parties in November 2010 to afford them the opportunity to comment upon any implications that the judgement has on their cases. The comments that have been received are recorded within the reporting of the parties’ cases. The comments have been taken into account in the part of the conclusions in the report dealing with the development plan. (Inspector’s note: the Planning Inspectorate’s letter is at X/14. The responses from the appellant, the Council, STIG and POC are at SITA/0/41, CC/0/14, PC-STIG/0/19 and POC/0/7 respectively).

17. The smooth running of the inquiry owed much to the efficient way in which the programme officer, Mrs Brenda Taplin of Persona Associates, arranged the inquiry timetable and ensured that documents were catalogued, copied and circulated to the parties. I am grateful for her quiet efficiency. Most of those attending the inquiry, whether taking part in giving evidence or observing the proceedings, expressed to me their appreciation at the quiet, patient and courteous way that Mrs Taplin dealt with their numerous questions and requests for information.

18. Another Inspector, Mr Clive Sproule BSc MSc MRTPi CENV, was appointed to assist me throughout the inquiry and the reporting process. I wish to place on record my appreciation of the assistance that Mr Sproule has provided to me both during the inquiry and in the reporting process.

The Site and Surroundings

19. The appeal site is located on the north-western edge of an extensive area of existing and former china clay workings to the north and north-west of the town of St Austell.
20. The site extends to about 14.6ha, of which the CERC itself – the EfW plant, ash handling facility and other associated buildings – occupies about 6.6ha, whilst the access road – some 800 metres in length – occupies about 1.7ha and the private haul road – approximately 2kms in length – about 5ha. The pipework for transferring heat to the adjacent complex of driers occupies a further 1.3ha. (Inspector’s note: the extent of the appeal site can be seen in fig 1.2 on page 15 of the supporting statement submitted with the planning application, CD/A1).

21. The main body of the appeal site, containing the CERC plant and buildings and the access road, lies within a tract of farmland between the large settlement of St Dennis, occupying high ground to the north-east, and the village of Treviscoe, to the south. This farmland, which is characterised by a patchwork of small fields enclosed by Cornish hedges and a scattering of farms and residential properties, forms part of the upper valley of the River Fal. (Inspector’s note: photographs of the site and the surrounding area are contained in the book of photographs attached to Mr Coulson’s proof, SITA/6/4, see particularly photographs GC008 to GC016, and the photographs submitted by Mrs Butcher, CC/5/3, see particularly figs 1, 2, 6, 13, 14 and 15. Mr Coulson’s book of photographs contains a useful topographical map, GC017).

22. To the east, south and west, this area of farmland is bounded by higher ground which has seen extensive working of china clay over many years. This higher land is characterised by areas of active quarrying, restored quarries, lagoons, tips, china clay dryers and other industrial buildings. The proposed haul road from the highway connecting the A30 and Treviscoe to the start of the proposed access road to the CERC complex mainly uses existing haul routes within china clay workings. These haul routes are associated with the extensive Wheal Remfry china clay workings to the west and south-west.

23. To the north, the farmland around the upper Fal valley opens out into a wider, more open landscape along the A30, the main route into western Cornwall. Within this landscape and to the north-east of St Dennis, are the Indian Queens Power Station and its associated overhead transmission lines. This power station, which uses gas oil, is used on a “on demand” basis and does not operate continuously. To the north of the power station and extending northwards to the A30 and for some distance eastwards is an extensive area of bog and heath, the Goss and Tregoss Moors and Breney Common. This area has been designated a SAC.

24. At some distance beyond the A30 to the north lies the hill fort of Castle-an-Dinas.

25. About 2kms to the south-east of the site is the St Austell Clay Pits SAC. As the name suggests, this is within an extensive area of china clay workings.

26. In terms of land uses adjoining the main CERC site, it is bordered on three sides by farmland. On the other side, to the south, the site adjoins a mineral railway line. On the far side of the railway line there is a complex of substantial buildings, silos and stacks of the Goonvean and Parkanddillick Dryers. These china clay driers are operated respectively by Goonvean Ltd and Imerys Minerals (UK) Ltd. The railway line is owned by Network Rail and operated by Imerys to transport china clay products. The railway line connects to the main Penzance to Paddington line and via other mineral lines to the docks at Par and Fowey.

27. As for residential properties, the nearest ones are Rostowrack and Bodella Farms immediately adjoining the main CERC site. A pair of semi-detached houses, La
Mount and Glen Garth, adjoins the proposed access road and three dwellings, Hawthorns, Springfields and Godstone, lie close to the proposed haul road.

28. The nearest residential properties in St Dennis are on the outskirts of the settlement, about 330m from the site, whilst the nearest properties in Treviscoe are approximately 60m from the proposed access road. Some 600m north of the boundary of the main CERC site is a group of properties at Trerice Terrace.

Planning Policy

29. The Council’s reasons for refusal refer to local policy provided within the WLP (See document CD/D5), RBLP (see document CD/D4) and the SP (see document CD/D3).

30. The main parties to the inquiry have confirmed that the WLP was adopted in 2002. WLP policies L6, L6A, L6B and C1 are relevant to this case. Policy L6 is permissive of an application for an EfW plant within the CCAS, subject to the meeting of certain criteria. Nonetheless, the policy enables careful consideration to be given to the exclusion of individual requirements of the policy where these would not be met by a proposal.

31. Policy L6A sets out that planning applications for EfW plant should fully address the landscape and visual effects of the scheme. Criteria within the policy indicate the nature of adverse effects that would lead to refusal of planning permission. These include: harm to landscape features; loss of local landscapes; incompatibility with local landscape character due to scale, design, location, planting or light pollution; or significant adverse effect on the visual amenity of people in the area. The thrust of this policy is reflected in Policy L6B, which requires proposals for EfW plant to be of a high quality design that is appropriate for its location.

32. Policy C1 seeks to ensure that operational practices at waste management sites in Cornwall protect local amenity and safety. This would include the provision of measures to minimise and mitigate impacts from such facilities. Various matters are the subject of the policy’s criteria, including visual impact, the historic environment, highway safety and the protection of local amenity, for example, from the effects of noise.

33. With regard to the RBLP, Policies 1, 6, 10, 11, 12, 18, 24, 25, 26, 33 and 37 are relevant. LP Policy 1 outlines the document’s strategy, which is for new developments to contribute to sustainable development. This it seeks to do by concentrating development in the urban areas of St Austell and Newquay. St Dennis is identified as a main local service centre in a rural area, where development would be of a size and type appropriate for the needs of the locality and its environmental constraints. The appropriateness of such development is also set within the context of its potential to reduce vehicle journeys and be served by public transport.

34. Design principles for new development are contained within RBLP Policy 6, which requires new developments to harmonise with their surroundings and create interesting and attractive environments. This is identified as being achieved by amongst other things, taking into account changes in level or slope, not protruding above prominent ridge or skylines, not intruding into prominent views and being of a design that respects the character and identity of the area.
35. In dealing with energy supply, RBLP Policy 10 is supportive of proposals for renewable energy schemes, including EfW plants, unless they would cause demonstrable harm to the countryside, landscape, features of historic importance, or residential amenity. The RBLP recognises that noise can have a serious effect on quality of life and Policy 37 aims to prevent such harm occurring.

36. RBLP Policy 18 lists features that occur within the Cornish countryside. It is only permissive of developments that would harm their integrity or continuity where it can be shown that the reasons for the development clearly outweigh the need to retain these features.

37. A similar balance is also applied in respect to effects on the A GHVs listed within RBLP Policy 24, which include Trerice Bridge and Castle-An-Dinas/Belowda/Goss Moor. RBLP Policy 33 is not permissive of development that conflicts with the preservation or enhancement of listed buildings and their settings. RBLP Policy 25 seeks to prevent development that would damage Scheduled Ancient Monuments, other archaeological remains of national importance or their settings. Locally important archaeological sites and approaches to dealing with those that may be affected by development are the subject of RBLP Policy 26.

38. Protection of historic heritage is also the subject of RBLP Policy 11, while RBLP Policy 12 is supportive of proposals for interpretative / educational facilities and agreements and conditions that would provide greater awareness and management of an area’s historic and natural environment.

39. The Council’s reasons for refusal also refer to SP Policies 1, 2, 3, 6, 13. Policy 1 contains principles which aim to ensure that development brings long term and sustainable improvement to Cornwall’s circumstances without harming future opportunity. Within the context of this policy, development should be compatible with, amongst other things, the SP’s objectives for Cornwall’s character and distinctiveness, regeneration, natural and historic environments and sustainable travel. Protecting and enhancing local character and distinctiveness and their component parts is also the subject of SP Policy 2. SP Policy 13 highlights the importance of the county’s existing tourism and recreation resources, which development should enhance the quality of, and opportunity for their use.

40. SP Policy 3 is concerned with the prudent use of resources, giving priority to the use of previously developed land and seeking to avoid the risk of significant noise and light emissions. Waste management is the subject of SP Policy 6, which has the objective of providing sufficient capacity to deal with Cornwall’s arisings in ways that are based on the principles of the waste hierarchy, proximity principle and regional self-sufficiency.

41. MLP Policy CC4 confirms much of the appeal site to be one of the MLP allocated Areas Identified for Plant Development. This plant would be ancillary to the extraction of china clay and the policy would only enable such minerals related development where it would not be significantly detrimental to the environment, local living conditions or communities. (See document CD/D7).

42. RPG10 2001 was adopted as the spatial strategy for the South West for the period up to 2016. It provides a regional spatial framework for plans, strategies and programmes in an area that includes Cornwall. RPG10 contains policies on matters such as development strategy, transport, economic development, minerals, waste and the environment. (See document CD/D1).
43. Policies SD1, SD3 and W2 of the draft RSS (2008) are referred to by a number of the Council’s reasons for refusal. Draft RSS policy SD1 seeks the Ecological Footprint of the region to be stabilized and then reduced by, amongst other things, the wise use of natural resources, minimising the need for travel and meeting national and regional targets in respect of renewable energy and waste production and recycling. Policy SD3 aims to protect and enhance the region’s natural and environmental resources, including ensuring that development respects landscape and ecological thresholds.

44. Draft RSS policy W2 contains sequential approaches to the provision and location of waste management facilities. It seeks to minimise both the creation of waste and the transport of that which is produced. Policy criteria also address the location of strategic waste management facilities and look firstly to site such services at SSCTs, which are defined within the document. (See document CD/D2).

45. Parties to the inquiry have made reference to the Cornwall WDF Submission Stage draft (2007). This document is intended to lead to the replacement of the WLP. It comprises a Core Strategy & Policies, Waste Development Control Policies and Proposals Mapping. In April 2007 The Planning Inspectorate provided a note of an advisory visit in respect of the WDF and preparations for its examination. However in the period following this, the WDF was not submitted for examination and consequently, there is yet to be a finding on its soundness. (See documents CD/D6 and CC/8/3 Appendix 9).

46. WS2007 contains current national policy in respect to waste and indicates that applying the waste hierarchy will have financial and environmental benefits. In doing so, it intends to divert materials from landfill and reduce the quantities of greenhouse gases released from waste. It seeks to reduce the use of natural resources by increasing the re-use and recycling of materials. Both of these activities lie above EfW and disposal in the waste hierarchy. Nevertheless, paragraph 17 of WS2007 Chapter 5 is clear that recovering EfW that cannot sensibly be reused or recycled is an essential component of a well balanced energy policy. (See document CD/F1).

47. PPS10 sets out Government policy on waste. The overall objective of the policy is to protect human health and the environment by producing less waste and where possible, using that which does arise as a resource. It seeks to move the management of waste up the waste hierarchy and away from landfill. PPS10 also highlights that waste planning authorities should concern themselves with implementing the strategy within the development plan and considering the potential impacts on the local environment and amenity, but they should not seek to control processes that are a matter for the pollution control authorities. (See document CD/E6).

48. Responsibilities under the planning and pollution control systems are also the subject of paragraph 10 of PPS23. It states that the planning system should focus on the acceptability of the proposed use of the land and the impacts associated with it, rather than the control of emissions from the development. Paragraph 10 is explicit that planning authorities should work on the assumption that the relevant pollution control regime will be properly applied and enforced.

49. Paragraph 6 of PPS23 outlines the circumstances when the precautionary principle should be invoked. These are when there are good reasons to believe
that harm would occur to the health of organisms or the environment, and the
level of scientific uncertainty regarding the consequences of the risk results in
insufficient confidence to inform decision-making. (See document CD/E15).

50. It is a Key Principle of national policy within PPS1 that development plan policy
should encourage patterns of development that addresses climate change.
Further detail on how planning can contribute to this is the subject of Planning
Policy Statement: Planning and Climate Change - Supplement to Planning Policy
Statement 1 (PPS1 Supplement) and it provides emphasis on this within national
planning policy. (See documents CD/E2 & CD/E3).

51. In respect of renewable and low-carbon energy generation the PPS1 Supplement
states that any local approach to protecting landscape and townscape should be
consistent with PPS22 and should not preclude the supply of any type of
renewable energy except in the most exceptional circumstances. PPS22
highlights that the Government’s energy policy aims to cut the emission of
greenhouse gases. In addressing renewable energy, the document covers
energy flows that occur naturally and repeatedly in the environment, including
the biodegradable fraction of municipal and industrial waste. Although the
national planning policies within PPS22 deal with EfW technologies, the forward to
the document is clear that these do not include the mass incineration of domestic
waste. (See document CD/E13).

52. PPS7 seeks development in the countryside to be sustainable and to protect its
intrinsic character. (See document CD/E4).

53. Sustainable economic growth is the overarching objective of PPS4. It seeks to do
this by, amongst other things, delivering more sustainable patterns of
development that reduce the need to travel and respond to climate change.
Also, it wishes to raise the quality of rural life while protecting the rural
environment and the open countryside within it. Policy EC10 of PPS4 states that
local planning authorities should adopt a positive and constructive approach
towards planning applications for sustainable economic development. (See
document CD/E20).

54. National policy within PPS5 aims to conserve heritage assets and their setting in
a manner appropriate to their significance. The “setting” is confirmed to be the
surroundings in which the heritage asset is experienced. Policies within PPS5
include HE1, which addresses heritage assets and climate change. (See
document CD/N14).

55. Key principles within PPS9, state that the aim of planning decisions should be to
prevent harm to biodiversity and geological conservation interests. If significant
harm cannot be prevented, adequately mitigated against or compensated for,
then planning permission should be refused. (See document CD/E5).

56. PPG24 provides advice on how the planning system can address the impact of
noise. It highlights that, wherever practicable, noise sensitive development
should be separated from major sources of noise. Where adequate separation is
not possible, the use of planning conditions and obligations are indicated to be a
possible means of providing mitigation. (See document CD/E16).

57. Consultation on a Planning Policy Statement: Planning for a Low Carbon Future in
a Changing Climate (2010) sets out a draft policy for securing progress toward
the UK’s targets to cut greenhouse gas emissions and use more renewable and
low carbon energy. It looks for opportunities for decentralised energy supply and for steps to be taken to assist the co-location of heat suppliers and users. (See document SITA/0/4).

The Proposal

58. The proposal has a number of elements. The site at Rostowrack Farm would contain two main buildings positioned in parallel across the site. The largest building would be located on the western part of the site and measure some 145m in length, be between 38m and 58m in width and have a height of 45m at the apex of its curved roof. Amongst other things, this building would accommodate the waste reception area, waste storage bunker, moving grate furnace, boiler system, steam turbine and flue gas treatment system. It will also accommodate the administration and visitor’s centre. (Inspector’s note: for a fuller description of the proposals see the text, plans and photomontages contained in pages 20 to 28 of the supporting statement submitted with the planning application, CD/A1).

59. The other building would be located on the eastern part of the site and would be 172m in length and 56 metres in width. This building would be built so that it steps downwards with levels on the site in a series of curved roofs. Its maximum height would be 23m. It would contain an area for the storage of bottom ash, facilities for separating ferrous metals from the ash for recycling and plant for grading the ash for future use as an aggregate.

60. Between the two buildings would be twin 3.4m diameter stacks with an overall height of 120m. The upper part of the stack would be finished in a light grey matt finish, whilst the lower 35m would be finished in non-reflective steel. The roofs of the two main buildings would be of aluminium sheeting and the walls in a variety of materials, including metal panels, perforated metal mesh, concrete and translucent polycarbonate.

61. Around the main site would be other ancillary buildings and plant, parking areas, vehicle circulation space and landscaping.

62. Access to the CERC site for virtually all vehicular traffic would be from the Highgate Hill junction on the A30 and then along Stamps Hill before taking a private haul road through areas used by china clay industry. The haul road would require the construction of a new bridge over the River Fal. This would avoid traffic using the existing Trerice Bridge, a listed structure. Traffic would emerge from the haul road onto the public highway just before La Mount Corner. Traffic would leave the highway after La Mount Corner onto a purpose built access road into the CERC site.

63. Although most of the waste being brought to the CERC site will be transported via the proposed haul and access roads from the A30, refuse collection vehicles serving nearby communities will deliver both municipal wastes to be combusted in the CERC facility and recyclable materials direct to the CERC site. The recyclables will be deposited in a bay at the southern end of the bottom ash building where it will be bulked up before being taken to the Bodmin MRF.

64. The CERC facility is designed to take up to 240,000 tonnes of waste per year. Most of this would be MSW with any shortfall made up of C&I waste. The CERC is intended to operate with two streams, with each stream capable of burning about 15 tonnes of waste per hour. The steam turbine will be capable of generating
about 20MW of electricity from the combustion of the waste. Approximately 16.6MW of the electricity would be exported to the national grid through a sub station at Fraddon, with the remaining electricity being used within the CERC site. The proposals also allow for the export of heat through a pipeline to the adjacent china clay driers.

The Case for SITA Cornwall Ltd

Introduction

65. In opening the appellant’s case, the point was made that it was important to appreciate the context in which we had arrived at this appeal. The proposal is the direct result of contractual obligations between the appellant and the Council. On 16 October 2006 the parties entered into a contract through which the appellant was charged with implementing Cornwall’s adopted WMS as contained in Chapter 4 of the WLP. The very purpose of the Contract is to enable the Council to achieve an integrated approach to waste management in the County, to reduce the Council’s complete dependence on landfill, to increase recycling and to exploit the application of recovery technology (see CD/D5).

66. The contract requires the appellant to build an EfW facility of exactly the capacity proposed on precisely the site proposed. It is the key facility in the integrated waste management solution for Cornwall. We are here because the members of the WPA’s Planning Committee (to quote Mr Flanagan, Corporate Director, Environment, Planning and the Economy at the Council) “chose to refuse [planning permission] on what they saw as planning reasons” (see background (b) in CD/G1). It is not difficult to discern where Mr. Flanagan’s sympathies lie.

67. The Planning Committee’s decision was flatly contrary to the strong recommendation of Phil Mason, the Council’s Head of Planning and Regeneration, contained in the PR (see CD/B1). The PR contained a thorough appraisal of all the relevant issues and its conclusions and recommendations are deserving of considerable weight. The Council’s corporate actions since the refusal have also not sat comfortably with the Planning Committee’s decision. Indeed they have only served to reinforce the strength of the case for granting planning permission for the CERC. In short, the Council has been engaged in a battle with itself which has been all too evident when the tensions between the WD and the WPA have bubbled to the surface during the course of the inquiry. In opening, reference was made by the appellant to a press article which characterised the situation as the Council going into battle with itself. After hearing all the evidence it is hard not to agree with that assessment, (see “This is Cornwall” dated 27 January 2010).

68. The Council is, of course, a single legal entity which incorporates both the WPA and the WDA, but there is a remarkable dichotomy between the WPA’s case presented at this inquiry and the corporate position of the Council. The Council has a very clear and often repeated corporate position. That position is as follows. First, the WMS is set out in the WLP (see appendix 2 of SITA/10/5). Secondly, the contract – which the Council entered into through the Cabinet acting corporately – is the delivery vehicle for the WLP strategy of a single EfW facility in central Cornwall (see appendix 2 of SITA/10/5 and agreed by Mr Miles in cross examination). Thirdly, the Council will work towards delivering that goal unless and until the WMS is changed (see appendix 2 of SITA/10/5). Fourthly, the Council reaffirmed this position at a meeting of the Cabinet on 10 February
2010 at which it was decided to instruct the appellant to prepare a RPP in accordance with the provisions of the contract and the WLP. Of course, the Council subsequently issued on 17 March 2010 the formal instructions to prepare the RPP (see SITA/0/22).

69. The Council continues to support and promote CERC and the strategy of the WLP which it is designed to deliver and, with immaculate timing, on the day after the inquiry opened, in effect, reaffirmed the contract with the appellant. Mr Miles agreed in cross examination that there was absolutely nothing to suggest that the Council were no longer confident in the WMS as set out in the WLP. It is worth noting that the Council’s corporate position that it would continue to pursue the delivery of the WMS as set out in the WLP unless and until the WMS is changed was adopted at a time when PPS10 was current and when the draft RSS was available. However, at this Inquiry the WPA, contrary to the corporate position, has suggested that the strategy does not fit with either PPS10 or the draft RSS. The chasm that exists between that corporate position and the WPA’s case has not been and could not be bridged simply by submitting its key proofs to senior officers (who incidentally were conspicuous by their silence in response thereto).

70. Several of the WPA’s witnesses had no knowledge or at least no proper appreciation of the Council’s corporate position and, therefore, how that failing undermined their evidence. A particularly disappointing feature of the Council’s case is that none of the elected members who took the decision (to reject the officer’s recommendation) has chosen (or been chosen) to give evidence to explain their decision, particularly in circumstances when a number of the reasons for refusal were opaque and had to be clarified by Mr Mason. One appreciates the pressures on local councillors, but whatever the volume of local objection to the proposal; local objection to proposed development is not by itself a proper reason to withhold permission. (See para 27 of the General Principles document accompanying PPS1).

71. Further, particularly in relation to some of the evidence of Mr Miles, the appellant has to question whether the WPA had any authority to take these points. For example, Mr. Mason’s clarification letter explained that the Council did not consider a single facility solution in the CCA objectionable in principle, yet Mr Miles’s evidence and submissions made on the WPA’s behalf indicate exactly the opposite. There has been no resolution of the Council rescinding the strategy of the WLP. Actions and evidence of the WPA which now attempt to thwart the delivery of that strategy are deserving of no weight.

72. In closing submissions, Mr King on behalf of the Council submitted that the WPA and WDA exercise different powers and functions and the fact that the Council was a single corporate body ‘is really beside the point’. We profoundly disagree. Whilst the two bodies do exercise different functions, both are constituent parts of the Council and that Council, acting corporately and therefore speaking for both constituent parts, has confirmed that it remains committed to delivering the strategy of the WLP. This surely is of the utmost importance in considering whether the WPA is acting (as it must act) consistently with the repeated publicly stated position of the Council in relation to the WLP and the delivery of a single EfW plant in the CCAS. If and to the extent that the Inspector finds that the WPA position is not in accordance with the corporate position of the Council then that must devalue any weight to be accorded to the WPA’s case.
The contract

73. The contract is genuinely part of an integrated solution to waste management in the County. In order to put the Council’s WMS into effect, the contract requires the appellant to build or refurbish a range of facilities in two phases. The focus of the first phase is on waste minimisation, reuse and recycling. (As part of the contract, the appellant is to provide two MRFs, six HWRCs, one RTS, 3 combined HWRC & RTS as well as the EfW facility on the appeal site). Phase 2 of the contract focuses on obtaining value from residual waste. The key facility in this regard is the proposal before this inquiry.

74. And so we find ourselves in the bizarre situation where the Council now opposes a proposal which forms a central part of its own WMS as contained in the WLP to which it remains corporately committed and which the Council contractually requires (a requirement which it has reconfirmed even after its refusal of planning permission through its instruction to prepare a RPP in accordance with the contract and the WLP) the appellant to develop on this very site; a site which the Council itself identified after a thorough appraisal of alternatives. It is potentially very damaging for the Council to be acting in this manner as it is only by having a settled WMS that waste management companies will have the confidence to make the heavy investment that making an application for a waste management facility requires. This is quite apart from the damage to meeting the pressing need for the waste management facilities that are required.

75. Mr Miles agreed in cross examination that the contract ‘translates’ the WMS and is the ‘delivery mechanism’ for the WLP. In the circumstances, the contract must be regarded as highly important. All the more so for the great emphasis which national policy places on the timely provision of waste management facilities to meet the needs of the Community. (See para 3 of PPS10 at CD/E6 and pages 75 and 76 of WS2007 at CD/F1). And, of course, the Council has hitherto made no attempt to shy away from the WMS. The opposite is true.

76. Since the refusal the Council has repeatedly re-endorsed the WMS. In June 2009, shortly after the refusal, the Council confirmed in a letter to DEFRA that first the Council remained committed to delivering a single EfW facility in central Cornwall, secondly, that there had been no change to the WMS and, thirdly, that the contract delivered the key asset of the WMS. (See appendix 2 of SITA/10/5).

77. On 10 February 2010, the Cabinet of the Council, acting corporately, endorsed the provisions of the contract and the WMS by accepting the recommendation of the WDAP, a body whose members are drawn from across the whole Council, to instruct the appellant to prepare a RPP; effectively to continue the proposal now under consideration in accordance with the WLP. (See appendix 15 of SITA/10/3 and appendix 3 of SITA/10/5). The Council has expressly stated that it wishes the RPP to be prepared before this appeal decision is published “to enable the WDA to accept the draft RPP and execute the revised documentation as soon as planning consent is granted if members wish to proceed with the CERC.” (See SITA/1/8 and para 15 of CC/0/5). It is impossible to reconcile that corporate position with the case put at this inquiry by the Council through the WPA.

78. Significantly, DEFRA confirmed that the contract and the proposal made under it are very much in accordance with national policy. (See the Defra letters of 24 April 2009 and 22 February 2010 at appendices 1 and 6 of SITA/10/6).
Moreover, the contract (and the Council through it) endorses both the appeal site and the exact capacity of the plant. This should be of no surprise given the fact that the contract was drawn up in parallel with the preparation of the WDF. The WDF was prepared with the involvement of both WPA and WDA officers. It identifies the appeal site as one of two preferred sites. To suggest that the contract should be accorded no weight in these circumstances is a nonsense.

79. There was some misapprehension of the terms of the contract when it was suggested in the cross examination of Mr Aumôniér (by reference to clause 4 of appendix 4 to part 2 of schedule 10 of the contract at CD/G1) that the Council may be forced to provide waste to CERC which may otherwise have been recycled. However, as Mr Scanlon explained (through SITA/1/6) the clause is not an obligation on the Council to supply 216,000 tonnes per annum but a guarantee from the appellant as to how much material will be diverted from landfill by means of the EfW plant. If the appellant fails to divert at least 216,000 tonnes from landfill it will suffer significant penalties. There is, in fact, no obligation on the WDA to provide any specific tonnage to the CERC. The only obligation on the WDA is to provide a minimum of 250,000 tonnes of MSW globally but there is no obligation as to how this is made up. So if the WDA gave the appellant 200,000 tonnes of recyclable material and only 50,000 tonnes of residual, the appellant would only be allowed to process 50,000 tonnes through the CERC.

80. Accordingly, there is no obligation whatsoever on the Council to provide sufficient waste to CERC under the terms of the Contract nor is the Council required to take any action if the facility is not full. It is, therefore, simply wrong to assert that the contract would cause recyclable materials to be sent to CERC. Rather it ensures that only residual MSW will be sent to the facility. In fact, the contract imposes obligations on the appellant to recycle and, in particular, a recycling rate of 50 per cent at HWRCs. (The appellant’s marked success in increasing the recycling rates in the County since beginning operations under the contract is addressed later).

81. Whatever the ability to depart from the terms of the contract, Mr Scanlon has confirmed (See SITA/1/7 and SITA/1/8) that the RPP would to all intents and purposes be the proposal before this inquiry. In particular, it will be in relation to the appeal site itself, it will be of the same capacity and will adopt the same technology. There is nothing in that letter which is inconsistent with the contract terms or the deliberations of the WDAP as recorded in CC/0/5 or the minutes of 27 April 2010 or 14 September 2010. (See CC/0/10 and CC/0/11 respectively for these minutes). Indeed, the Council is keen that the RPP is prepared before the outcome of the appeal is known and there is, therefore, no intention by the appellant to alter the main provisions of the appeal proposal, whatever the scope for flexibility under the terms of the contract. Indeed, to do so by for example reducing the plant’s capacity would give rise to procurement law issues as mentioned in the minutes of 27 April 2010.

82. Moreover, as the appellant suggests later when discussing the consequences of dismissing this appeal, a change to the technology would be likely to be viewed as a material change to the Final Business Case approved by DEFRA which would result in the loss of PFI credits. It would seem unlikely that the Council would wish to lose their PFI credits by suggesting a different technology choice whatever the scope for doing so provided by the contract. In any event, the reality is that the principal difference in the RPP which will be proposed by the...
appellant will be only that the cost basis for the provision of CERC will be updated. Happily, the letter dated 30 September 2010 from Mr. German (see X/3/18) confirms what the appellant has said on the RPP.

83. Mr. German does not refute anything Mr Scanlon said in SITA/1/7 and 8. Rather, he confirms that the appellant has been tasked with preparing the RPP both in accord with the WLP and in advance of the Secretary of State’s decision. In the circumstances, how else could the appellant proceed but on exactly the same terms as contained in the contract that is to say with the same site, technology and capacity? To submit anything else would be purely speculative. Moreover, it must not be forgotten that the particular form of the Council’s instructions to prepare the RPP and, indeed, the Council’s decision not to terminate the contract on the planning long stop date of 30 March 2010 amount to a clear reaffirmation of the contract and yet another corporate endorsement of the proposal before the inquiry especially since the Council requested that the appellant drafts the RPP before the outcome of this appeal is known.

84. It is important to look at precisely what Mr. German said. He said “if issues of location, capacity and/or technology are directly addressed by the Secretary of State I would expect the RPP (to the extent that it is possible under the terms of the contract and procurement law) to put forward alternatives accordingly.” No issue is taken with this statement. However, it is highly improbable that the Secretary of State will make such findings.

85. First, it is no part of the Council’s case that a particular smaller capacity would be acceptable. Secondly, the Council does not put forward a preferred technology. It is therefore hard to see a basis on which the Secretary of State could direct the utilization of a different technology from that proposed. Thirdly, given that no alternative sites have been identified and so it is impossible for the Secretary of State to make any conclusion on the merits of an alternative site.

86. Significantly, in his closing submissions (see PC-STIG/0/16) Mr Cole stated at paragraph 147 that he understood that the WDA had made it clear to the WDAP and the Cabinet that the RPP would, because of the contract and the associated procurement rules, still focus on an incinerator in the CCA. The appellant agrees and points out that this has been confirmed in both of the letters from Mr Scanlon. Mr Cole added at paragraph 149 that the Cabinet minutes for 10 February 2010 record that the result (of the RPP) would still need to be an incinerator, albeit possibly smaller, in the CCA. Mr Scanlon’s letter makes it plain that the RPP will be based on the same capacity as the appeal proposal. The minutes of the Cabinet Meeting of 10 February 2010 (see page 16 of SITA/10/5) record the Cabinet Member as stating that other waste management options would be considered (in the RPP) but as they were outside of the contract they would not be included within the RPP.

87. Given that the contract is the delivery mechanism for the implementation of the key piece of waste infrastructure required by the WLP and given that the Programme Director of the WIDP within DEFRA has so recently again confirmed that the contract continues to accord with Government policy (see Appendix 6 of SITA/10/5), its provisions are deserving of the greatest weight and, therefore, the decision maker should be very slow indeed to make a decision which thwarted their achievement. WS2007 emphasises (see page 15 of the executive summary of CD/F1) that the Government is using PFI to encourage a variety of energy recovery technologies. The financial consequences of a decision which led
to the contract being terminated or incapable of being implemented should, it is submitted, be given very careful scrutiny.

88. In the Belvedere decision (see CD/I3), Mr Miles, as in the present case, gave evidence for the WPA and sought to persuade the Inspector to attach little weight to the difficulties and financial consequences flowing from the thwarting of the relevant contract. However, the Inspector clearly attached importance to the WDA’s evidence about financial penalties (see para 9.14 of CD/I3). The Inspector concluded that the prospect of significant cost to the public purse from the further delays if the contract had to be re-tendered had not been treated with the weight it deserved and that the uncertainty that would arise if the contract had to be re-tendered should weigh heavily with the decision maker, (see paras 13.47 and 13.67 of CD/I3). Similar weight should be given in the present case to these matters. (The Inspectors have asked the parties to address in their closing submissions the flexibility in the contract to enable Cornwall’s waste management needs to be dealt with in ways which allow new technologies and opportunities to be taken on board. This is addressed later under reason for refusal 6).

89. Particularly, in the present circumstances when cost effectiveness is at the heart of all Government decisions and is enshrined in Government waste policy, it is all the more important to attach considerable weight to the financial consequences for the County in the event of this appeal failing. Significantly, Mr King in his closing submissions for the Council has not disputed the scale of the costs as advised by the WDA and what must be the understatement of the inquiry has simply submitted that these costs are to be regretted.

90. A theme that ran throughout Mr King’s closing submissions was that the full nature and scale of the appellant’s planning application was dictated by the terms of the contract. In no sense should this be seen to be a weakness or failing of the application; to the contrary, since the contract is the delivery mechanism of the fundamental WMS of the WLP and the application is the means by which the key asset of that strategy is delivered it should be accorded even greater significance as an application which is wholly in accord with that strategy and the objectives of the WLP. Whilst Mr King sought to denigrate alternative site assessments carried out by both the WPA (see CD/G3) and the appellant (see CD/A20) (criticism of the WPA’s own work from Mr King seems a little odd) for failing to look outside the CCAS, it should be recalled that the WLP Inspector concluded that the WLP’s strategy for a single large centrally located EfW facility represented BPEO.

Need and national waste and energy policy

91. It is the appellant’s case that CERC would generally accord with relevant saved policies in the WLP, which, since its provisions are consistent with national policy, can be regarded as reasonably up to date. In such circumstances paragraph 22 of PPS10 (see CD/E6) makes it clear that there is no requirement to demonstrate a quantitative or market need for the proposal. Further and in any event, WS2007 also makes it plain (see para 18 on page 76 of CD/F1) that EfW is now placed in a wider energy policy context and the Climate Change Supplement to PPS1 emphasises that applicants for energy development are not required to demonstrate overall need (see para 20 of CD/E3).
92. As a result of this policy, the Inspector at the Eastcroft appeal concluded that the need argument raised before him was not relevant (see para 344 of CD/I1). At Ince Marshes it was held that neither waste nor energy policies sought to place a rigid cap on waste management capacity (see CD/I2). A similar message is contained in the draft overarching NPS for Energy (EN-1) (see CD/I2). Notwithstanding this, the existence of need is clearly highly relevant to the outcome of this appeal: demonstrable need would considerably bolster what is already a strong case in favour of the appeal being allowed and should be weighed against any harm that it is considered the proposal may give rise to. Therefore, need provides an important context to the consideration of the appeal.

93. The fact is that there is a compelling, urgent and clearly demonstrated need for additional waste management capacity in Cornwall. Mr Miles confirmed in cross examination that the Council did not resile in any way from the clear statement in the PR that there is “a need for waste recovery capacity in the County and that this need will become more urgent and pressing as a result of landfill diversion targets and diminishing landfill capacity” (see para 125 of CD/B1). This is also repeated in the Council’s Rule 6 statement (see para 6.1). The Council clearly accepts that there is an urgent and pressing need. It will be recalled that the PR included draft reasons for approval which recorded that the WPA recognised and gave considerable weight to the need for additional waste facilities in Cornwall and, in particular, EfW facilities in order to meet European and National waste targets.

94. Unless and until CERC is in operation, Cornwall will continue its heavy dependence on landfill: the SoCG records that no less than 62% of MSW was landfilled in 2008/09 (see para 10.2.5 of CD/C2) increased in 2009/10 to over 63% (see page 14 of SITA/0/7). Landfill, of course, sits at the very bottom of the waste management hierarchy and is the least desirable way of managing waste. Furthermore, landfill capacity, is, in itself in short supply. Without CERC, Cornwall will rely in the first place on its own remaining landfill capacity and then on out of county solutions unless and until new consented facilities are available in Cornwall. As the WDA explain (see X/3/2) such out of County landfilling is likely to be a considerable distance away given the lack of void space in adjacent areas (see table 5.2 in SITA/9/2).

95. And so the appellant says that there are two principal factors relevant to the consideration of need: first, waste arisings and, secondly, the remaining landfill capacity in the County. These will be addressed in turn. However, any discussion of need must be considered in context. The Landfill Directive (seeCD/H2) places a legal obligation upon the UK to divert waste away from landfill and move it higher up the waste hierarchy. The Landfill Directive is, as Mr Aumônier put it, the key driver of national waste policy. Both WS2007 (see CD/F1) and PPS10 (see CD/E6) demand diversion of waste from landfill up the waste hierarchy with disposal to landfill as a last and increasingly expensive resort. As a result, most products should be re-used or their materials recycled and energy should be recovered from the remaining residual wastes where possible.

96. The Government recognises that in order to achieve its key waste planning objectives a step change in the way waste is handled will be required as well as significant new investment in waste management facilities (see para 1 of CD/E6). These key waste planning objectives are to decouple waste growth (in all sectors) from economic growth and put more emphasis on waste prevention and re-use;
to meet and exceed Landfill Directive diversion targets for biodegradable municipal waste in 2010, 2013 and 2020; to increase diversion from landfill of non-municipal waste and secure better integration of 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 hazardous waste; 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 (see para 23 of CD/F1).

97. The Government will ensure that the market demands these new waste management facilities by, *inter alia*, increasing Landfill Tax and by imposing severe financial penalties on authorities that do not provide such facilities through the LATS. (Note that landfill tax for MSW and C&I waste is currently £48 per tonne and will rise by £8 per tonne per year, reaching £80 per tonne by 2014).

98. Both PPS10 and WS2007 emphasise that the planning system is pivotal to the adequate and timely provision of these new waste management facilities. In examination in chief, Mr Aumônier explained that the timely delivery of new waste management facilities was absolutely critical. Mr Aumônier also explained that, nationally, the UK already lags behind many other European countries on waste recovery and, consequently, a very large number of facilities will be required. In Cornwall the problem is more acute than in most of the rest of the Country. CERC represents the only realistic and deliverable opportunity for Cornwall to divert waste away from landfill.

99. Mr Aumônier described the recovery targets set in WS2007 as challenging (recovery of MSW: 53% by 2010; 67% by 2015; and 75% by 2020 and C&I waste going to land fill to fall by 20% by 2010 compared to 2004) and concluded that Cornwall is unlikely to meet the 2010 recovery target and, without the CERC or a similar facility, it will be very unlikely that Cornwall will meet the 2015 recovery target. Any further delay will condemn Cornwall to consigning yet more waste to landfill contrary to national policy and at huge expense to its tax payers.

**Energy policy**

100. CERC is, of course, not only a solution to Cornwall’s waste management crisis but would make a significant contribution to the similarly pressing need for renewable and low carbon energy. EfW is defined as a renewable and low carbon energy (see page 6 of CD/E3). The UK is committed to a target of producing 15% of its total energy from renewable sources (see para 3.4.1 of CD/E17).

101. CERC must be considered not only within the context of waste management policies but also within the context of energy policies. Mr Miles in cross examination agreed as much and, fairly, acknowledged he had failed to deal with energy policy at all in his written evidence (a curious omission to say the least for the Council’s principal policy witness). However, Mr Miles agreed that (as WS2007 emphasises) recovering EfW 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. (See page 76 of CD/F1). The advice to maximise opportunities for renewable and low-carbon sources of energy supply is reiterated in the PPS1 Climate Change Supplement. Paras 13 and 40 of CD/E3 of that document go further and state that an application for a development which
contributes to the delivery of, amongst other things, the Government’s Climate Change Programme and energy policies “should expect expeditious and sympathetic handling of the planning application”).

102. It is clear that the Government places significant importance on the generation of renewable and low carbon energy. The Energy White Paper makes it clear that local authorities should look favourably upon planning applications for renewable energy developments (see para 5.3.67 of CD/E1). The Energy White Paper provides:

“New renewable projects may not always appear to convey any particular local benefit, but they provide crucial national benefits. Individual renewable projects are part of a growing proportion of low carbon generation that provides benefits shared by all communities both through reduced emissions and more diverse supplies of energy, which helps the reliability of our supplies. This factor is a material consideration to which all participants in the planning system should give significant weight when considering renewable proposals. These wider benefits are not always immediately visible to the specific locality in which the project is sited. However, the benefits to society and the wider economy as a whole are significant and this must be reflected in the weight given to these considerations by decision makers in reaching their decisions.” (See box 5.3.3 Renewables statement of need on pages 157 and 158 of CD/E1). (It should be noted that the Draft National Policy Statement for Renewable Energy Infrastructure (in CD/E18), which is a material consideration in planning decisions made under the 1990 Act, provides at paragraph 2.5.33 “As most renewable energy resources can only be developed where the resource exists and where economically feasible the IPC should not use a sequential approach in the consideration of renewable energy projects (for example, by giving priority to the re-use of previously developed land for renewable technology developments).”

103. The Renewable Energy Strategy 2009 provides that the UK needs radically to increase the use of renewable energy. Further support is found in the new draft PPS on Planning for a Low Carbon Future in a Changing Climate, which seeks to identify strategic opportunities to marry up heat suppliers and customers (see para 11 of SITA/0/4) (which Mr Greenwood said this proposal was an example of), intones that renewable and low carbon energy should be at the heart of planning and is neither optional nor additional (See par 16 of SITA/0/4). When Mr Greenwood appraised CERC against policy LCF1.4 it was plain that CERC performs extremely strongly. It should be noted too that in the recent DEFRA announcement of a review of energy policy there is a clear indication that the Government sees waste playing a role in meeting renewable energy targets.

104. The benefits of renewable energy are, of course, recognised in adopted planning policy and, in particular, the directive that:

“An applicant for planning permission to develop a proposal that will contribute to the delivery of the Key Planning Objectives set out in this PPS should expect expeditious and sympathetic handling of the planning application.” (See para 44 of CD/E1).

105. Mr Miles agreed significant weight should be given to the fact that CERC would produce renewable energy (at the time, Mr Miles agreed that CERC would contribute towards the RSS renewable heat target of 500 Megawatt Hours in 2020). Perhaps most significantly, Mr Miles agreed that, as stated in WS2007,
particular attention should be given to siting the plant where it could maximise the opportunity for CHP (see para 28 on page 79 of CD/F/1).

106. He agreed that CERC was extremely well positioned in this regard as there are three drying plants in the immediate vicinity (Parkandillick and Treviscoe operated by Imerys and the Goonvean driers) (as SITA/1/3 makes clear, the appellant has agreed heads of terms with Goonvean and is in discussions with Imerys) which are heavy energy users and dependent on a constant and secure source of energy, together with the potential to supply heat to the Eco-town in the future. (Note that para 20 of CD/E1 provides: “...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 a development must be sited in a particular location.”) The Energy White Paper identifies industrial sites in continual operation as the best sites for CHP. The relationship of suitable industry and CERC could hardly be more favourable for CHP than here.

107. PPS22 sets out the Government’s further aim of cutting carbon dioxide emissions by 60% by 2050 and making ‘real progress’ towards that target by 2020 (see page 6 of CD/E13). PPS22 provides that:

“The development of renewable energy, alongside improvements in energy efficiency and the development of combined heat and power, will make a vital contribution to these aims...... Increased development of renewable energy resources is vital to facilitating the delivery of the Government’s commitments on both climate change and renewable energy. Positive planning which facilitates renewable energy developments can contribute to all four elements of the Government’s sustainable development strategy.”

108. CERC can therefore address four global policy requirements and the need for infrastructure to achieve them: first, the provision of waste management capacity critical for efficiently and sustainably managing Cornwall’s waste; secondly, helping to achieve the required diversion from landfill and to meet the WS2007 recovery targets; thirdly, providing much needed renewable and low carbon energy with maximum potential exploitation of CHP thereby offsetting reliance on fossil fuels; and, fourthly, reducing carbon dioxide that would otherwise be emitted to generate energy and displacing harmful methane emissions that would otherwise arise with landfilling.

109. Of course it should not be forgotten that CERC will provide CHP. (WS2007 provides in paragraph 28 of Chapter 5 that: “Any given technology is (where applicable) more beneficial if both heat and electricity can be recovered. Particular attention should therefore be given to the siting of plant to maximise opportunities for Combined Heat and Power”). In cross examination of Mr Greenwood there was some attempt to undermine the proposal’s ability to maximise the opportunity to provide heat to the dryers by reference to the fact that the Goonvean dryers will take only 6% of the available energy. That figure takes no account of the other potential consumers of heat – Imerys and the Eco-town – and, as Mr Greenwood explained in re-examination, if those potential customers are accounted for some 27.5% of the available energy would be used as heat. The rest of the available energy will be exported to the grid as distributed energy which is encouraged in the Energy White Paper. That is what CHP is. It is totally wrong, therefore, to suggest that somehow only 6% of the available energy will be utilised. On the contrary, all of it will be used.
Waste arisings

110. Happily there is no need to descend to the detail of the rival assessments and contentions of Mr Aumônier and Mr Miles on arisings, including such issues as the effect of the recession, estimates of population growth, the effect of the impending redefinition of MSW and the application of data from the NW Region to Cornwall. Therefore the ‘spurious precision’ that PPS10 warns us against can be avoided because the short point is that whichever of Mr Aumônier’s or Mr Miles’s estimates of future waste arisings is preferred, it is clear that CERC at 240,000 tpa would be appropriately sized. (See the conclusion of the need assessment accompanying the planning application at page 3 of CD/A2).

111. In 2019/20 Mr Miles predicted some 175,000 tonnes of residual MSW (or 73% of CERC’s capacity) (see Appendix 2 of CC/1/3). The equivalent figure in draft RSS Policy W1 was 190,000 tonnes (or 79%) (see para 7.21 of CD/D2). Mr Aumônier’s lower bound/ best case figure was 157,000 tonnes (or 65%) (see his upper bound or worst case would be 239,000 tonnes equating to 99.6% of CERC capacity).

112. In the same year, Mr Miles predicted 125,000 tonnes of recoverable, residual C&I waste. It is to be noted that this figure was in part based on an estimate of what proportion of the waste stream is recoverable (60%) on the basis of the Urban Mines Study (see appendix D of CC/1/3). Mr Miles said, fairly, in examination in chief that a health warning must be applied to that assumption as it was rather simplistic and it is difficult to extrapolate data from one area to another. This was certainly the view of Mr Aumônier, who said that the proportion of recoverable C&I waste would be much higher in the South West given the prominence of the tourism and food and drink sectors and relative lack of importance of manufacturing (see para 6 of SITA/2/4). This compares with draft RSS Policy W1 with a figure of between 160,000 and 180,000 tonnes and Mr Aumônier with 249,000 tonnes.

113. It follows that, if Mr Miles’s figure for residual MSW proves to be right, CERC would have capacity to take only 52% of his assessment of recoverable C&I waste; if the figures in RSS Policy W1 prove to be correct then that capacity for residual C&I would be lower still at between 28% and 31% and if Mr Aumônier’s lower bound/ best case came to pass then the amount of recoverable C&I to be utilised would be merely 33% of the total residual quantity available. (It would be 0% in Mr Aumônier’s upper bound or worst case scenario).

114. Mr Miles’s revised estimate (see paras 3.24 and 5.50 of CC/1/2) was that the Council did not contest that a total recovery capacity for residual MSW & C&I waste of up to 302,000 tonnes per annum may be required. This is a volume, of course, well in excess of CERC’s capacity. Using the quantities which the RSS required to be provided in 2020 after recycling gives rise to a much higher volume of between 350,000 and 370,000 tonnes per annum, i.e. some 110,000 tonnes to 130,000 tonnes per annum in excess of CERC’s capacity.

115. In the following paragraphs the appellant addresses a number of points made by the Council and third parties in relation to need and capacity.

116. On the first point, it is manifestly appropriate for CERC to be sized to accommodate residual C&I waste. In the first place, there is strong Government policy support for greater integration in the management of MSW and C&I waste, as Mr Aumônier confirmed in re-examination. (See para 23 of chapter 1 and
paras 30 & 33 of chapter 6 of CD/F1). In this context, Mr Aumônier has described the fact that CERC may be able to treat some residual C&I waste as extremely beneficial (see appendix 2 of SITA/10/5).

117. Secondly, it was in any event, a decidedly odd point for the Council to take given the Council’s clear statement of strong support for capacity in CERC to deal with some of the commercial waste in Cornwall which would otherwise go to landfill (see appendix 2 of SITA/10/5). Thirdly, there is absolutely nothing in the WLP to suggest that the EfW plant should be limited to MSW waste only. This is not what Mr Miles claimed in para 5.50 of CC/1/2. But what he said was contrary to the WLP at para 5.32 at CD/D5: “This gross capacity anticipates a proportion of commercial and industrial waste inputs”; at para 4.12: “The strategy underlying the Plan also anticipates the adoption of a single centrally located EfW plant to handle a maximum of 60% of the 1998/9 total municipal solid waste stream as well as a proportion of the commercial and industrial waste stream”; and para 4.13: “It is anticipated that an element of capacity of an EfW plant will be available for elements of commercial waste which cannot be recycled.” Mr Miles agreed as much in cross examination and acknowledged that his analysis in his written evidence was based on the mistaken assumption that WLP Policy L6 addressed MSW waste only (see para 3.13 in CC/1/2).

118. On the second point, CERC will not prejudice the County meeting its recycling targets (see para 5.32 of CD/D5). In re-examination, Mr Aumônier was asked whether he felt that allowing the CERC proposal would cause the problem that the capacity limit of 200,000 tpa was designed to avoid. He said it would cause no concern at all and pointed out that the WLP’s recycling target for 2010 was 33% and this had already been exceeded. As stated in WS2007, there is considerable evidence from other European countries that higher rates of recycling and higher levels of recovery can and do co-exist (see chart 5.2 and para 23 on page 80 of CD/F1). This must be regarded as an official statement of Government policy to which considerable weight should be attached. The belated reference to an internal Audit Commission document in POC58 cannot be given any credence: it is in flat contradiction to Government policy issued in the same year, it is an informal document which enjoys no status and its assertions are totally contrary to evidence put forward at this inquiry. Moreover, it is DEFRA’s firm conclusion that CERC will not hinder the achievement of higher recycling rates (see appendix 6 of SITA/10/5).

119. In any event and as set out above, Cornwall has made significant progress in improving recycling rates in the County from the date on which the appellant began to manage Cornwall’s waste under the Contract. The appellant has in fact been extremely successful in improving the Council’s recycling rates. Recycling has increased from a rate of 27% when the contract commenced in November 2006 to 37% in 2009. At HWRCs the rate has increased from 43% to 62% over the same period. As a result of this effort the Council is well on track to meeting the Government’s target of 40% recycling of MSW by 2010 (see CD/F1). Of course, the estimates of future waste arisings are based on the generous assumption that the 50% target set out in WS2007 will be achieved.

120. Despite all the progress made under the appellant’s stewardship, the gap to the 50% target remains a substantial one, and there are diminishing returns in raising recycling to and beyond this level, compared with the progress already made. In any event, even if recycling exceeded the target, whilst this would reduce the quantity of residual MSW requiring recovery, CERC would then be able
to manage a larger proportion of the residual C&I waste for which there is no
recovery route and which would otherwise be destined for landfill.

121. Mr Miles’s concern was quite a bit narrower. He explained in cross
examination that the extent of his concern was in relation to the potential (and
he was extremely careful to stress this word) of competition between the facility
and recycling in relation only to C&I waste. However, no proper attempt was
made to substantiate that case. On the one hand, Mr Miles and the Council
accepted the need for the development and made no attempt to resile from the
clear conclusion contained in the PR that there is a need for a waste recovery
capacity in the County which will become more urgent and pressing as a result of
landfill diversion targets and diminishing landfill capacity (see para 125 of
CD/B1). On the other hand, Mr Miles made no suggestion as to how much
capacity is in fact required if not 240,000 tonnes. He specifically said that it was
not his or the Council’s case to suggest that a capacity of 200,000 tonnes was
more acceptable than that proposed.

122. Moreover, as gate prices at landfill sites rise as a result of landfill tax, it is not
clear where else these wastes would be managed within Cornwall, if not at CERC.
Mr Scanlon and Mr Aumônier explained how the appellant is confident in its
ability to attract sufficient residual C&I waste from Cornwall to CERC to fill any
spare capacity after dealing with residual MSW and has committed to a very
substantial capital investment on this basis. Mr Miles explained at paragraph
3.22 of his proof what his concern about recycling was: that where recovery
facilities are proposed at a scale which exceeds the practical availability of
residual waste remaining after recycling targets have been met then there will be
potential for competition. But manifestly, and on his own revised figures, that
will not be the result here. The available residual waste for recovery after full
recycling is allowed for both MSW and C&I produces a waste volume greater than
CERC’s capacity (302,000 tonnes compared with 240,000 tonnes per annum).
For C&I waste, as already mentioned, CERC would treat only between 28% and
52% of the residual (that is, after full recycling is allowed for) recoverable waste
that would be available. Hence there is no likelihood of his potential competition
arising.

123. Furthermore, Mr Scanlon was emphatic that the commercial realities were such
that CERC would not deter recycling of C&I waste. As Mr Scanlon explained, the
main contractors collecting such waste have a real incentive to recycle and sell
into the market. Therefore, it would not make economic sense for contractors to
prefer to forgo that revenue for selling recyclables and instead pay dearly for it to
be incinerated. Mr Scanlon said in answer to a question put to him in cross
examination that it would be “unthinkable” to take good quality recyclables and
then burn them, that if one tonne of recyclables can be sold in the market for
£30 it is not going to be burnt at a cost of £40 a tonne and that this is a “model
which does not work economically.” Mr Scanlon’s point is readily understandable.

124. The third point is that there will be quantities of residual MSW and C&I
waste well in excess of CERC’s capacity, there is no real likelihood of the
appellant importing waste from outside the County. The Council in CC/0/9 seeks
to draw an adverse inference from the appellant’s “desire to retain the ability to
import waste from outside the county”. This is a gloss on Mr Scanlon’s evidence
which was that he wanted simply to leave the option open given that the terms
of the contract could be amended if it became necessary to restrict imports
(which he added the appellant would be very happy to agree to) so that there
was no justification for a condition to be imposed or a planning obligation to deal with this point. It only arises in connection with the C&I waste as the contract would preclude CERC treating MSW from outside Cornwall.

125. In answer to Mr King’s questions, Mr Scanlon explained that it was “very unlikely practically” that the appellant would take such waste from outside the County as, practically, C&I waste will go to the nearest local facility. Further Mr Scanlon drew attention to the Secretary of State’s conclusion in the Ineos Chlor decision (see page 8 of CD/16) that the sourcing of fuel is a commercial matter for the operator. The Inspector at the Eastcroft appeal was very critical of conditions which sought to restrict the origin of the waste, concluding that it would give rise to practical difficulties and conflict with PPS10 (see para 3.5.1 of CD/11).

126. There is, therefore, no need for a condition or a section 106 obligation to prevent C&I waste from outside Cornwall being treated at CERC because: first, there is no evidence that it is at all likely; secondly, there is no evidence that it would be objectionable even if it did take place; thirdly, it is in any event a commercial matter; and fourthly, the Contract provides a mechanism for preventing or limiting such waste being treated at CERC if circumstances were ever to arise to make that desirable.

**Landfill capacity**

127. There are currently three landfill sites in Cornwall: United Mines, Connon Bridge and Lean Quarry. The appellant operates the first two, whilst the latter is run by Viridor Waste Management Ltd. United Mines is due to close in 2010 under the terms of its planning permission. There will be some capacity (approximately 400,000 cubic metres, see SITA/0/26) remaining at United Mines when it is closed. However, as Mr Miles agreed in cross examination, it could not be clearer that the planning permission will not be extended. The Council consulted the local community about the possibility of extending the permission to use the remaining void space and offered a £1m (which would have been derived from savings in transport and income from trade waste) Community Trust Fund to compensate for any local impact caused by the extension. However, the clear result of that consultation was that the local community did not want the extension. In 2008 the Council publicly announced that United Mines would close as planned in 2010 saying that both the Council and the appellant accepted the position of the local community (see SITA/0/27).

128. It was therefore a surprise to hear the Council place reliance on the United Mines void space during the course of cross examination of Mr Scanlon and Mr Aumônier. To do so is unrealistic and contrary to the Council’s own publicly stated position. During the course of the inquiry, the Council appeared to acknowledge this. In cross examination of Mr Scanlon, the projected unused capacity at the scheduled closure of United Mines was relied upon but by the time the Council cross examined Mr Aumônier a week later the Council excluded the United Mines capacity when putting its estimate of remaining capacity in the County to Mr Aumônier. (The figure put to Mr Aumônier in cross examination was 4,500,000 tonnes which was equal to the addition of the extended Connon Bridge (which Mr King rounded up to 2,200,000 (1,200,000 existing plus extension of 936,000) and 2,300,000 tonnes at Lean Quarry). However, in the Council’s closing submissions we heard the startling proposition that the WDA and the appellant ‘had it in their own hands’ to utilise the void capacity at United
Mines, subject to the little matter of the grant of planning permission! Given the appellant’s experience which has led to this inquiry the prospects of this happening are surely zero. That the Council feels it necessary to rely on such a suggestion demonstrates how exposed they must feel in relation to the need for additional waste management capacity.

129. Connon Bridge is currently mothballed but will be brought back into use upon the closure of United Mines. Connon Bridge has approximately 1,200,000 cubic metres of remaining void space. However, under its existing planning permission, the site will close by the end of 2014. The appellant is preparing an application for an extension to the site. If planning permission is obtained, there would be an additional 800,000 cubic metres of void space available. (It was suggested to Mr Scanlon in cross examination that this figure was 936,000 tonnes by reference to CC/1/13. He agreed that the range was 800,000 to 936,000 tonnes but that later figure would represent a “very successful” compaction ratio). As Mr Miles agreed in cross examination, there is no guarantee – this inquiry is stark testimony to that fact – that planning permission will be granted.

130. There is about ten years remaining capacity at Lean Quarry (see para 4.3 of CC/1/13 which was agreed by Mr Scanlon in cross examination). However, that capacity is contracted to Plymouth City Council until 2014 under an arrangement that was made in 2008 following the closure of Plymouth City Council’s last remaining landfill site. Additionally, Plymouth City Council has an option to extend that contract for a further five years until 2019. (It must be recorded that it was clear in cross examination that Mr Miles had simply not understood that Plymouth had an option to extend the contract at Lean Quarry). As Mr Scanlon explained in evidence the 2014 target date for an operational EfW in Plymouth is unrealistically optimistic, especially so given the planning difficulties that led the appellant to withdraw from the bidding process for the South West Devon Partnership Waste PFI contract. In short, Lean Quarry is neither available now nor is it likely to be before 2019 when viewed with any form of realism.

131. As Mr Miles agreed in cross examination, the Council’s whole thesis on landfill capacity in the County is founded on two precarious assumptions: first, that Connon Bridge is extended and, secondly, that Lean Quarry becomes available to Cornwall from 2014. Mr Miles agreed in cross examination that there was uncertainty in relation to both factors. The appellant suggests that there is considerable uncertainty.

132. Mr Scanlon estimated, taking the amount of waste the appellant currently sends to landfill in the County, that the Connon Bridge extension would be exhausted at best by 2017 (see para 5.10 of SITA/1/2). Mr Aumônier estimated that if the extended Connon Bridge was to take all of Cornwall’s residual MSW and C&I waste, it would have sufficient capacity for the disposal of all of Cornwall’s residual waste up to approximately March 2015. At worst, the capacity would be exhausted by approximately March 2014 (that is to say even before the planned opening of CERC) (see figure 5 of Appendix B of SITA/2/3). In cross examination of Mr Scanlon, Mr King tried to estimate the remaining capacity in years on the basis of MSW alone. There was no proper basis on which to assume that none of the larger C&I waste stream consumed landfill capacity whatsoever.

133. Connon Bridge aside, no additional landfill void capacity has been identified or is proposed, nor, given the lengthy lead times involved for EfW or other forms of
waste management facilities, is there any likelihood of other facilities being available within the requisite timescale. In short, there is extremely limited landfill capacity in the County at the moment and without CERC that capacity will be quickly exhausted, forcing the County to export waste out of county for an extended period prior to being able to bring an alternative to CERC into operation. It was not unduly alarmist for the WDA to state in its letter of 11 March 2010 that if CERC is rejected there will be a “waste management crisis” in Cornwall.

**The development plan**

134. Until the WLP is superseded it remains the adopted waste policy for Cornwall. Mr Miles agreed in cross examination that the WLP was the key document and that the contract was let on the basis of it. (As the Council itself said in their letter to DEFRA dated 16 June 2009, see appendix 2 of SITA/10/5). This means paragraph 4.8 of Mr Miles’s proof of evidence should be deleted in which he relied on the statement in the ES that the WLP was out of date (see para 2.9 of CD/A7). That statement in the ES was perhaps unfortunate. Clearly the WLP could not reflect the most up to date targets. However, the important point is that the policies are compliant with PPS10, as the appellant made clear in the planning statement accompanying the application (see page 51 of CD/A1) and in Mr Greenwood’s analysis (see paras 9.15 to 9.18 in SITA/10/2) in which he concludes the WLP is up to date.

135. It is clear that the WMS in the WLP accords with the strategy of PPS10 and, indeed, it was endorsed in the WDF which was approved by the Council after the publication of PPS10. The policies have been expressly saved by the Secretary of State and, as Mr Miles recognised, those that were not saved were disposed of because of their failure to conform to PPS10 such that it is clear that the Secretary of State regarded those policies which he saved as being PPS10 compliant (see SITA/0/33). The WDF endorses not only the strategy of a single centrally located EfW but further the very capacity and site of this proposal (see CD/A6). (Of course, the WDF also updates the WLP in terms of required capacity and targets). Moreover, WLP policies are cited by the Council in the reasons for refusal.

136. Finally, the Council corporately endorsed the WMS as contained in the WLP when it instructed the appellant to prepare a RPP (see SITA/0/22). In any event, this debate has now been overtaken by the evidence given during the inquiry, given Mr Miles’s agreement that the WLP is the key document. He, significantly, agreed that CERC was in general conformity with the WLP. Mr King suggested that the WLP was out of date in the sense that it predates WS2007 and PPS10 which has, of course, been acknowledged by the appellant but significantly he did not suggest that the WLP was contrary to Government policies set out in those documents. The highest it was put was that it did not fully reflect current national policy priorities.

137. However, the very matters that Mr King draws attention to are matters which are, in fact, dealt with. The age of the WLP is not a material issue. What is important is whether its policies are reasonably consistent with current Government advice. The removal of BPEO as a planning consideration does not in any way undermine the weight to be attached to the policies. BPEO, of course, remains a valid consideration, albeit now referred to as BAT which has been consigned to the EA as the regulatory authority. Significantly, the PR did not
advise elected members that the provisions of the WLP were in any sense in conflict with current Government guidance. Mr King’s reference to dinosaurs seems misplaced given that similar scale and much larger EfW plants continue to be granted planning permission by the Secretary of State. What Mr King conveniently overlooked throughout his submissions was the full endorsement and support given by DEFRA at all material times to this proposal including its recent confirmation that CERC “continues to be in accord with Government policy.” (See appendix 6 of SITA/10/5).

138. Mr King in his closing submissions contended that the WLP’s choice of a single EfW plant was driven by economic rather than sustainability objectives. However, economic considerations and sustainability objectives are not mutually exclusive; sustainability must sensibly have regard to economic practicalities and, in any event, as we have observed already, the local plan Inspector concluded that this choice represented the BPEO (that is, the best outcome taking into account all relevant considerations including sustainability).

139. Whatever tensions may or may not have existed between the WLP and regional policy, there can now be no debate about the primacy of the WLP. On 6 July 2010, the Secretary of State announced the revocation of RSSs. It is now clear that there is no prospect of the draft RSS being adopted and accordingly little weight can now be placed on its policies. RPG10 which was adopted as the spatial strategy for the South West is still part of the development plan although it predates the WLP and SP. It also predates Government policy in the climate change supplement to PPS1, PPS10 and WS2007. Unfortunately for the Council, it predicated much of its case (in particular in relation to the location of the development and with regard to the eighth reason for refusal) on draft RSS Policy W2. Given the limited weight that can be placed on this document, the arguments which rely on that policy are no longer sustainable.

140. In any event, the Council’s reliance on draft RSS Policy W2 was always contrived and questionable. First, the WPA had consistently objected to Policy W2 on the basis that it was not suitable to the peculiar geography of the County. The former County Council’s objection to draft RSS Policy W2 says: "The policy as proposed by the Secretary of State appears to put greater emphasis on the requirement to locate facilities at SSCTs whether or not that facility is intended to serve, primarily, that SSCT. The wording as proposed by the Panel differs in its emphasis in suggesting that where a facility is proposed for an SSCT that location of that facility should follow a sequential approach. The wording as proposed by the Panel is favoured as it gives flexibility about the location of facilities where they will serve a substantially greater area that just one SSCT. The principle that waste should be managed as close as possible to where it is derived is accepted. However, where plant is of a larger scale (for example, 200,000 + tpa) and the general character of the area is rural, it is likely that waste will be collected from dispersed sources over a wider area. In such a case close proximity to one of a number of urban centres to be served by the facility may not necessarily be the optimal location in terms of minimising overall transport movements by road...”

141. Secondly, the draft policy was in conflict with the statutory development plan policies in the WLP. Thirdly, the PR concludes that some elements of the proposal accord with the emerging spatial strategy and others conflict. The partial conflict with the emerging policy has to be understood in the context of the peculiar geography of Cornwall. The PR recognises this. It concludes that having regard to the rural nature of the County, the spread of population and the
functionality relationship between the towns, the proposal is the most sustainable option in the context of all the current and emerging plans and policies (see para 77 of CD/B1) and that draft RSS Policy W2 was wholly impractical when applied to Cornwall (see para 76 (f) and (g) of CD/B1). Interestingly, much of this commentary on Policy W2 is also contained in Mr Daly’s draft planning committee report (see paras 80 (f) and (g) in appendix 17 of CC/8/3). Significantly, Mr Daly concluded that there was “no clear way forward.” Fourthly, neither SWRDA nor the South West Regional Assembly objected to CERC. Little weight should be attached to draft RSS Policy W2. It is not going to be progressed further to form part of the development plan and, in any event, it is not clear how the Council’s objection to this policy would have been resolved.

142. Despite this and the Council’s acknowledgement that significantly less weight can now be placed upon the draft RSS policies themselves (see para 8 of CC/0/4), the Council submitted a position statement (see CC/0/4) on the revocation of the RSSs designed to breach some life back into the draft RSS to repair the damage to its case. The attempt is forlorn in the extreme. Revoked and abandoned policies can be given little no weight. However, it is recognised that some reliance could be placed on the evidence base for those policies. In his examination in chief, Mr Greenwood described the position statement variously as “perverse”, “fanciful” and “bizarre.”

143. For example, the Council now seeks to rely on advice from DCLG that the evidence which informed the preparation of revoked RSSs may be a material consideration in the context of development control decisions. To some degree, this overlooks the fact that it is RPG10 which forms part of the development plan. The draft RSS had not been adopted and, since it has now been abandoned, we will never know what its final adopted content would have been. More to the point, both the main parties to this inquiry objected to Policy W2 and its emphasis on SSCTs.

144. The Coalition Government’s reasoning for abandoning RSSs is to give freedom to local planning authorities to agree their own strategies without top down direction. In view of the Council’s consistent objection to Policy W2, it is truly perverse for it now to be trying to hang on to the last vestiges of the draft RSS policy. Further, Mr Greenwood also explained in examination in charge that the Council’s claim within their position statement that the evidence supporting the draft RSS was up to date was not correct. The fact is that it is the same evidence that supported the RMS for the South West 2004 – 2020 ‘From Rubbish to Resource’ (see CD/F2) and, of course, the document was published in 2004, that is, it predates both PPS10 and WS2007. This makes nonsense of the claim that that evidence base addressed the location of waste management facilities in accordance with the requirements of PPS10 and WS2007 (see para 7 of CC/0/4).

145. It is therefore difficult to believe that the evidence will be relevant to the preparation of the Council’s Core Strategy at all (see para 6 of CC/0/4). Moreover, Mr Greenwood must have been right to describe the Council’s statement that “it is mindful however that effect will need to be given in some form to the strategic policies in the draft RSS” (see para 9 of CC/0/4) as “bizarre” and as “clinging to the draft RSS by their finger tips.” The Council’s position statement runs contrary to the Government’s decision to revoke RSSs. It ignores its own principled objection to Policy W2 as it had been drafted and the fact that the Council had previously adopted very different waste policies in the WLP in the face of a policy which had material similarities to Policy W2 in RPG10.
146. To assert that a future policy framework must or will follow the same strategy as the policy which it had vehemently opposed is an inversion of common sense and logic, especially at a time when the Council’s own plan making powers have been substantially increased. Mr Greenwood hit the mark when he described the Council’s position as perverse. That the Council felt compelled to make these submissions shows how tenuous it must believe its policy objection based on the once emerging RSS is following the revocation of RSSs.

147. Support for the WMS as contained in the WLP is provided by the submission stage WDF. Whilst the WDF was not formally adopted it is plainly a material consideration. The WDF identifies the appeal site as one of two preferred locations for a single, centrally located EfW facility with a capacity of 240,000 tpa. It was approved by the Council in late November 2006 as the document to be submitted to the Secretary of State. The following points should be noted and were agreed by Mr Miles in cross examination. First, the WDF was prepared after the publication of PPS10. Secondly, it was prepared after the publication of the consultation stage draft RSS and yet still adhered to the CCAS in view of the dispersed pattern of settlements in Cornwall. Thirdly, there has been no attempt whatsoever by the Council to rescind the decision to approve the WDF. Fourthly, the author of the PR advised that some weight should be attached to the WDF (see para 62 of CD/B2). This approach was also taken by Restormel Borough Council.

148. There is very little force in the suggestion that less weight should be accorded to the WDF as a result of the Inspector’s advisory note on the WDF (see appendix 9 of CC/8/3). Mr Miles agreed in cross examination that the Inspector’s concerns related to process and not to the content of the WDF. That must be correct. First, it is clear that Mrs Burden, the Inspector conducting the advisory visit, had not read all the documents (see para 1 of appendix 9 of CD/8/3). The criticism was that the document looked like an old style local plan and not a spatial document. The Inspector recognised that a great deal of work had been carried out which could still be used to produce a sound spatial document. Secondly, there is no mention in the PINS advisory note of any substantive issues and, as the Inspector in this appeal suggested to Mr Miles, one would expect the Inspector looking at the WDF to point out and record any identified flaws.

149. Thirdly, the Council’s officers thought they could make the necessary changes within 6 to 8 weeks which must indicate that the problems were not substantive or substantial (see para 10 of appendix 9 of CC/8/3). In his closing submissions, Mr King submitted that it was not likely that the Council’s new waste policies would follow the strategy of the WLP/ WDF. There is absolutely no evidential foundation for that submission. The Council has in fact studiously avoided putting forward any alternative strategy at this inquiry. Given the corporate position of the Council that it remains committed to the WMS it is really no more than unsubstantiated advocate’s speculation as to what policies may emerge.

150. The appellant submits that little or no weight should be placed upon the policies in the RBLP given that it defers to the WLP in relation to waste issues. There is little dissent from any party on that point. Indeed, Mr Miles explained that he failed to address the RBLP in his written evidence because he did not consider it relevant.

151. It is submitted, therefore, that there is an excellent fit with the relevant policies of the material parts of the development plan. In R v Rochdale MBC ex
parte Milne (No.2) (Reported at [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. Accordingly, the appeal proposal enjoys the presumption in favour of permission being granted for development which accords with the development plan.

152. (Inspector’s note: The appellant’s comments received as a result of the High Court’s decision in the Cala Homes (South) Limited case are summarised as follows. In taking the opportunity to comment following Cala Homes (South) Limited v Secretary of State for Communities and Local Government [2010 EWHC 2866], RPG10 remains part of the development plan for the area which includes the appeal site. Pursuant to Section 38(6) of the Planning and Compulsory Purchase Act 2004, this appeal must be determined in accordance with the development plan unless material considerations indicate otherwise. RPG10 policies were addressed by the appellant’s evidence which was put to the inquiry.

153. The appellant also draws attention to Cala Homes (South) Limited v Secretary of State for Communities and Local Government and Winchester City Council (CO/12056/2010) as well as the Government’s intention to abolish RSSs through legislation. The Bill is at an early stage in its progress through Parliament. Nevertheless, it is considered that there would be no likelihood of the draft RSS progressing further to become part of the development plan and that this should be a material consideration. Support for this view can be seen in the withdrawal of funding from those with responsibility for the document. On that basis, whilst the draft RSS will in theory be a material consideration in the determination of this appeal, it should be given very little weight). (Inspector’s note: see document SITA/0/41).

Other areas of national policy

154. There is of course much national policy that we could draw upon to find support for this proposal. However, we have covered the most relevant aspects of national waste and energy policy in the context of assessing the need for the development above. It is worth saying that CERC performs extremely well against the key planning objectives set out in paragraph 3 of PPS10. CERC will help to:

(a) Deliver sustainable development by ‘driving waste management up the waste hierarchy’ and ‘addressing waste as a resource’. In particular, CERC will enable Cornwall to move away from its dependence on landfill and will use residual waste as a resource for energy (key planning objective 1);

(b) Provide a ‘framework in which communities take more responsibility for their own waste.’ Householders will know that the black bags they put out for collection will be treated by CERC and that the more they separate out for recycling the greater will be the amount collected for recycling (key planning objective 2);

(c) Implement the national WS by ensuring that the targets for recovery and diversion from landfill are achieved in Cornwall (key planning objective 3);
(d) Secure the recovery of waste without endangering human health and harming the environment. CERC has been designed to meet current best practice in energy recovery and will be subject to monitoring and controls that will regulate its operation and emissions so as not to endanger human health (key planning objective 4); and

(e) Meet the needs of the WDA who, of course, support the proposal, as well as businesses in Cornwall (key planning objective 5).

155. In terms of other national policy we draw attention to the clear national policy support for economic development and, in particular, Policy EC10 of PPS4 which provides that local planning authorities should adopt a positive and constructive approach towards planning applications for economic development and that planning applications which secure economic sustainable development should be treated favourably.

Reasons for refusal

First reason for refusal

156. This reason for refusal alleges that the proposal fails to comply with unspecified criteria within WLP Policies L6, L6A and L6B. It is now clear that, in so far as Policy L6 is concerned, the alleged conflict is with criteria (b), (g) and (h). (See Mr Miles's proof of evidence at para 5.35. Mr Miles expressly agreed in cross examination that having regard to SITA/0/2 and SITA/0/3 criterion (c) was met). Each of these is dealt with in turn below and Policies L6A and L6B under the second reason for refusal. Before turning to the specific criteria it is worth recording that the Report concluded that the proposal complies with policy L6 (see para 76(g) of CD/B1) and, in any event, the policy itself states that not all the criteria of the policy have to be met.

Criterion (b): rail provision

157. If, but only if, criterion (b) of Policy L6 is interpreted as a requirement for the site to be served by rail at the outset of development, then it is acknowledged that there would be conflict with this element of the policy. However, it is not accepted that that is the correct interpretation. In addition to the ambiguous wording of the criterion (that is, is it referring to provision from the outset or at some future date?), it is wholly wrong to treat this or, indeed, any individual criterion as a policy requirement. To do so would directly contravene the final clause of the policy which makes explicit that not all the criteria have to be met and that individual requirements can be excluded.

158. Moreover, the explanatory text at 5.37 states that not all sites will achieve the “optimal range of factors” listed in the policy and, specifically in relation to rail, at 5.30 refers to the site being “optimally” served by rail. Note too that paragraph 5.35 identifies a single site which could only be developed if served by rail (it should be noted that the central area of search was extended to include this particular site because it has an advantage which the appeal site shares: a ready customer for heat and power). This express requirement for the provision of rail at only one of the potential locations for the EfW facility strongly indicates that rail is not an obligation in relation to other sites. Mr Miles agreed in cross examination that permission could be granted consistently with Policy L6 notwithstanding that there was no rail provision. This position is entirely
consistent with WLP policy L1 criterion (g) which provides that applications for waste management facilities should have regard to the need for adequate transport arrangements "including rail access where appropriate and practicable."

159. Of course, Policy L1 is no longer a saved policy but it is legitimate to have regard to it in order to aid the construction of other (saved) policies within the WLP. The position is also entirely consistent with national policy guidance which promotes sustainable modes of transport and encourages transport of freight by rail (see para 21 on page 12 of CD/E/6. A similar point is made in para 45 of CD/E10) but where practicable and beneficial. (It is consistent too with WDF Policy 13 which provides the location, layout and design of the facility should make provision for the plant to be served by rail). It plainly would not be practicable (for the reasons set out below) and, for the Council, to resist this proposal on the ground that it failed to provide rail access from the outset, would fly in the face of the warning in paragraph 18 of PPS10 to avoid “unrealistic assumptions” on the prospects for a particular waste management facility.

160. The circumstances of this case are such that criterion (b) can and should be excluded and, accordingly, no conflict arises on this matter with Policy L6. Even if that is not accepted and it is found that the absence of rail provision is contrary to the policy, such a conflict would in no sense be material. Indeed, it is bizarre that the Council have even attempted to construct an objection to the proposal on the grounds that rail access is not provided.

161. First, the Council’s adopted Rail Freight Strategy 2007 which forms part of the Local Transport Plan recognises that it is not currently financially feasible to transport waste by rail (see para 2.3.5 of the supplement to CD/D8). It was also made plain in the minutes of the Council’s Environment Policy Development and Scrutiny Committee meeting, held on 17 January 2007, at which it was resolved to ask the Executive to approve the Rail Freight Strategy as the Council’s policy statement in relation to freight distribution in Cornwall. The minutes record:

"Replying to further questions, the Transportation Policy Manager advised that the County Council, not SITA, had decided not to transport waste by rail as it would add £1m to the operating cost each year. It was not possible to transport waste by rail from the proposed transfer station at Scorrier as it would be necessary to provide a siding which was not considered to be safe along the main railway network. The provision of a siding at the Hallenbeagle site was also not practicable because it would involve the rebuilding of 3 miles of railway; therefore, the costs would be prohibitive...” (See pages 113 and 114 of appendix 13 of SITA/10/3).

162. Secondly, the Council instructed the Appellant not to include rail provision in the contract because it was not economically viable. Inquiry document X/3/2, a letter dated 11 March 2010 from Mr Owens, Head of Waste Management, to the Planning Inspectorate. Mr Owens said: "There is potential for the plant to be served by rail but the WDA instructed SITA Cornwall in 2006 that, due to the considerable cost and practical implications, there should be no reference in the Contract to use rail as a means of transport. It remains the position today that rail is not economically viable. If Cornwall Council wishes to introduce a rail connection at the CERC facility in the future, it can instruct SITA Cornwall to construct the necessary infrastructure to develop a rail siding in the area specifically provided for that purpose."
163. Thirdly, the appellant has now been instructed to prepare a RPP in accordance with the provisions of the contract that is to say without rail (see SITA/0/22).

164. Fourthly, the Council has made no attempt at all, during the course of the inquiry, to abandon its conclusion that the provision of rail is not financially viable at present. Whilst Mr Miles had not explored the question and deferred the distinct question of whether or not it was the Council’s case at this inquiry that the provision of rail is financially viable to Mr Sharp of Capita Symonds (from whom it was unnecessary for the inquiry to hear in the end), Mr Millington was able to confirm that the Capita Symonds report (see appendix A of CC/7/3) deals only with the question of whether or not the provision of rail was feasible and did not deal at all with whether it was practicable. In this regard it is important to note that Mr Millington had earlier agreed that the question of whether or not rail was practicable included consideration of financial viability. The question of feasibility was of a technical nature and did not require consideration of financial matters. Mr Millington agreed in cross examination that the word “practicable” should be replaced by the word “feasible” in paragraph 3 on page 11 of CC/7/2.

165. Mr Millington also agreed that neither his own nor Mr Sharp’s evidence suggested in any way that rail would be financially viable. There was even some suggestion from the Council that rail may never be economically viable. In these circumstances, Mr King’s submission that there was no evidence before the inquiry to demonstrate that the provision of rail access was not viable is contrary to the clear information before the inquiry. The Inspector put a series of questions to Mr Millington in which he made a number of pertinent observations on obstacles to the provision of rail. Mr Millington agreed with all of the Inspector’s observations. First, the provision of rail at the EFW would require the provision of reciprocal facilities at waste transfer stations. Second, that Cornwall, due to its geography, is not currently well served by rail. (In this regard see page 114 of appendix 13 of SITA/10/3 in which the Head of Transportation and Waste Management is recorded as saying that there is insufficient funding to permit a major upgrade of the railway system during the next 10-15 years unless there was a major change in Government policy and that there was no financial case for commercial/private investment in the rail network in Cornwall). Third, the provision of rail is more practicable in conurbations.

166. These observations neatly summed up why the Council has repeatedly come to the conclusion that rail was not viable in general in Cornwall as well as with particular regard to the appeal site. Mr Miles seemed to go a little further when he said that there were no circumstances in which he could envisage either the appellant or the Council retrofitting the existing waste transfer stations with rail. Of course, if that were right then one would have to question the value of policies which seek to safeguard rail. However, it is the appellant’s view that it is to the proposal’s considerable advantage that it has the potential for rail access and will safeguard that potential as required by policy if it should become economically viable at some future date – in contrast to a spread of local facilities. (It is to be noted that in cross examination both Mr Miles and Mr Millington agreed that the provision of rail was more likely to be viable with a single centrally located EFW as opposed to under a strategy of dispersed waste management facilities).

167. Fifthly, the Council has not identified any alternative site or sites for which rail access is more likely to be provided than the appeal site. The potential for rail access at the Hallenbeagle site, which has been discussed at the inquiry but not put forward as an alternative to the appeal site, has, in any event, been
described by the Council’s Transport Policy Manager as prohibitively expensive on account of the length of new track that would be required.

168. Sixthly, the alternative strategic approach to waste management which the Council has very hesitantly floated (indeed the Council has been very careful to stress that this alternative is not by way of preference to the adopted WMS that underpins the appeal proposal) which involves two or more sites dispersed within Cornwall would make it far less likely that rail transport would be viable.

169. The reality is that this objection bears all the hallmarks of being “cobbled up” in an attempt to bolster a demonstrably thin refusal. It will be recalled that in the lengthy pre and post application process there was never any suggestion from Council officers that rail access should be provided and that, despite the thorough Scoping Opinion and subsequent Regulation 19 Requests in respect of the EIA, there was no requirement to deal with rail access (see paras 4.29 and 4.35 of SITA/10/2). Indeed, at the meeting on 5 July 2007 the Council, as WPA, expressly advised that all that was required to meet policy requirements was a feasibility study and illustrative plans to demonstrate that rail access could physically be provided if necessary. Mr Millington agreed in cross examination that the appellant had done exactly this and had, therefore, complied with the policy requirements.

170. The PR (see CD/B1) did not raise any concerns about the absence of rail access. It concludes that the proposal accords with the general thrust of Policy L6 and the strategic approach to waste management in the WLP. Indeed, both documents see the potential of the site to be served by rail in the future to be an advantage. Significantly, Mr Daly does not even refer to criterion (b) as one of the key criteria of the policy that the proposal conflicted with in his draft report (see para 127 in appendix 17 of CC/8/3).

171. The decision notice does not refer expressly to rail access nor does the first reason for refusal even specify what criteria of Policy L6 the proposal allegedly conflicted with. The eighth reason for refusal deals with the issue of waste transport but does not refer to Policy L6. It refers instead to Policy W2 of the draft RSS, but this only requires consideration to be given to the opportunities to connect sites to the rail network and is not a requirement for such connection.

172. It is, therefore, only in its evidence that the Council has attempted to promote the absence of rail access to a free-standing objection. Mr Millington’s evidence on this matter was essentially twofold: that there was conflict with Policy L6(b) and that since there was insufficient space within the appeal site for a rail terminal it would prevent use of rail in the future (see para 4.45 of CC/7/2 and para 3.3 of CC/7/4). However, in cross examination both points were expressly abandoned and he agreed that those paragraphs in his evidence should be deleted. (Para 3.15 of appendix 1 of his CC/7/3, which refers to the need to relocate certain buildings, should also be deleted).

173. The agreed statement between Mr Millington and Mr Penfold (see CD/C6) records that it would be physically feasible to implement a rail facility to serve CERC and that there are various options for achieving this, which as Mr Penfold explained do not require any need to alter the configuration of CERC within the site. In short, granting planning permission as sought would not prevent rail access being provided in future. Co-operation from Network Rail, Imerys and the
owner of the appeal site may be required but there is no suggestion from the Council that this would not be forthcoming.

174. Moreover, there is, in fact, no need to reach agreement with Imerys. In SITA/9/8 Mr Penfold outlines a comprehensive infrastructure layout to serve the appeal site by rail which is completely independent of Imerys (see para 1.1.5 of SITA/9/8). Mr Penfold sought to demonstrate that rail use was feasible without the use of Imerys’ land for the reason that at present it was not possible to understand how the rail use of the two sites might dovetail. It may well be the case that use of Imerys’ infrastructure would be feasible. Therefore it can be seen that Mr King in his closings put it far too highly when he suggested that there was a need to avoid entirely the use of Imerys’ facilities.

175. Far from there being any objection to the appeal proposal in relation to rail provision, one of the principal advantages of the appeal site is that it lies alongside an operational railway line and has the capability of being rail fed in the future if and when it is economically feasible. Furthermore, as the Council itself recognises, it has the ability to instruct the appellant to make provision for rail in the future by a variation of the contract. In this respect, see para 6 of X/3/2: “If Cornwall Council wishes to introduce a rail connection at the CERC facility in the future, it can instruct SITA Cornwall to construct the necessary infrastructure to develop a rail siding in the area specifically provided for that purpose.” As Mr Scanlon explained, the appellant will always monitor the economic efficiency of CERC’s operation and that, if rail became more economical than road, then the appellant would seek to exploit such a change.

176. The capability of the site and the ability of the Council to amend the contract should be seen as distinct advantages for the appeal proposal, especially in circumstances where the Council has not identified a preferred alternative site, let alone one with a better prospect of achieving a rail connection in the future. The WDAP clearly regard the potential for rail as a considerable benefit and the Council’s new WS will include high level aspirational statements on transport including the use of rail if the network is improved in the future (see page 27 of CC/0/11).

177. In so far as rail is concerned the proposal is wholly in accord with the Council’s specific instructions to the appellant as well as the Council’s clear and consistent policy approach towards rail transport.

178. The criticism in CC/0/9 that there is no commitment to use rail or to review its use in the future is misplaced. Having instructed the appellant not to advance rail access, it is absurd to criticise them for not legally committing to such a chimera. Its use in the future is perfectly capable of being reviewed under the provisions of the Contract. Such a commitment is, as we have explained, in any event unnecessary: it would be taken up by the Appellant if it was cost effective to do so.

**Criterion (g): the effect on the SAC and Appropriate Assessment**

179. The question of the need for an appropriate assessment and whether or not there is a conflict with criterion (g) of Policy L6 can be dealt with together. It is plain that if an appropriate assessment is not required, that is to say that there are no likely significant effects, then the proposal would not have an adverse effect on the integrity of the European site and so no conflict with criterion (g) of policy L6 would arise.
180. Much like the issue of the BS and MB which are dealt with later, the efforts to which Mr Webb and the Council have gone to seek to suggest that an appropriate assessment is required have been completely out of all proportion to the tiny increment to background pollution levels that CERC would give rise to. That the Council felt compelled to adopt a stance wholly at variance to that of both the EA and NE and to devote so much industry to this issue reveals a lack of confidence in its ability to sustain its other grounds of objection.

181. The first point to record is that no ecological objection whatsoever was identified in the reasons for refusal. The Council now relies on criterion (g) of Policy L6. However, no conflict was identified with this criterion in either the draft PR (see appendix 17 of CC/8/3) or the PR itself (see CD/B1) and it was not referred to in the first reason for refusal which cited Policy L6. In fact, the first mention of criterion (g) was in the Council’s Rule 6 statement. If the Council had genuine ecological concerns, such concerns would surely have merited a specific reason for refusal and, indeed, reference to Policy E3 of the WLP (which Mr Webb acknowledged in cross examination to be the most relevant policy). However, no conflict with E3 was identified despite the statutory duty on the Council to cite all relevant policies in the reasons for refusal.

182. The Council’s case is not that the proposal would have an adverse impact on the SAC but that such impacts could not be discounted (see para 6.10 of the Council’s Rule 6 statement). The historic lack of ecological objection points to a late decision to make a stand on a technical point of law and policy which flies in the face of Mr Justice Sullivan’s statement in the Dilly Lane case that “the provisions in the Habitats Directive are intended to be an aid to effective environmental decision making not a legal obstacle course.” (Dilly Lane case is R (oao Hart District Council) v Secretary of State for Communities and Local Government [2008] EWHC 1204 (Admin) at 72. See appendix 7 of SITA/5/3). Having heard the Council’s submissions, it seems to us that the only sensible conclusion to be drawn is that the Council is using the Habitats Directive precisely as a legal obstacle course complete with threats of legal challenge. However, what is notable has been the complete lack of any assertion that the appeal proposal would give rise to any harmful impact on the SACs.

183. Moreover, the appellant’s approach to the “1% rule” was made absolutely clear from as early as March 2008. The ES, which accompanied the planning application and which the Council received in March 2008, clearly sets out the approach to the 1% rule adopted by the appellant and which is now impugned by the Council (see page 52 of appendix B of CD/A9). Bureau Veritas itself reviewed the ES in June 2008. When Mr Webb was asked in cross examination if the air quality experts at Bureau Veritas accepted the 1% rule he said “I assume so.” In his procedural note of January 2010 (X/4/1), the Inspector identified the adequacy of the ES as an issue on which he wished to hear evidence. There has been absolutely no suggestion whatsoever by any party that the ES is inadequate. It is commended as a comprehensive and unchallenged piece of work.

184. However, despite knowing about the appellant’s approach since 2008, Mr Webb confirmed that neither he nor the Council had made any request of the appellant to use a different approach. It was not even asserted that the 1% approach was unlawful at the meeting between NE, Bureau Veritas and the Council on 12 March 2010 (CC/4/11). Nor had Mr Webb or the Council ever written to either the EA or NE to suggest the 1% rule was unlawful.
185. The haste with which the objection was put together can also be seen in Mr Webb’s approach to documentary evidence. In an inquiry not short on documents, Mr Webb has the dubious distinction of having submitted more supplementary evidence than any other witness at this inquiry, much of it long after he had given his evidence. Why? Well the starting point must be that Mr Webb did not even address the issue in his proof of evidence! It was first raised by Mr Webb in his rebuttal, only after the Council appreciated from the appellant’s proofs the significance of the 1% rule. The reality is that the Council raised the question of the legitimacy of the 1% rule in a sudden flurry of emails approximately one week before the start of the inquiry (see CC/4/6). In re-examination, Mr Webb was given the opportunity to repair the impression that the objection had been cobbled together at the last minute. He was asked if the issue had been raised in various meetings and telephone conferences during the course of 2009. It was telling that all Mr Webb could say was that he did not remember either way.

186. Unfortunately for the Council and Mr Webb, this objection was made to look rather forlorn on 28 January 2010 when EA indicated that it was minded to issue the EP (see appendix 3 of SITA/5/4) and even more so on 20 August 2010 when the EA issued a draft EP for CERC for public consultation together with a very thick explanatory memorandum which considers in detail whether there will be any likely significant effects on the SAC (see X/9A and X/9B). It is extraordinary that the Council continue to push the point in the circumstances. Even more so when one considers that it is only air quality, the issue on which the EA is manifestly best placed and statutorily required to judge, which remains in debate.

187. Mr Webb confirmed in cross examination that in relation to hydrology, water quality and dust any impacts would be trivial and of no concern and would not adversely affect the SAC. The vast majority of the emissions will be generated by CERC itself, particularly via the stack, and this is manifestly the territory of the EA and not the WPA. Traffic emissions are not for the EA but here Mr Webb’s appropriate assessment is entirely silent and the appellant’s evidence has shown that it would not be likely to have any significant effects on Annex 1 habitats or Annex 2 species. Mr Webb accepted this in cross examination. Air quality concerns raised by Mr Webb are, therefore, wholly outside the remit of the WPA.

188. Not content with attempting to hijack the role of competent authority on air quality matters, the Council has without any justification sought to denigrate the competence of the EA. Mr Boyle, in an unfounded assertion, put to Mr Picksley in cross examination that the EA is ‘not held in high regard.’ In doing so, the Council has completely abandoned the position which was reported to members in the PR (see paragraph 75 of CD/B1). This was identical to the position to that in the draft PR (see paragraph 79 of appendix 17 of CC/8/3). The position was, namely, that the WPA and the EA were seeking to co-ordinate their respective roles and expertise on the relevant matters and that it would be the EA who would assess the impacts relating to air quality (a position which was wholly in accord with both law and policy).

189. Moreover, the Habitats Regs (see Regulation 65(1) of CD/K4a) provide that where there is more than one competent authority nothing in the Habitats Regulations requires a competent authority to assess any implications of a plan or project which would be more appropriately assessed by another competent authority. PPS10 reflects this by providing that the controls under the planning
and the pollution control regimes should complement rather than duplicate each other and that waste planning authorities should work effectively with pollution control authorities to ensure the best use is made of expertise and information, and that decisions on planning applications and pollution control permits are delivered expeditiously (see paragraph 5 of CD/E6). PPS23 repeats the point (see para 10 of CD/E15).

190. Both documents require the WPA to assume that the EA has properly applied the pollution control regime. The Council seemed perfectly well aware of this point when it advised its members on the planning application but seeks now to abandon the point because the EA is ‘not held in high regard.’ The Secretary of State was not impressed with such an approach at Ineos Chlor saying: “It is the Secretary of State’s view that the Council’s underlying concerns which prompt their suggested conditions relating to monitoring equipment and minimising and monitoring of dioxin emissions would more properly be left to the regulator under the pollution control regime. This conforms with planning policy guidance, specifically Planning Policy Statement 23: Pollution and Planning Control.” (See para 3.5(a) of CD/I6).

191. Of course the Council does not just take issue with EA but also with NE. The NE, despite not inconsiderable pressure from the Council, sees no need for an appropriate assessment and has expressly endorsed the EA’s Appendix 11 Assessment. (This is at CD/K16). The bundle of documents at Mr Webb’s CC/4/14 include an email, dated 20 April 2010 (which is well over a month into the inquiry and after Mr Webb began to give evidence) that shows clearly the NE’s frustration with the Council: “NE have already made our position absolutely clear...our advice has been consistent throughout...NE do not believe our position is inconsistent with that of the EA either.”

192. As Mr Picksley advised in evidence, NE is not afraid of taking a different position from the EA and so the very fact of their agreement is a matter to which significant weight should be attached. The Habitats Regs (Regulation 61(3)) require the WPA as competent authority to have regard to NE’s views. The EA and NE are the lead advisors to central Government and there is absolutely no incentive on either body to pull its punches. If either body entertained any real doubts about CERC’s likely effects on the SAC it is inconceivable that they would not have objected and/or called for an appropriate assessment. The attempt by Mr Boyle in the cross examination of Mr Picksley to undermine the competence of the EA to understand and apply its own guidance totally failed. It is notable that the Council in its closing submissions did not directly address the weight to be given to the views of EA and NE on the matter of an appropriate assessment.

193. The Council’s case rests on an attack against the lawfulness of Appendix 7 of the Habitats Guidance (see appendix 7 of CD/K10 for Stage 1 and 2 Assessment of new PIR permissions under the Habitats Regs) which is a national joint EA and NE document (“the Joint Guidance”). As Mr Webb agreed in cross examination, in so far as he or anyone else at the inquiry is aware, the Joint Guidance has not been the subject of any legal challenge whatsoever. It has been in existence since 2001 and represents the nationally agreed approach and guidance for appropriate assessment. It is reviewed on a regular basis. (In this respect, see the comments of Mark Willis and Wesley Smyth on page 1 of CC/4/9).

194. Mr Webb acknowledged in cross examination that many EU countries adopt a similar approach to the 1% rule in the Joint Guidance by using a threshold. The
Council’s assertion (which is expressly rejected by NE as is mentioned later) is that where background levels already exceed the CL for the features of interest as here (see the table 2 on page 35 of SITA/5/2) then any further deposition will by definition be harmful. (See for example Mr Webb’s proof of evidence (CC/4/2) at paras 8.26, 8.31 and 8.35 and, indeed, his examination in chief). The Joint Guidance on the other hand is very clear that the 1% rule (described as such in para 2.6.2 of CD/K10) applies irrespective of background levels (see para 2.6.1 in CD/K10). There is good reason for the application of the test irrespective of background levels.

195. First, as page 7 of the EA guidance in SITA/5/7 explains, although the precautionary approach applies, any judgment must be reasonable and based on information attributing cause and effect. In the circumstances of this case, it is manifestly not reasonable to contend, purely arbitrarily and as if it had universal application, that any increase over existing levels will be harmful, especially when Mr Webb was totally unable to attribute any harmful effects to the SAC from exceedances of the various CLs. Page 13 of the same guidance requires the significance judgment to be made on a case by case basis and only to seek further information where there is a high degree of uncertainty. No such uncertainty here arises. On page 12, examples are given of "generic" effects which are likely to be significant, but there is absolutely no evidence that existing air quality has had or would in the future give rise to any such effects.

196. Secondly, as Mr Webb agreed in cross examination, the assessment of likely significant effects is a screening stage (see para 2.1.1 of CD/K10). It is the second stage and different from the first, the initial screen to filter out matters which could not affect the interest features of the SAC, which would include de minimis effects. The nature of the test at the second stage as to whether or not an appropriate assessment should be required seeks to exclude the need for appropriate assessment where the effects are more than de minimis but trivial, negligible or inconsequential. Mr Barrowcliffe described it as a test of inconsequentiality.

197. Mr Boyle’s opinion has seemingly confused the separate concepts of de minimis and trivial effects, concluding that if an effect is not de minimis it must be considered in combination with other effects. ("I do accept that where a site has no effect, it is right that it cannot ‘combine’ with other potential polluters...This extends to where the ‘no’ effect is more properly a de minimis effect – i.e. immaterially small...However, a site causing emissions at or (as here, very close to) 1% of the critical load is unlikely to be considered to have no effect. Unless 1% is held to be a de minimis effect, it should be considered in combination with others." See pages 11.30 to 11.34, paras 8 and 10 of CC/8/4). In so doing he has omitted the crucial consideration whether the effect, albeit not de minimis, is trivial. It is difficult to call it anything other than trivial when the 1% threshold is set at 100 times below the level below which significant harm would not be caused. (The definition of Critical Loads is “a quantitative estimate of exposure to one or more polluters below which significant harmful effects on specified sensitive elements of the environment do not occur according to present knowledge” Nilsson & Grennfelt reported in CC/4/8).

198. It is for this reason that Mr Barrowcliffe describes it as a test of inconsequentiality and the EN Habitats Regulations Guidance Note 3 provides that likely significant effects exclude trivial or inconsequential effects (see SITA/0/9). See also note 2 on page 16 of SITA/0/10 (Environmental Risk...
Assessment extract) which refers to the substantial safety factor provided by the 1% criterion, which is two orders of magnitude below the CL, and explains that where as a result of other sources the CL is already exceeded a process contribution of less than 1% would only be a small proportion of the total. Mr Webb agreed in cross examination that the process contributions from CERC are ‘totally swamped’ by the background levels. Indeed, in the case of the deposition of N on Goss Moor, the process contribution is one fifth of 1% of the background levels. (See table 8.4 in CC/4/2, agreed by Mr Webb in cross examination. See also table 2 on page 35 of Mr Picksley’s evidence in SITA/5/2).

199. Mr Webb’s approach would require, in circumstances where the CL was already exceeded, the screening stage to be dispensed with. It would make nonsense of the Habitats Regs which require the competent authority to determine whether an appropriate assessment is required (Regulation 61). Mr Picksley was cross examined on the basis that it was impossible to ascertain that the proposal would not adversely affect the integrity of the SAC, but as he pointed out that is the test at the appropriate assessment stage and one first has to consider whether significant effects would be likely to occur, a task which Mr Webb failed to perform.

200. Mr Webb’s rebuttal at paragraph 4.21 is totally wrong. In this paragraph he states “This guidance is also not in accordance with the wording of the Habitats Regulations which simply states that if it cannot be concluded beyond reasonable scientific doubt that a plan or project either alone or in combination will not have an adverse effect upon the integrity of the site.” Regulation 61 says no such thing. His misunderstanding of the requirements explains his failure to recognise that the competent authority has to decide whether the project is likely to give rise to significant effects. Further, it is not accepted that there must be an in combination assessment with Indian Queens Power Station given that it is a plant which has been operating for several years (see para 4.4.3 of CD/K2). However, the appellant was asked to consider the power station and did so. The appellant’s assessment was accepted by EA and taken into account in its Appendix 11 Assessment.

201. Moreover, the Council’s approach is deeply problematic. As Mr Barrowcliffe explained it would in effect bring a halt to development because the CLs of about 50% of the Country’s SACs are exceeded by existing background levels as a result of imported emissions (even from farther afield than the UK). Mr Webb acknowledged that hundreds upon hundreds of planning permissions and permits would be undermined if the Council was correct.

202. The Council has also glossed over the fact that the approach they have put forward at this inquiry is a departure from the way in which they have treated previous applications. In the past the Council has been perfectly happy to apply the 1% threshold in the same way that the EA has done in this case in issuing the draft EP. For example, the Council granted planning permission at Penare Farm where the existing background level was substantially above the critical load. (Unsurprisingly, neither the EA nor the NE objected at all to the grant of that planning permission). (See page 9 of CD/K9 and pages 96 and 97 of SITA/0/5).

203. Thirdly, ‘likely significant effect’ must be judged in relation to the features of interest and their conservation objectives (see para 2.1.2 of CD/K/10). For that reason there is no scientific magic or precision about the 1% figure. As Mr
Barrowcliffe said in evidence it is not 1%. He was adamant that it was absurd to contend that 1.23% was materially different from 1%, adding that the guidance was not legislation to be argued over by lawyers. It is also why the Joint Guidance does not simply conclude that where the process contribution is more than 1% of the relevant CL the plan or project would be likely to have significant effects. Instead further consideration is required. In such circumstances the guidance provides: “cannot conclude no likely significant effect” (see para 2.6.3 of CD/K10).

204. There are two critical points of evidence to be recorded in the context of the judgement of the project against the conservation objectives. First, it is absolutely clear that lack of grazing and management is the chief cause of the current unfavourable condition of the SAC. Secondly, there is absolutely no evidence whatsoever that air quality issues have contributed to the unfavourable conditions. The Goss Moor National Nature Reserve Management Plan 2000-2005 (see CD/K7) covers almost the same area as the SAC and is the most recent management plan. That document is clear that the cessation of grazing on Goss Moor has had a significant role in the decline in the extent of open habitats (see page 24 of CD/K7). The document also recognizes the vital link between grazing pressure and the maintenance of open habitats and, further, that the losses of open heathland and wetland are directly related to the reduction in grazing pressure (see page 25 of CD/K7). However, there is absolutely no reference to aerial pollution as being part of the problem. Indeed Mr Picksley confirmed in examination in chief the presence of at least three of the species which the Joint National Conservation Council says indicates a positive site condition for bogs (see para 8 of SITA/5/6).

205. At the WPA/NE meeting on 12 March 2010 (see CC/4/11), although NE stated that it did not know one way or the other whether air quality was affecting the SAC, it repeatedly emphasised that it was aware of no evidence that it was. Further, subsequent to this meeting, perhaps the clearest expression of the lack of NE’s concern about air pollution is its email of 24 March 2010 which stated: “It is Natural England’s responsibility to report on the condition of the site according to its conservation objectives. The site is currently in unfavourable recovering status. The unfavourable aspects of the site have been associated with factors around the physical management of the site such as grazing. Measures have been put in place to deal with these hence its unfavourable recovering status. Natural England has not found any evidence of an impact on the condition of the site as a result of air pollution when applying its common standards monitoring (CSM) approach, but also in a previous targeted chemical and biological monitoring programme (undertaken as a condition of a previous IPPC authorisation…) to assess any impact from the nearby Peak Power Station (that is, the Indian Queens Power Station). (The appellant’s in-combination assessment was extremely conservative in its treatment of the Indian Queens Power Station). It was modelled as if operating to its maximum hours of permitted operation when, in fact, it was operational for approximately 20% of that time between 2007 and 2009 (see page 22 of CD/K28), as using fuel with a higher sulphur content than would now be permitted and with the over precautionary critical load of 0.47 (rather 0.69) for the MFB. Mr Webb agreed the process contribution from the power station is significantly greater than from CERC). This did not identify any impact on the condition of the site as a result of air pollution from that installation. This is despite the CLs/ levels for several
pollutants being greatly in excess of 100%.” (See para 1 of e-mail dated 24 March 2010 at CC/4/12).

206. In any event, the real issue is not so much whether air quality has affected the SAC, but whether there is any doubt about the effect that CERC would cause. In circumstances where there is no evidence that existing CL exceedances of more than 300% have had any effect on the SAC, it can be safely concluded that CERC’s process contribution would be truly negligible. In 2007 the EA after consultation with NE reviewed and renewed Indian Queens Power Station’s permit. It could only have done so on the basis that it was not affecting the integrity of the SAC. It would be extraordinary, and indeed perverse, if it were now concluded that CERC’s process contribution, which would represent a tiny increment to the emissions of the power station was likely to give rise to significant effects.

207. Mr Picksley carried out his assessment of likely significant effects in great detail in his proof of evidence (see pages 27 onwards in SITA/5/2). He reached his professional judgment not just by reliance on the deposition modelling (which was not challenged by the Council, Bureau Veritas or Mr Webb), the 1% rule and Plymouth University’s Study of the SAC, but carried out a full field study of the habitats, reviewed all the monitoring reports, considered the conservation objectives for the site, discussed the matter with both EA and NE and spoke to those responsible for the management of the SAC. (The relevant documents taken into account by Mr Picksley in his assessment can be found in the following places: the Plymouth Report (SITA/5/3, Appendix 4), Goss Moor NNR Management (CD/K7), the SSSI Condition Assessment (SITA/5/3, Appendix 1), the SAC Condition Assessment (CC/4/3, Appendix 2), Natura 2000 Standard Data form for Goss Moor (CD/K19) and for St Austell Clay Pits (CD/K21) and the Report to the Mid Cornwall Moors LIFE Project (CD/K8). All of these documents are relevant to considering the condition of the SAC and none of them suggest that the SAC is suffering as a result of poor air quality. Moreover, the prognosis for MFB does not look at all bleak given the improved management plan).

208. His conclusion was not based upon a desktop study as suggested in closing for the Council. He found no evidence that the abundance of flowers attractive to Marsh Fritillary Butterflies or the presence of their larval food plant had been affected or that in any other way air quality was adversely affecting the sensitive habitats or the Marsh Fritillary Butterflies.

209. The following short additional points are made which arise from the evidence. The appellant adopted a very conservative CL for the acidification of habitats with the potential to support Marsh Fritillary Butterflies (0.47KeqH+/ha/yr). When using this value the 1% contour extends into the SAC. There are two vegetation types (M23 and M25) which support Marsh Fritillary Butterflies and which are found within the 1% contour on the basis of that CL. However, the amount of land comprising those vegetation types is extremely limited (18.92ha) and the vast majority of which (11.63ha) has acid deposition as a percentage of CL of between 1% and 1.05% with no land having more than 1.2%. Mr Barrowcliffe described the difference between 1% and 1.05% to be virtually undetectable).

210. However, the debate as to the significance of the 1% contour overlapping the SAC is now academic. On 29 January 2010 the EA said that the appellant had erred in using the CL of 0.47 and that 0.69 KeqH+/ha/yr was more appropriate (see CC/4/5). As a result the appellant’s calculations had been “over
precautionary”. The appellant remodelled the depositions on the basis of the corrected figure (see SITA/0/6) and found that no part of the SAC fell within the 1% contour line. In any event, the evidence is that there is plenty of land which can support Marsh Fritillary Butterflies. Mr Picksley described as encouraging the fact that NE found that the species had expanded its range across the SSSI and was recolonising historic sites, albeit in low numbers (see SITA/5/5). The low numbers cannot be regarded as a concern, for Marsh Fritillary Butterflies populations naturally fluctuate and, therefore, as Mr Webb agreed in cross examination (page 238 in appendix 1 in SITA/5/4), their absence should not result in a classification of unfavourable condition provided that the habitat is in a condition to support the species.

211. NE advised (see letter dated 11 November 2009 in appendix 1 of CD/K9) that an appropriate assessment would be required if the combined levels of emissions from CERC and traffic serving it exceeded 1% of the relevant CL for sensitive habitats or species which are present within 200m of the road. Having regard to Mr Picksley’s figures 4, 5 and 6 of his appendix 2 (see SITA/5/3), Mr Webb agreed in cross examination that there is no area of the SAC with Annex I habitats or Annex II species within 200m of the road where the relevant critical load or level exceeds 1 per cent for these habitats. NE confirmed in their letter dated 12 February 2010 that the size and scale of any potential impacts arising from traffic emissions is likely not to be significant (see letter from NE dated 12 February 2010 in CC/4/5).

212. Lastly, with regards to the St Austell Clay Pitts SAC, the condition assessment records that in the longer term china clay works create new habitats for Western Rustwort (Marsupella Profunda); see page 6 of CD/K25. It is a species which thrives on exposed clay surfaces such that the key to its survival, as Mr Webb agreed in cross examination, is not the protection of its existing habitat but the continual creation of newly exposed faces. As the Inspector put it in his questions to Mr Webb, what would help most of all is if the China Clay industry keeps going. Of course, CERC will help the China Clay industry through the provision of renewable energy. Mr Webb agreed that Mr Picksley, Mr Barrowcliffe, the EA and NE all agree that Western Rustwort is not likely to suffer any significant effects from CERC. All the claims about extinction made by the Council and Rule 6 parties in closing were misplaced.

213. Finally, we have to suggest that there are good reasons not to place too much weight on Mr Webb’s evidence as there are a number of obvious problems with his work. First, Mr Webb’s proof of evidence (see CC/4/2) was, in substance, little more than a rehash of the shadow appropriate assessment complete with all the same mistakes (see, for example, page 8.4 of CC/4/2 where the SAC is misnamed and Mr Webb refers to Annex II habitats and Annex I species). In simply restating the shadow appropriate assessment, Mr Webb completely ignored the fundamental criticism levelled at the shadow appropriate assessment by NE; namely, NE’s comprehensive rejection of the Council’s fundamental argument that additional emissions are by definition harmful where the background CL is already exceeded (see the penultimate para of letter dated 12 February 2010 from NE to WPA at CC/4/5). Secondly, he fails completely even to refer to the conservation objectives in the screening assessment. Thirdly, the screening assessment fails to refer to the work undertaken by the EA. Such a failure is frankly inexplicable given the EA’s expertise and the edict in PPS10 and 23 that planning authorities should work on the assumption that the relevant
pollution control regime will be properly applied and enforced. Fourthly, and
despite Mr Justice Sullivan’s conclusion that it would be ‘ludicrous’ to
disaggregate mitigation measures from the screening stage (see the earlier
reference to the Dilly Lane case), the Council failed to consider the mitigation
measures incorporated in the project.

214. Fifthly and bizarrely, no mention is made in the shadow appropriate
assessment of emissions from traffic despite the fact that this issue was identified
in the screening for appropriate assessment document as a concern and it being
within the Council’s former area of competence. Sixthly, the conclusions reached
in the draft shadow appropriate assessment scientific report relied upon the same
evidence used to produce the screening for appropriate assessment. However,
different conclusions are reached. The information was deemed insufficient to
determine the potential effects related to dust and hydrological issues (in
November 2009) in the screening assessment but allowed the same author to
conclude no likelihood of significant effects on these matters in the shadow
appropriate assessment (the first draft for which was produced in December
2009).

215. Seventhly and perhaps most disconcertingly, is Mr Webb’s misunderstanding of
the test in the Habitats Regs that the appellant has identified above (see by
reference Mr Webb’s rebuttal at para 421 in CC/4/4) and his misunderstanding of
the definition of CL. In his proof he defines it as “the limit of deposition for any
particular pollutant above which habitat deterioration as a direct result of that
deposition will become likely.” (See para 8.7 of CC/4/2). That is significantly
different from the Nilsson & Grennfelt definition which Mr Webb agreed in cross
examination was appropriate which provides that the CL is the level below which
significant harmful effects do not occur. Perhaps this fundamental
misunderstanding was the source of the objection.

216. It is, therefore, submitted that it can be objectively concluded that CERC is not
likely to give rise to significant effects on the SAC and that the Council’s
objections are entirely misconceived. In the end the objection comes to nothing
for the great irony is the fact that there seems to be little dispute that there is
sufficient information before the inquiry for the Secretary of State to carry out an
appropriate assessment in the event that, contrary to the EA and NE’s position
and our submissions, the Secretary of State decides that an appropriate
assessment is required. Indeed, in examination in chief Mr Barrowcliffe said he
would “struggle to think what more could be done” and Mr Picksley said that
“every possible angle had been explained.”

217. Mr Boyle in his advice contained in CC/8/4 said that undertaking an
appropriate assessment need “not be elaborate or complicated” and that “all the
information should be available from the ES, but this should be put together with
information on in-combination effects, and the effect on the conservation
objectives.” The inquiry now has the information on those latter two points. Mr
Boyle concluded by saying “on current information, it is far from certain that the
appropriate assessment will conclude that the scheme would adversely affect the
integrity of the SAC.” It follows that, even if the Secretary of State does not
agree with the EA, NE and our own position, there is nothing to stop the
Secretary of State carrying out an appropriate assessment and there is a
universal expectation amongst the Government’s statutory advisors that any
appropriate assessment would not conclude that the scheme adversely affects
the integrity of either Goss Moor or the St Austell Clay Pits SACs.
Criterion (h): capacity

218. The proposal would exceed the maximum annual capacity referred to in criterion (h). However, as explained in the PR (see para 61 of CD/B1) the emerging WDF has updated the capacity now required to deal with Cornwall’s needs. The proposal accords precisely with the capacity limit set in Policy 13 of the WDF on the basis of the most up to date assessment. Furthermore, as we have already demonstrated above (under the heading ‘Waste arisings’) the proposal is well sized in the context of the clear and urgent need for waste management facilities in the County.

219. Whilst there is a breach of criterion (h), it must be considered whether that is a material breach. Policies are not self-serving and it is important to have regard to the purpose behind this criterion. As made clear in paragraph 5.32 of the WLP, the maximum capacity has been stated in the policy to ensure that there would be no prejudice to significantly increasing recycling to meet the then applicable national targets. The evidence has already demonstrated that CERC with a capacity of 240,000 tonnes per annum would not prejudice the achievement of the current more challenging recycling targets. Indeed, Mr Aumônier’s need assessment has been predicated on the basis that those targets would be met. Mr Miles raised no concern about CERC’s effects on household waste recycling; his only concern related to C&I waste recycling. Furthermore, the Council has not advanced the case that it is the incremental increase over 200,000 tonnes per annum which is objectionable; indeed, there has been no suggestion at all that the additional 40,000 tonnes per annum over the criterion (h) level is objectionable in itself. In these circumstances the breach of the criterion has no material planning consequence and can be ignored.

Second reason for refusal: impact on landscape character and visual impact

220. There is an irreconcilable conflict between this reason for refusal (and the references to WLP Policies L6A and L6B in the first reason) and the written confirmation to DEFRA by the Council’s Corporate Director for Environment, Planning and Economy on 16 June 2009, that is, after the refusal, that the corporate position of the Council was that its WMS has not changed, that its waste policies are set out in the WLP and that until and unless the policy changes the Council will work towards delivering a single EfW facility in central Cornwall. The general scale, massing and height of the appeal proposal are the embodiment of this WMS and these waste policies enshrined in the statutory Development Plan. While the capacity of CERC is a little larger than that envisaged in the WLP, it has been no part of the Council’s case that a reduction to 200,000 tonnes per annum would make the development acceptable.

221. Any single, large, centrally located EfW would adversely affect the landscape and give rise to visual impact wherever such a facility were to be located. The WLP expressly recognises this. The WLP states that an EfW plant of the size required would, if developed, represent a substantial development which could have a significant visual and landscape impact. Paragraphs 5.30 and 5.38 of the WLP say that “such plants are substantial in scale”, whilst para 5.37 talks of “sheer scale” (see CD/D5). The PR at paragraph 125 says “It is inevitable that harm of these types [visual, landscape and historic] will arise to a greater or lesser degree if the aim of providing a single EfW is to be fulfilled within the area of search” (see CD/B1). It should be noted that criterion (e) of Policy L6 requires sufficient on site capacity to provide residual processing facilities. Further
explanation is provided at paragraph 5.30 of the WLP. This policy requirement inevitably increases the bulk and size of the buildings that are needed. (Mr Scanlon deals with bottom ash treatment at paras 8.63 to 8.71 of his proof of evidence, SITA/1/2).

222. It is in light of this fundamental truth that the policies seeking to protect the landscape should be read. Fairly, Mrs Butcher agreed in cross examination that the WLP policies and Policy L6A should be construed and applied in a manner which does not preclude what she agreed was the fundamental strategy of the WLP: the provision of a large, single, centrally located EfW. She also agreed that the approach taken in the Report (CB.B1) at pp.86 was correct namely that conformity with Policy L6A must be considered in the context of the whole of the development plan and that the development plan promotes a single central EfW which will have a significant impact because of their size and scale (see CD/G3). Therefore, the fact the CERC would cause landscape and visual impact (as the appellant recognises) cannot be a proper basis for refusing it permission and the Council’s objections on these grounds are, frankly, synthetic.

223. Further, it should be recalled that the Council as part of the PFI procurement and contemporaneously with the preparation of the WDF, informed by a thorough Site Search Report (see CD/G3), identified not just the general location of the site but its precise boundaries and that, in addition, on 10 February 2010 shortly before this inquiry opened the Cabinet resolved to instruct the appellant to propose a RPP in accordance with the provisions of the contract and the WLP (the instruction followed on 17 March 2010), see SITA/0/22. Given its repeated endorsement of the WLP WMS and its reaffirmation of the contract in accordance with the WLP and in circumstances where the Council accept that there is an urgent and pressing need for waste recovery capacity and where it does not attempt to identify another site where there would be less landscape and visual impact, it is irresponsible and unreasonable to seek to attack CERC because of its landscape and visual impact.

224. As a generator of renewable energy, the Council’s opposition to CERC on landscape and visual grounds is in fundamental conflict with the emphatic statement of national policy in paragraph 20 of the Climate Change Supplement to PPS1 (see CD/E3) that planning authorities should ensure that any local approach to protecting landscape does not preclude the supply of any type of renewable energy other than in the most exceptional circumstances. The Council does not suggest that there are exceptional, still less most exceptional, circumstances at play here: indeed, its objections could apply to a CERC scale facility anywhere in the CCAS. The core strategy of both PPS22 and the climate change supplement is to promote and encourage renewable and low carbon energy infrastructure rather than seeking to restrict it. (See also the draft PPS, SITA/0/4).

Advantages of the appeal site

225. In fact the locality of the appeal site and the site itself have a number of features which were mostly agreed by Mrs Butcher in cross examination to be advantageous in landscape and visual terms for accommodating CERC. First, and highly relevant to the application of policy, the appeal site lies outside any area designated for its landscape or visual qualities, in marked contrast to large tracts of Cornwall. Secondly, the site sits within a bowl and is screened on three sides by higher ground which define its visual envelope and limit medium and longer
views from the south, west and east. (See SITS/6/4 and GC017 and par 7.4.10 of CC/5/2 in which Mrs Butcher confirms that views of the main body of the development will be screened from the south and west).

226. Thirdly, within that bowl the visual effects of working industry and its after effects in the form of spoil tips are prominent. Indeed fourthly, the site is directly adjacent to prominent and bulky existing industrial buildings which would assist in absorbing CERC’s scale. This is graphically demonstrated by the amount of purple hatching in figure 5 of appendix D of CC/5/3. Fifthly, the site slopes from south to north which facilitates a stepped design which again helps to assimilate CERC’s bulk. Sixthly, the landscape hereabouts is far from pristine. It is a dramatic, dynamic, lunar landscape. (See in this respect the various landscape character assessments in page 55 of CD/J2, pages 188 and 189 of CD/J6, CD/J7 and LCA17). This is a landscape which has absorbed a significant amount of change. Mr Coulson said in examination in chief that the landscape had changed markedly since his involvement in the project as a result of changes to the spoil heap. It is now “overlain with all the industrial trappings of a mining area” (see page 188 of CD/J6). It has a pronounced industrial character and there are numerous vertical structures (e.g. pylons in profusion, chimneys, stacks, plumes and sky-tips) and various landmark features.

227. Seventhly, this landscape continues to have the capacity to absorb change, as recognised by Land Use Consultants who in their 2004 Report (see CD/J8) identified this area as providing the greatest opportunity in Cornwall for accommodating a large scale wind farm on account of its large scale landform and low sensitivity. Mrs Butcher agreed in cross examination that it was a sensible approach to seek to locate an EfW plant in an area of low sensitivity and which has the capacity to absorb change even if she did not accept that the appeal site was such an area.

228. Lastly, the area is not over burdened with housing. The areas shaded green on GC075 show the amount of housing which surrounds the appeal site and which does not have views of the existing industrial buildings adjacent to the appeal site. It is revealing that not many of the houses will be able to see the proposed building on the appeal site (see the still expansive green area in GC077). The reduction in the number of houses which are now protected from seeing either the existing industrial buildings adjacent to the Appeal Site or their stacks (GC074) compared to the number which will not be able to see either the proposed building or stack is greater but it is a point very much in the Appeal Site’s favour that, first, the global number of houses affected is very low and, secondly, even so close to what is undeniably a large building and stack, there remains a significant proportion of houses that would not be able to see CERC at all (GC076).

229. Cornwall is a county which is blessed with landscape which is recognised as amongst the most precious and valuable in the Country. Some 30% of Cornwall is designated as AONB. A further large proportion of the County is designated as WHS, Heritage Coast or AGLV and there are yet more areas which have been designated for local value. However, Cornwall also has a pressing need for waste management facilities and, in particular, the single centrally located EfW which forms the key facility of the WMS. The appeal site is in the area that is perhaps uniquely capable of reconciling the need for CERC with the need to protect Cornwall’s landscape. The appeal site is located in one of only two out of forty character areas in Cornwall which contain no AONB or WHS designations (as
agreed by Mrs Butcher in cross examination. See also pages 38 and 39 of CD/J9).

230. The selection of the appeal site also reflects the clear hierarchy of protection to landscape areas from national designations downwards that is sought to be provided by national, strategic and local policies, including the WLP. This was agreed by Mrs Butcher in cross examination. In this context, Mrs Butcher agreed that WLP Policy, which applies to undesignated, “ordinary” countryside, was the most relevant to the appeal proposal and, further, that Policy E8 only seeks to avoid significant adverse effects but even here explicitly allows such impacts if outweighed by benefits. Therefore the most relevant policy of the development plan (which itself puts forward a single, centrally located EfW as the principal element of the WMS) expressly countenances the grant of planning permission for waste management facilities which have significantly adverse landscape impacts. It is to be recalled that Policy E8 is not cited in the decision notice: as the most relevant landscape policy it could hardly have been overlooked and, given the statutory duty to cite all relevant policies in the refusal, the implication must be that the Council did not consider CERC to conflict with it.

**Landscape character assessment**

231. Mrs Butcher’s approach to landscape character assessment is more akin to a land use description. She seemed to be more interested in land use than landscape character and was distracted by the division of land use which could be seen either side of the railway line adjacent to the appeal site. However, Mrs Butcher herself said that if one looks south from the appeal site the view is dominated by the landscape of the china clay industry and, in particular, the Parkandillick dryers. (See page 9 of appendix B of CC/5/3). Mrs Butcher agreed in cross examination that this ‘domination’ did not just affect the appeal site but extended over a greater area revealing the fallacy of focusing on land use. Mrs Butcher also agreed in cross examination that the railway line alongside the appeal site did not act as a visual barrier and, further, that it would be incorrect to equate land use with landscape character. Whilst Mrs Butcher’s description of ‘agricultural land’ in paragraph 4.4.2 of her appendix D (see CC/5/3) makes passing reference to the backdrop of china clay works and tip landforms, it underplays their role and she fails to discriminate between those areas of more rural character and those areas (like the appeal site) where industrial and mining activities and land uses have a very strong influence on their character.

232. Significantly, Mrs Butcher’s own landscape character assessment became redundant when the key characteristics of the formal landscape assessments which were before the inquiry (see CD/J2, J6, J7 and J8) and which were put to Mrs Butcher in cross examination and she agreed uniformly that these characteristics applied to the area which includes and surrounds the appeal site.

233. In respect of the Cornwall & Isles of Scilly Landscape Assessment 2008 (see CD/J7) Mrs Butcher agreed that the authors (as in the previous 1994 Landscape Character Assessment, see CD/J2) had not chosen the railway line as a border of the relevant area (CA17, St Austell and Hensbarrow China Clay Character Area). In fact, the railway line cuts through the middle of CA17 (and the previous CA13a) and, importantly, the area includes the swathe of agricultural land which Mrs Butcher tries to isolate as its own character area. To take that approach is to deny what Mrs Butcher agreed was one of the key characteristics of this area –
234. As Mrs Butcher agreed in cross examination, the small scale field patterns are found in the miners’ enclosures on Carne Hill and will not be affected at all by the development. Clearly, the contrast between industry and agricultural field patterns, particularly the small field patterns, identified as one of the key characteristics will persist if CERC is built. Mrs Butcher also accepted that this was a dynamic and changing landscape (in the words of the CA17 description “a vivid and dynamic visual landscape character quite unlike surrounding Character Areas”). Mrs Butcher agreed all of the key characteristics applied and that the landscape was dynamic unlike the rest of Cornwall (see page 188 of CD/J6 on Character Area 154) and that St Dennis was dominated by landform which has been shaped by industry (see page 189).

235. It is these features that allowed the authors of the Cornwall Sustainable Energy Project: Planning Guidance to conclude that Area 13a St Austell Group: China Clay Mining provides the greatest opportunity for siting a large scale wind farm (that is, more than 10 turbines) because of its lack of designation and low sensitivity to such structures (whose height is a shared feature with CERC). Mrs Butcher agreed that stacks and other vertical elements were already features in the landscape (see page 61 of CD/J8).

Policy

236. Further points should be made in relation to landscape policy. First and crucially, the very site of this proposal is one of two preferred sites endorsed by WDF Policy 13 following a detailed site selection exercise carried out by the Council with the assistance of a landscape architect in 2006 (see CD/G3). The WDF post dated the SP and RBLP, both of which defer to the WLP in relation to waste issues, and it must be assumed the Council considered that the preferred sites were consistent with the landscape policies not only of those plans but more particularly the WLP policies. Significantly there is no equivalent of WLP Policies L6A and L6B in the WDF. As preferred sites they were considered acceptable in landscape and visual terms and so such policies would have been unnecessary.

237. It now seems disingenuous for the Council to complain that such a large structure will harm the landscape, especially in circumstances where the impact of such a plant on the other preferred site would certainly be no less and indeed, according to Mr Coulson, greater than at the appeal site because of the flatter terrain and absence of nearby, large, industrial structures. In particular, the appeal site was considered to be ‘adequate’ in respect of both landscape impact and visual impact. The other preferred site was considered to be ‘adequate’ and ‘poor’ respectively. (See CD/G3, sites 4 (the appeal site) & 32, 34 and 35 (jointly called the Victoria Business Park). These sites were ranked as follows: adequate/ poor, adequate / poor and very poor / poor for landscape and visual impacts respectively). The Council’s difficult position is further compounded by the fact that the provision of CERC at the appeal site is a requirement of the contract, so recently reaffirmed by the Council’s Cabinet. Indeed, the Council has sought and obtained the requisite interests in land that would allow the appellant to go ahead and construct the plant if permission were to be granted.

238. Secondly, much of the appeal site is designated in the MLP for ancillary plant development for the mining industry (Policy CC4 in CD/D7). The fact that such a
designation may never be taken up is not the point. What is the point is that the Council has assessed the capacity of this land to absorb industrial development on yet another occasion in the past and concluded that the appeal site could accommodate industrial development.

239. Thirdly, as Mrs Butcher agreed in cross examination, the impact of the development on visual amenity and the landscape forms part of the wider balancing exercise that a decision maker must undertake – an exercise that Mrs Butcher did not perform. Mrs Butcher did agree, however, that the approach to the balancing exercise in the PR was correctly undertaken. Moreover, it was undertaken in the light of Mrs Butcher’s own analysis as contained in her reports to the Council prior to the decision (see appendices A, B and C of CC/5/3). The PR concluded that the visual, landscape and historic impacts were not so serious in degree so as to outweigh the overall support and need for CERC in the development plan (see para 130 and reasons for approval in para 131 in CD/B1).

240. Fourthly, in the context of that judgment and Mrs Butcher’s agreement that landscape policies must be construed in such a way so as not to conflict with the central plank of the WMS – the provision of a single, large EfW plant – it should be recalled that it is no part of the Council’s case to suggest that there is another site, in either the CCAS or in Cornwall as a whole, which would be better suited to accommodate CERC in landscape and/or visual terms.

Reason for refusal

241. The reason for refusal is (rightly in view of the requirement for decisions to be clear, precise and specific) drafted explicitly and relates to the proposal’s impact on landscape character and visual impact by virtue of its scale, massing, height, encroachment into undeveloped countryside and the loss of established Cornish hedge. Mrs Butcher agreed in cross examination that the haul road would not encroach onto undeveloped countryside. Mrs Butcher also agreed in cross examination that, although she had in her evidence raised concerns about light pollution, architectural detailing and the loss of agricultural land, these matters formed no part of the decision to refuse. Each of the objections is dealt with in turn.

242. In the end the Inspector will make his judgment on the basis of his site views with the aid of the photomontages, the viewpoints and methodology of which have been agreed. (It should be noted that PC-STIG accepted during the course of cross examination that their photomontages were inaccurate and consequently no regard should be had to them). It is worth noting that the result of accommodating the Council’s requested additional viewpoints is, as Mr Coulson pointed out, a preponderance of views which are in very close proximity to the site. It is largely this selection of viewpoints that paints Mrs Butcher’s assessment of the impact of CERC red (see her appendix 3 in CC/5/5). Mr Coulson explained that the very substantial or substantial effects of CERC would, with one exception at 5.5km, be confined to areas within c.5km radius of the site and that any views beyond this localised area would experience only moderate, slight or negligible effects.

Scale, mass, height

243. The design of the building evolved over time and through regular meetings with the Council. At no stage has the Council expressed any serious reservations about the design or its scale and massing. The Council has been involved with
the design and was aware of the scale of the building at all stages. There was involvement of officers of both the WDA and WPA with considerable overlap between the parallel processes for the PFI procurement and the WDF. Indeed, sketch drawings were submitted at the best final offer stage of the procurement process for the contract in December 2004 (see GC071 and 72).

244. Furthermore, the design team accommodated suggested changes during the development of the proposal. The stack was separated from the main building after a meeting with the South West Design Review Panel in September 2007 (see CD/J14. of September 2007). The height of the stack was raised later that year. The proposal is designed, we say successfully, as a landmark building, an approach commended in appendix 7 of the WLP. (It fulfils the CABE definition of a landmark building, see page 90 of CD/J11). It embodies a high quality and innovative design which has been carefully shaped and orientated to respond to the contours of the ground and the local topography (this is well demonstrated by, for example, GC030 which shows the roofline of the main building reflecting the contours of the landform immediately behind and the roofline of the bottom ash handling facility reflecting the contours of the wider ridgeline behind the development). This was recognised by Mrs Butcher; see her page 13 of appendix B of CC/5/3.

245. The curved form of the roof allows the building profile to be significantly reduced when compared with more angular, rectilinear forms. A landmark structure in this large scale landform which already features other landmarks such as the sky tips seems entirely appropriate, but, in any event, CERC as a striking and well designed structure of innovative design will stand as an important symbol of confidence in this area and convey a powerful statement of Cornwall’s progressive attitude to dealing with its waste and to renewable energy and climate change. If, and to the extent that, it screens the unattractive sprawl of industry immediately behind it in views from the north, so much the better.

Encroachment into the countryside

246. This part of the objection is extremely unconvincing. Putting aside the need for the development and the Council’s past and recent endorsements of the appeal site for CERC as well as ancillary structures for the minerals industry, the reality is the loss will be two fields of undesignated land. Although undeveloped, they lie immediately adjacent to an extensive industrial complex and the site thus can hardly be described as open countryside. In examination in chief, Mrs Butcher confirmed that the Council had no objection to the loss of the agricultural land. Mrs Butcher agreed in cross examination that the haul road did not run through existing open countryside but largely followed an existing track within an area of working clay industry. Mrs Butcher further agreed that the access road would not be a problem feature in the landscape. When these points and concessions are taken together it is very difficult to do anything but agree with Mr Coulson’s assessment in examination in chief that the loss of the two fields would not have a significant impact on the landscape or upon the integrity of the field patterns in the vicinity of the appeal site.

247. Mrs Butcher also raised the matter of loss of vegetation as a result of the haul road. Mr Coulson explains (see para 5.25 to 5.28 of SITA/6/2) how the design of the haul road minimises the removal of significant vegetation and that most of the removed vegetation is regeneration and scrub (mostly category C (low quality and value)) such that the arboricultural consultant could conclude that the
haul road "can be achieved with little compromise to the trees worthy of retention" (see page 6 of appendix 7 of CD/A11).

**Loss of established Cornish hedge**

248. Again this aspect of the objection did not withstand examination at the inquiry. The appeal site is one of the Council’s preferred locations for an EfW of this size and much of the appeal site has been allocated for ancillary minerals development. In the light of this there could be no objection in principle to the loss of some Cornish hedge. In fact, the Council has failed to recognise that the proposal would provide an overall increase in Cornish hedge. Whilst 802 metres of Cornish hedge would be removed, it would be translocated – and so not lost – in accordance with the best practice and some 1,418 metres of net additional Cornish hedge would be provided, which Mrs Butcher described in cross examination as a ‘positive feature.’

**Other matters**

249. Mrs Butcher’s concern in relation to light pollution was based on her experience of the Portsmouth EfW. This was misplaced since the two locations are entirely different. For an urban context such as Portsmouth, bright illumination is not inappropriate. Here it would be inappropriate and so is not proposed. In any event, this is a landscape which already experiences a lot of light as shown in Mr Coulson’s night montages which were accepted as accurate. These circumstances together with the proposal for light baffling louvres mean the concern is overcome.

250. The effect of the proposal on visual amenity in relation to footpaths is dealt with under the fourth reason for refusal and the effect of the proposal on AEL under the third reason for refusal.

251. Mr King in his closing submissions criticised as disingenuous Mr Coulson’s answer in cross examination that his assessment and conclusions had been influenced by the need for CERC. However, in cross examination Mr Coulson repeatedly emphasised that the evidence of other witnesses on need had not influenced his assessment of the landscape and visual acceptability of the scheme and that information had not affected his judgment on whether or not the proposals was acceptable. He stressed that his landscape and visual analysis was undertaken independently and separately from any consideration of need as assessed by others.

**Conclusions on landscape**

252. There can be little doubt that CERC will bring about marked changes in the landscape. However, almost without exception the key characteristics of the landscape character will remain if CERC is built. Indeed, the introduction of CERC will be an expression of one of those key characteristics: the dynamic industrial landscape. It is no coincidence that this area has been identified as the best able to accommodate a large wind farm due to its lack of designation, low sensitivity and above all continuing ability to absorb change. Significantly, the relevant landscape policies do not require an absence of harm. And, as Mrs Butcher agreed, these policies must in any event be read and applied in a manner which does not frustrate the central feature of the WMS – a single, large EfW plant which is acknowledged to be likely to have significant adverse effects on the landscape and visual amenity wherever it is located. In our submission any
adverse impacts on landscape and visual amenity are outweighed by the compelling need for this facility and the absence of any realistic alternative to this site or the overall strategy of the WLP. That was the judgment of the PR (see para 82 of CD/B1. The Report also concludes that the proposal is generally in accordance with the design principles of WLP Policy L6B).

253. Change will undoubtedly occur and CERC will certainly not hide in the landscape, but its striking and attractive design will ensure that it becomes a landmark feature that advertises to those visiting Cornwall and driving along the A30 the importance that Cornwall attaches to generating renewable energy, combating climate change and embracing sustainable waste management practices as well as regenerating the CCA.

Third reason for refusal: cultural heritage

254. In bringing forward this objection the Council has failed to have proper regard to one of the fundamental aims of sustainable management of the historic environment: the reconciliation of the protection of the historic environment and the economic and social needs and aspirations of the people who live in it (see para 18 of CD/N3). The EH document “Conservation Principles, Policies and Guidance for the Sustainable Management of the Historic Environment” sets out express policy on integrating conservation with other public interest. (See para 149 at CD/N3; the document also advises at para 155: “Every reasonable effort should be made to eliminate or minimise adverse impacts on significant places. Ultimately, however, it may be necessary to balance the public benefit of the proposed change against the harm to the place. If so, the weight given to heritage values should be proportionate to the significance of the place and the impact of the change upon it.” We are told that the underlying considerations should always be proportionality and reasonableness (see para 255 of CD/N3) – considerations which it is suggested have been disregarded by the Council in its fixation on the MB/BS issue.

255. Moreover, it has to be recognised, as Mr Cahill agreed in cross examination change is an essential component of the historic environment (see page 58 of appendix 7 of SITA/7/3) such that the duty which falls upon EH and the decision maker is to manage – and not prevent – change. Of course, change is writ large across the landscape surrounding the appeal site and this is recognised in the present day landscape. As Mr Cahill agreed, the most important feature of the landscape is its time-depth (see page 88 of appendix 12 of SITA/7/3) which includes the modern manifestations of industry.

256. It is no exaggeration to say the appeal site sits in a landscape which is overlain with the trappings of industry and modern life. In cross examination, Mr Cahill agreed the following non-exhaustive list of features in the landscape – the A30 and its traffic, Indian Queens Power Station, pylons, electrical substations, wind turbines, sewage works, tips, industrial buildings, farms and villages. CERC would sit comfortably alongside such features without damaging the time-depth of the landscape. Despite the many differences between CERC and a wind farm, the EH advice on Wind Energy and the Historic Environment (see CD/N2) provides useful guidance for assessing CERC. In this EH sets out its support for renewable energy and identifies dynamic landscapes (and all parties are agreed that is an apt word to describe the landscape in which the appeal site sits) as most suitable for accommodating large scale wind energy development (see page 8 of CD/N2).
257. This approach is, we submit, of general application and of particular importance here. Whilst in answer to the Inspector, Mr Trehy agreed that in areas where extensive industrialisation had led to large-scale loss of historic character it may be appropriate to attach additional weight to keeping what still remained, the fact of the matter here is that this is a landscape whose prevailing character is one of dynamic industrial change and is, therefore, more suited to accommodate further change than a less dynamic area. This landscape has absorbed a significant scale of industry over the years, yet this has not prevented the full understanding and appreciation of its heritage assets. There is no reason why this process should not continue so that the landscape can accommodate CERC without impairing the continued appreciation of those assets. The topography and context of the site and its surroundings are particularly suitable in this regard: the bowl in which the site lies, the man-made landforms hereabouts and the adjacent industrial complex all would assist in assimilating CERC in this landscape.

258. The Government’s national policy also now seeks to reconcile the impact on the historic environment of development for renewable energy and the need for it in policy HE1.3 of the new PPS5 which provides that the benefits of mitigating climate change should be weighed against any harm to heritage assets. It is a theme that permeates the new PPS5 (CD/NE14). (See, for example, Policy HE10, which Mr Cahill agreed in cross examination was the most pertinent to the assessment of the appeal proposal, which provides that when local planning authorities are considering proposals which do not make a positive contribution to or do not better reveal the significance of the asset, local planning authorities should weigh any such harm against the wider benefits of the application. Policy HE9.2 makes it clear that there is a requirement to perform the weighing exercise even where there is total loss of a designated asset).

259. Mr Cahill was undoubtedly correct to say that the new PPS does not affect the advice on proportionality and balancing need in the EH Conservation Principles document – on the contrary it endorses it. He agreed in cross examination that PPS5 did not change the EH guidance. It is not accepted that PPS5 makes any division of labour let alone a ‘very explicit’ one (as Mr King put it in his closings) between the heritage assessment and the wider benefits of the application.

260. However, despite agreeing the import of this advice in cross examination, Mr Cahill admitted that he had had regard only to the impact on the heritage assets and had not as required carried out the balancing exercise. Mr Cahill’s failure to do so does not sit comfortably with the positions the Council has taken on this issue in the past. First, the conclusions of the PR were clear that any harm to cultural heritage assets did not outweigh the need for the facility (see paras 87 to 91 of CD/B1). The PR concluded at paragraph 91 that: “Overall there is an adverse impact upon the setting of the historic landscape and listed buildings. These must be given particular consideration as a requirement of both legislation and policy. Concluding that there is an adverse impact on these features does not necessarily mean that the application should be refused. A balanced view should still be reached. The proposal of this site in the emerging Waste Development Framework should be noted and whilst the proposal may be larger than anticipated at the time that decision was taken, I do not believe that these changes make the impacts significantly worse nor do I believe that these impacts are sufficient to outweigh the overall need for the facility and the support for the facility within the Development Plan.” It should also be noted that paragraph 90
of the PR concluded that there would be no adverse impact on Castle-an-Dinas. In cross examination, Mr Cahill accepted that the approach taken in the PR was entirely correct.

261. Secondly, it is plain that in 2006 when selecting the preferred sites for the WDF, of which the appeal site is one of only two, the Council did not see the impact of an EfW on the appeal site on cultural heritage assets as being unacceptable. It is to be noted that Mr Trehy examined the density of cultural heritage assets within the 5kms ZVI based on a 120 metres high stack on the appeal site and the other preferred site put forward in the WDF at Victoria. The results are summarized in paragraph 4.44 of SITA/7/2. In short, there are many more cultural assets around the Victoria site. Thirdly, as Mr Cahill confirmed in cross examination, he had not been asked to identify another site within the CCAS or elsewhere for a similar facility which would give rise to less impact on cultural heritage assets.

262. Fourthly, the Council has accepted the principle of industrial development on the appeal site in the adoption of MLP Policy CC4 which permits ancillary development for the china clay industry. Fifthly, whilst the CISI (see CD/N12) recommended in 2004 that St. Dennis be designated as a Conservation Area, neither the Council nor the former Restormel Borough Council before it has taken action to do so in the intervening six years.

263. Neither does Mr Cahill’s position take any account of the assessment of EH. (In cross examination, Mr Cahill could not point to a single reference in his proof of evidence to the lack of an objection from EH). EH is the Government’s statutory advisor on cultural heritage matters and therefore considerable weight should be attached to its views. Significantly, it does not object to the proposals (see appendix 6 of SITA/7/3). EH’s position was adopted notwithstanding its conclusion that the proposal would significantly intrude into the setting of the area. EH was consulted no less than on three occasions and each time EH reiterated that it had no objection. It should be noted that EH endorsed the position of Mr Coplestone of Cornwall Historic Environment Service who required a condition requiring a programme of archaeological works to be implemented prior to the development. In cross examination, Mr Cahill agreed that Mr Coplestone had looked at both above and below ground matters (see his letter of 16 June 2008 in appendix 6 of SITA/7/3).

264. Whilst not “enthusiastic” (to quote Mr King) about the appeal proposal, had EH considered that significant harm would be caused to heritage assets which would not be outweighed by the benefits CERC would deliver, it is surely inconceivable that it would not have formally objected (as opposed to simply expressing concern and disappointment) in accordance with its Policies and Guidance (see CD/N3) which is specifically to guide its staff in their consideration of proposals (see paragraph 20 of CD/N3). It should also be borne in mind that the Council’s Historic Environment Service raised no objection to the proposed development.

265. Significantly in the refusal notice the Council did not cite WLP Policy E4 (see page 52 of CD/D5) which, as Mr Cahill agreed, is the principal policy which deals with the historic environment in the context of applications for waste management facilities. It is all the more significant because, as Mr Cahill agreed in cross examination, Policy E4 is apt to address all of the cultural heritage assets which the Council claim are adversely affected by CERC (save for AEL which Mr Cahill agreed was not addressed by any development plan policy). Given the
statutory duty to cite all relevant development plan policies, one must conclude that the Council did not consider there was material conflict with this policy: after all, as the key policy or at least a key policy it could hardly have been overlooked. Instead, the Council have chosen to rely on, first, Policy C1 which as discussed elsewhere addresses the proper operational management of waste management facilities; secondly, SP policies which predate the WDF which identified the appeal site as a preferred site for CERC; and, thirdly, policies within the RBLP which the parties agreed are of limited relevance given the existence of the WLP.

266. Before turning to consider the heritage assets which feature in this reason for refusal, it is to be recalled that CERC would cause no direct impact to any nationally designated historic landscape or national heritage asset, still less would there be any loss or even damage to the fabric of any national heritage asset. At most we are dealing with landscapes or areas of County or local importance and effects on the setting of listed structures or ancient monuments.

The Manorial Boundary/ Boundary Stone

267. Perhaps the clearest example at this inquiry of the Council’s failure to apply the proper approach to managing change in the historic environment was Mr Cahill’s complete abdication of the principles of proportionality and reasonableness when dealing with the MB/BS issue. A prodigious amount of time and effort has been devoted to this issue which it is suggested was out of all proportion to its true significance. As Mr Trehy put it in examination in chief even if Mr Cahill was 100% right and he was 100% wrong, at most we were dealing with something of local importance. (Peter Herring and John R. Smith come to the same conclusion in relation to the BS, para 7 of SITA/7/6).

268. Following an extensive cross examination on the MB/BS issue the Inspector asked Mr Trehy what weight the Secretary of State should attach to this matter. Mr Trehy’s reply was that it had no context other than as a local site. Mr Cahill completely failed to follow the overarching aim in PPS5 to conserve heritage assets in a manner appropriate to their significance and the further advice that decisions should be made on the basis of the nature, extent and level of significance and investigated to a degree proportionate to the importance of the heritage asset (see para 7 of CD/N14). The appellant submits that it is completely unrealistic to claim that the MB/BS could be of national importance. There are over 1500 surviving Anglo Saxon land grants or charters known in England with 840 of them having attached boundary clauses (see para 13 of SITA/7/6) and in Cornwall alone there are 22 pre-Conquest charters (see para 10 of SITA/7/4). Mr Trehy explained that they are common features in the Historic Environment Record database and that it was not unusual for Parish boundaries to follow manorial charter boundaries; he knew of no instance in Britain where such a feature had been nationally designated.

269. It says much of this objection as a whole that the Council’s oral evidence at this inquiry was dominated by the question of the MB/BS. However, the MB/BS is not designated. (In this respect, it is to be noted that Mr Cahill did not know of any nationally designated pre-Conquest MB/BS in Britain). It has only been included in the County HER database following the evidence given at this inquiry. Moreover, Mr Cahill’s analysis of the MB conflicts with that of two of the foremost experts of the subject: Hooke, an expert in deciphering Old English and in land charters, and Herring, one of Cornwall’s leading archaeologists, whose
assessment was that the Trerice charter was not especially valuable (see page 74 of appendix 6 of STIG’s evidence).

270. In contrast to Mr Cahill, Mr Trehy’s analysis accords with these experts’ conclusions. Mr Trehy’s conclusions are further supported by an analysis of the ground conditions. The track on which the BS stands has been geotechnically analysed and is made ground. (Mr Cahill agreed in cross examination that it was). Lastly, it should be said that the aerial photo (see appendix 13 of CC/6/6) Mr Cahill adduced in evidence only appears to endorse Mr Trehy’s assessment. Desire lines are conspicuous by their absence over the route advocated by Mr Cahill. This contrasts markedly with the field directly to the south where such lines are clearly present.

271. In the end, this disagreement needs to be placed in context. It just does not matter who is right when the proper principles of cultural heritage management are applied and when any harm to the MB/BS is placed in the planning balance. It is clear that the need for CERC dramatically outweighs any harm caused to the MB/BS even if its importance – which we dispute – is as significant as Mr Cahill contends.

Anciently enclosed land

272. Again, a degree of realism has to be applied to the assessment of the impact of the proposal on AEL. Much, if not most, of Cornwall is an historic landscape and in all likelihood it would not be possible to site a major waste management plant anywhere in the County without there being an impact on that historic landscape. Certainly no one has identified a site suitable for CERC that would not have that effect.

273. AEL is the most widespread historic landscape character in the County covering some 57.5% of the landmass (see page 40 of CD/N13(a)). Whilst STIG tell us that in St. Dennis AEL is less widespread, it still accounts for over 40% of the area. Moreover, and contrary to Mr Cahill’s repeated assertion, AEL is not a designation but simply an historic landscape character description. Nor is it specifically protected by any development plan policy.

274. The Cornwall Archaeological Unit expressly warns against ranking the historic character areas in terms of importance, reiterates the point that these are descriptions and not designations and emphasises that it would be wrong to use the descriptions to influence planning control (see page 47 of CD/N13(a)). Certainly the characterisation of this area as AEL did not deter the Council from identifying it as one of only two preferred sites for a large EfW plant, nor did it prevent this area from being identified as the least sensitive landscape and therefore the most appropriate for accommodating a major scale wind farm.

275. The reality is that the proposals remove only two fields which are described as AEL, in an area where there has been significant loss of ancient field boundaries (see para RF1 of SITA/7/5). The effect of their loss must be assessed with a degree of reality. These are not fields which form part of the intricate small field pattern on Carne Hill and surrounding the Church identified as being of particular significance. Rather the two fields sit on the edge of a large tract of agricultural land. Post development the character of that large tract of agricultural land will remain just as legible and the County will still have almost 60% of its landmass described as AEL.
276. As Mr Cahill agreed in cross examination, the assessment of the impact of the proposal must be made against the area as a whole as opposed to on the basis of the impact on individual fields (see second bullet point on page 88 in appendix 12 of SITA/7/3). The actual effect of the proposal on AEL in the area is extremely limited. Meanwhile the need for the facility is great. This is precisely the situation where the principles of proportionality should be applied. When the effect on AEL is considered in the planning balance the clear conclusion is, we suggest, that the impact is plainly acceptable.

277. As a tailpiece to the AEL issue, it is to be recalled that Mr Trehy had been supplied with erroneous information by Council officers that the appeal site fell within a zone re-described as ‘recently enclosed land’ and that he had no reason to question this information given the changes that had affected the site and nearby land (see SITA/7/4). It is, therefore, unfortunate and indeed unfair that in the closing submissions of SDPC/STIG, Mr Trehy is criticised for failing a “pretty basic task”.

*St Denys Church*

278. The Church is over 1 km distant from the appeal site. The setting of the Church has been the subject of some marked and relatively recent changes following the devastating fire in 1985. Approximately 100 trees were planted along the Church green and graveyard in 1995. It is the somewhat isolated form of the hill and the identifiable cluster of those recently planted trees around the Church complex that are recognisable in the immediate and wider environs. From most angles it is difficult to pick out the Church itself. Taken around Carne Hill in cross examination, Mr Cahill had to concede that only the Church tower could be partially glimpsed from most views (see GC022, 31, 32, 36 and 82).

279. The church is a significant landmark in the settlement of St Dennis and in the wider landscape, notwithstanding that there are other structures that compete with it including the Parkandillick works, the Indian Queens Power Station, numerous pylons and masts and several prominent sky tips and other spoil heaps. The setting of the Church has experienced radical change; it forms part of a dynamic landscape with a pronounced industrial character which continues to change and has a well demonstrated ability to accommodate further change. Despite these changes to its setting, Carne Hill and its Church are still seen as dominant features in the landscape, largely because of the isolation of Carne Hill and its elevation relative to the surrounding land. The significance of Carne Hill as a former hill-fort can still be appreciated and this would continue if CERC were built and operated. Set apart by over 1 km, CERC would not detract from the dominance of the isolated hill over the low-lying surrounds and the viewer looking out from the Church precincts would still understand the defensive qualities of the Carne Hill to our forebears.

280. St Dennis is itself described by the RBLP as dominated by both the Church and the china clay industry (see para 42.1 of CD/D4). Moreover, St Dennis is not a traditional church town but developed through the amalgamation of three separate settlements whose populations flourished as a consequence of the china clay industry. It can be seen that industry is a fundamental part of the historical setting of St Dennis and its Church.

281. The Church and, in particular, Carne Hill on which it stands, also enjoy an important relationship with Castle-an-Dinas. These two sites functioned as
centres controlling a large area of varied territory and that historical function can still be understood. Lying well outside the area which intervenes between those two features, CERC will not interfere in anyway with that relationship. It is also important to appreciate that when a visitor approaches the Church complex there will be no juxtaposition of the proposed development with any part of the Church. On leaving the complex there are extensive panoramic views which take in the full panoply of the active and disused mineral and other industrial activity.

282. Once within the Church complex the area is best subdivided into three parts: the car park, the Church green and the graveyard. The most significant effect on the setting of the Church is from the car park (see GC024). However, from this vantage point one sees almost all of the settlement of St Dennis and its modern encroachments towards the church, together with the full panoply of industrial development, tips and other mining activity in the landscape all of which form part of the landscape and its character. The landscape is well able to accommodate CERC. The proposed development will sit against a backdrop of pre-existing industrial buildings and in such a way that will preserve the large tract of agricultural land which sweeps from east to west away from the appeal site. Whilst there will be obvious change, the fundamental character of the landscape observed from the church will remain largely unchanged.

283. The changes will be less pronounced when viewed from the Church Green as this is a relatively enclosed space with its own sense of immediacy and tranquillity (see plates 11 to 13 in appendix 3 of SITA/7/3). Its enclosure by both stone walls and a screen of conifer trees (which are still growing) isolate the area from the existing industrial works which, as a result, have little or no bearing on the immediacy or tranquillity of the Church green and are not a detracting aural or visual factor to the appreciation of the Church green or its setting.

284. The effects of the proposal will be even less pronounced when considered from the churchyard. The experience within the churchyard is one of seclusion, isolation and immediacy. The sense of place is intimate and contemplative as there are no detracting elements such as traffic, residential or industrial noise or structures that reduce the quality or appreciation of the churchyard and its many graves (see plate 15 in appendix 3 of SITA/7/3). GC059 – which is a winter view and which was taken on request from the Council from a position off the footpath and from a location which can only be accessed by crossing graves – demonstrates clearly that the proposed development would not, as Mr Trehy said in examination in chief, erode the seclusion and tranquillity of the Church and would not cause harm to the setting of the Church.

285. Lastly, but significantly, despite the Council citing numerous RBLP policies in reason for refusal 3, it does not identify any conflict with either Policy 32 of the RBLP, which seeks to conserve the character of ALAHV, or Policy R71 of the RBLP which proposes the St Dennis ALAHV. Importantly, the boundary of the ALAHV is stated to have been drawn to include the area crucial to the visual setting of the church (see para 42.3 of CD/D4). The area comprises principally Carne Hill and Fore Street. CERC lies well outside this area and will have no direct effect whatsoever on the area crucial to the church’s visual setting.
286. There are two principal reasons why the proposal will not have an adverse impact on either Trerice Bridge or the AGHV within which it sits. First, the proposal will use a newly constructed bridge about 45 metres to the west of Trerice Bridge and, therefore, will have no direct impact on the listed structure. Whilst CERC will be a significant addition to the wider landscape in views from the approach to the bridge, there are no historic or functional links to give this change relevance to the setting or interest of either Trerice Bridge or the AGHV. It should also be noted that the setting of Trerice Bridge has been extensively altered over the years by the China clay industry at Wheal Remfry and more recently and again extensively by works to the new road at Stamps Hill and on the immediate approach to the bridge (see plates 1 and 2 of appendix 3 of SITA/7/3). The proposed new bridge and junction would, by contrast, be set apart from the listed structure and, especially once the associated landscaping has taken hold, would not materially harm its setting. The ability to appreciate the significance of the bridge as an early crossing point of the river would continue unimpaired.

287. Secondly, the assemblage of historic assets in the surrounding AGHV which apparently led to its designation has very little visual presence. Some have been destroyed, others buried and those that remain are largely hidden within the established woodland. In fact, Trerice Bridge is one of the few structures within the AGHV which has a significant visual presence. Mr Cahill agreed in cross examination that none of the cultural assets he had identified within the Trerice Bridge AGHV were in good condition and concluded that their value was principally archaeological. Plainly, CERC and the proposed haul road will leave these assets’ archaeological value intact. Accordingly, the presence of CERC will have no bearing on the historic elements of the AGHV or Trerice Bridge.

The Engine House

288. The objection in relation to the Engine House is wholly unpersuasive and fell away under cross examination when Mr Cahill agreed that the proposal would not have any material effect on the functional setting (which both Mr Trehy and Mr Cahill agreed was the associated clay works) of the Engine House or its relationship with the wider landscape and, in particular, the St Dennis AEL. (Mr Cahill agreed in cross examination that the Engine House was unaffected in the following views: GC022, 23, 26 and 54. Mr Trehy explained in examination in chief that the appeal site was not in the functional setting of the Engine House or, indeed, within its setting as a whole).

289. Significantly, there will be no juxtaposition of CERC and the Engine House nor any intervisibility between them from what the council contend is the primary setting to the south (see GC058). As Mr King suggested, there will be positions from within the Parkandillick complex from where both the Engine House and CERC will be able to be seen. However, even where such a relationship exists, the Engine House is always approached and stands within the context of the china clay workings such that the functional setting of the Engine House will be preserved, as Mr Cahill acknowledged in answering the Inspector’s questions, so that, as Mr Trehy summarised the position in examination in chief, although CERC would only be 300 metres to the north there is nothing in the appeal proposal which would adversely affect a visitor to the Engine House. The Engine House has a distinctive form and stands out in some views in the wider
landscape. There is no reason why CERC’s presence in this landscape would obscure or detract from such views.

Castle-an-Dinas

290. The Council did not really push their objection in so far as it relates to Castle-an-Dinas. This is perhaps not surprising given that Castle-an-Dinas lies some 4.9kms to the north of the appeal site and the clear conclusion in the PR (see para 90 of CD/B1) that the proposal would not cause any harm to either the setting or long landscape views to and from the ancient scheduled monument. The proposal would have no direct impact on the Castle-an-Dinas AGHV.

291. As Mr Trehy explained in examination in chief, Castle-an-Dinas must be understood in the context of the 360 degree panorama from the hill fort. That panorama is a fundamental part of its historical and cultural significance as a hill fort. Of course, the panorama encompasses Newquay Airport, a number of wind farms, the A30, the Indian Queen’s Power Station, the railway line, industrial buildings associated with the china clay industry and tips and quarries. The interrelationship between Castle-an-Dinas and Carne Hill is clearly the principal justification for the extent of the AGHV. CERC would not intervene in views between the two former forts and Mr Cahill agreed in cross examination that the appeal site did not interfere with that interrelationship. It is extremely difficult to see how CERC at some 4.9kms from the hill fort and sited adjacent to existing industrial buildings would be materially detrimental to the setting of the Castle-an-Dinas.

Conclusion

292. Finally, attention is drawn to Mr King’s submissions in his closings that cumulatively the impacts on heritage assets were unacceptable. Significantly, it is not suggested that the impact on any individual asset should itself be regarded as unacceptable.

Fourth reason for refusal: impact on public rights of way

293. In assessing the impact of CERC on particular rights of way close to or crossing the Appeal Site (including the access and haul roads), it should not be forgotten that, as Mr Daly agreed in cross examination, the walker in the vicinity of St Dennis has the benefit of a wide range of choice: a network of public rights of way radiates out from St Dennis in all directions (see SITA/6/4 and GC073). These formal footpaths are augmented by a series of permissive paths (see plan in appendix 20 of CC/8/3) and allied to these formal and informal paths the public benefit from access to a significant area of open land, principally to the north and west of the appeal site see SITA/6/4 and GC073. The CROW Access Land is depicted in yellow).

294. Users of these paths cross a mixed landscape which includes industry on a significant scale and its associated traffic. The footpath system is therefore already subject to the acoustic and visual effects of industry and the HGVs which service that industry. In re-examination, Mr Coulson said that “it is almost impossible to walk the footpaths without having some views of industrial buildings”. It is important in assessing the effect of the proposal to have regard to the fact that industrial noise and noise from HGVs would not be a new feature in the soundscape; rather users of the footpaths at present will expect to experience and do actually experience the noise characteristic of industry.
295. Mr Stephenson agreed in cross examination that users of footpath 5 would experience noise levels of up to 55dBA. (See table 6 in CD/C4. This provides a background noise level of between 40 – 48 L_{A90} on footpath 5. Mr Stephenson agreed with Mr Dennis that the L_{EQ} would be “comfortably” up to 55 dBA. And note Table 8 where the baseline on footpath 2 is up to 55). Footpath users would expect to see industrial buildings and activity in this landscape. Any effects caused by CERC must be measured in this context. Moreover, the only empirical evidence before the inquiry suggests that the footpaths in the vicinity of the appeal site are only lightly used. (See appendix 4 of CD/A11. Whilst those local residents who have attended the inquiry regularly rejected this assessment, the survey must be given due weight as (a) the only empirical evidence and (b) the evidence was gathered by the Council’s own employees).

296. Planning policy does not provide anything like absolute protection to public rights of way. The reason for refusal relies on three SP policies. Policy 2 has nothing on its face which relates to public rights of way. Policy 6, which deals specifically with the provision of capacity for the sustainable management of waste in the County, provides only that development must be compatible with the protection of local amenity from significant adverse impacts. Accordingly, the policy does not seek to prohibit any adverse impact on footpaths. Rather, in recognition of the importance of and need for waste management facilities, it provides that any impact should be less than significant. Policy 13 is aimed, principally, at improving existing tourism facilities. It would be unconvincing in the extreme to suggest that the network of public rights of way in the vicinity of the appeal site comprises a tourist facility and so it is difficult to see how this policy is, properly analysed, relevant.

297. Lastly, the reason for refusal cites conflict with WLP Policy C1. This is directed at operational control. The principal concern of the policy is to ensure a proper regulatory regime is imposed at the time of the grant of planning permission. The policy does not address public rights of way directly but provides that applications should satisfactorily demonstrate that proposed site management measures can be ensured to protect local amenity through minimising emissions of noise, dust, fumes and odour. Public rights of way are specifically considered in the justification text (see para 7.24 of CD/D5). However, this text provides only that the Council will have regard to the impact of proposals for waste management facilities on public rights of way in determining applications – nothing more.

298. WDF Policy 32 is not cited in the reason for refusal but is relevant. It is a policy which applies during the operational life of a development and provides that development will be permitted where it does not have an unacceptable impact on and would not lead to a net loss of the public rights of way network. There are two points of note: first, relevant planning policy does not prohibit adverse effects on the network and, secondly, as a matter of fact, the CERC proposal does not lead to a net loss of the network. This was agreed by Mr Daly in cross examination. As the PR recognises (see para 112 of CD/B1) any harm to the footpath network must not be considered in isolation but form part of the overall balancing exercise. Significantly, the draft PR which was authored by Mr Daly (who led the Council’s evidence at the inquiry in relation to the impact on footpaths) advocated a similar approach (see para 115 of appendix 17 of CC/8/3). The PR goes on to conclude that any harm caused to the footpath network does not outweigh the benefits of the proposal (see para 112 of CD/B1).
299. The Council’s judgment on the significance of the footpath network in the vicinity of the appeal site has been evidenced in its past actions. First, and most significantly as this judgment was made in the specific context of considering the best location for an EfW, in selecting the preferred sites for the WDF, of which the appeal site is one of only two, the Council explicitly considered and weighed in the balance the impact upon users of public rights of way (see para 7.24 of CD/D5). It is plain that in 2006 when that exercise was carried out the Council did not see the impact of an EfW on the appeal site on public rights of way as being unacceptable.

300. Secondly, despite the Council’s duties under section 130(1) of the Highways Act 1980 to assert and protect the rights of the public to use and enjoy public rights of way, the Council, as confirmed by Mr Daly in cross examination, has taken no action at all to address the fact the footpaths 17, 108 and 109 were blocked or otherwise impassable. If these paths were so important or well used one might have expected the Council to act.

301. The physical changes to the network brought about by the proposal are detailed in the appellant’s response to the Regulation 19 request (see CD/A11) and in drawings provided in the response to a clarification request (see CD/A13). Given the extensive network of footpaths in the area, it would be fair to describe the direct impact of the proposal on the footpath network as limited. Wherever a facility of this scale is located it is inevitable that there will be some impact on rights of way. Here, however, the site is well removed from the AONB, Heritage Coast or other sensitive areas and the context is entirely different from the two appeal cases that Mr Daly referred to at paragraphs 7.31-34 of his proof of evidence (CC/8/2).

302. Mr Daly listed nine footpaths that he alleged would be physically affected (footpaths 2, 5, 14, 15, 17, 18, 31, 108 and 109) by the development and a further four (footpaths 10, 13, 16 and 26) that would be indirectly affected, although he considered that the footpaths most affected by CERC would be footpaths 2 and 5. Footpath 5 has been classified as “gold” status but only, it seems from the criteria at para 7.29 of CC/8/2, because it starts from a settlement. Footpath 2 is a “silver” route. In cross-examination it was shown that the majority of these footpaths would not be changed at all and that where there was some effect it was either modest or even beneficial.

Footpath 2

303. Whilst the planning application was considered on the basis that Footpath 2 would need to be diverted to run along a new footway directly adjacent to the access road (See appendix 22 of CC/8/3), the consultation responses in response to the Council’s preliminary footpath consultation dated 8 January 2009 (see appendix 15 of CC/8/3) cited as supporting this reason for refusal were also written on this understanding. In fact the objections raised by both the Ramblers’ Association and the Cornwall Countryside Access Forum are entirely addressed by the updated position), the appellant has clarified during the course of the inquiry that footpath 2 will be able to be retained in situ to the north of the access road so that the footway to be provided alongside the access road will be an additional route.

304. The dense, overgrown vegetation that blocked parts of footpath 2 was cleared shortly before the Inquiry, but prior to that it is clear that footpath 2 was at best
difficult to use. In the circumstances, the extra footway along the access road, which will be hard-surfaced, can only be regarded as an advantage to offset any harm to amenity caused by the introduction of the Cornish hedge and access road. The new hedge will help screen the existing footpath 2 from the effects of traffic on the access road.

Footpath 5

305. (It should be noted that, whilst Mr Daly in his proof said that all the footpaths which would be negatively affected and which would be subject to the most significant physical alterations have “gold” status under the Public Path Improvement Plan (CC/8/2, pp.7.30), he accepted in cross examination that that statement only properly applies to footpath 5).

306. CERC will have the most direct effect on footpath 5 which will have to be diverted around the perimeter of the appeal site. The reason for this is to facilitate the future provision of rail access facilities, a commendable feature of the development. Footpath 5 is one of the parts of the network which is currently most affected by industry. Users of the footpath are already used to experiencing the effects of industry. The introduction of CERC will not introduce alien characteristics into the experience of this footpath. Secondly, by no means does footpath 5 always have a dry and stable surface. In winter and after heavy rain there are significant muddy areas or quagmires especially where cattle poaching occurs. Mr Coulson relayed in evidence in chief the fact that he almost lost his Wellington boot twice in trying to use footpath 5. The appellant’s proposal will considerably improve the usability of the footpath by appropriately surfacing the route.

307. Thirdly, the circular walk around Little Trerice of which footpath 5 forms part will be preserved and, given the improvements to this footpath in terms of all weather accessibility, enhanced. As such footpath 5 would, post development, be suitable for the programme of walks organised by Mobilise, an organisation backed by the NHS and brought to the attention of the inquiry by STIG, for, in particular, those who do little exercise. Mobilise try to avoid steep hills, stiles, many steps or very muddy and slippery surfaces (see page 2 of CD/P5). Fourthly, a link will be provided with footpath 14 in the north eastern corner of the appeal site and a means of access provided to the open access land to the north east of the appeal site. Both these measures will improve the permeability of the footpath and open land network for users.

308. Fifthly, it is difficult to imagine the 400 metre increase in length caused by the diversion of footpath 5 will be of any consequence whatsoever when weighed against the benefits identified above. (It should be noted that in the STIG consultation response in relation to footpaths, STIG recognised (a) that some form of drainage for footpath 5 would improve accessibility and that the link to footpath 14 will provide more walking options, see page 14 of appendix 22 of CC/8/3). Finally, it should be noted that the diverted section of the footpath will be attractively landscaped and whilst it will not be positioned hard up against the security fence, the precise alignment is flexible and could, if the Council prefers be pulled farther away from the plant.

Footpath 17

309. Footpath 17 currently runs along the middle of part of the local road network, the C184. The current situation is anything but desirable. The appellant will
provide a footway alongside the road which is self-evidently advantageous as recognised by Mr Daly in cross examination and by STIG (see page 14 of appendix 22 of CC/8/3).

Other footpaths

310. The changes to other footpaths are extremely minor.

311. **Footpath 14**: although no works are proposed to this path, it is clear that there will be an increased industrial presence where it passes the appeal site. However, the simple fact is that footpath 14 passes through the china clay works so that heavy industry is already a fundamental part of its character.

312. **Footpath 15**: the crossing of this footpath and the haul road will be formalised. Mr Daly’s suggestion in paragraph 7.38 of his proof of evidence (see CC/8/2) that footpath 15 will be severed is spurious. First, footpath 15 already crosses the existing track used by Imerys vehicles. As such, the changes will improve pedestrian safety. Secondly, footpath 15 is, in any event, difficult to locate on the ground and so apparently is very little used if at all (in cross examination, Mr Daly conceded rather awkwardly that footpath 15 would “continue to be severed”).

313. **Footpath 18**: there will be no material direct changes to this footpath.

314. **Footpath 31**: the only change is that the junction of this footpath with footpath 5 will be formalised with additional signage and the provision of a style.

315. **Footpaths 108 and 109**: neither of these footpaths is currently used. The proposed changes will therefore be of no effect.

316. Mr Daly also referred to footpaths 10, 13, 16 and 26 being indirectly affected by CERC. He identified three principal forms of indirect impacts on the network of public rights of way: noise, dust and landscape and visual impacts. This will be dealt with in turn.

Noise

317. Table 8 of the Noise SoCG (see CD/C4) sets out the predicted operational noise levels, taking out of mitigation measures, on public rights of way. There is little guidance as to acceptable noise impacts on public rights of way. MPG11 is the only document to suggest a noise limit. (The WHO guidance (see CD/L8) provides that existing quiet outdoor areas should be preserved and the ratio of intruding noise to natural background should be kept low in relation to parkland and conservation areas (see pages xiv & 65). Mr Stephenson agreed in cross examination that in referring to parkland and conservation areas, the guidance was not dealing with footpaths. The IEMA guidance refers to “open air amenities” as a possible location for baseline monitoring but does not suggest an acceptable level of noise for such areas. It does, however, suggest a hierarchy of sensitive receptors in stating that sites such as those of special historic interest and nationally recognised footpaths and beauty spots should be considered as particularly sensitive (see para 5.17 of CD/L13). No party has suggested that the footpaths in the vicinity of the appeal site fall into this category).

318. Whilst MPG11 has been replaced by MPS2, Mr Dennis thought it the best available guidance. Mr Stephenson stated (see para 5.9.1 of CC/2/2) that it was of interest as it was the only guidance that contained absolute noise limits for
public spaces. MPG11 suggests a noise limit of 65 dBA during the day for gardens and open spaces which the public uses for the purposes of relaxation. (Note: MPG11 was superseded by MPS2 in October 2006. Annex 2 of MPS2 addresses noise. There is no specific suggestion as to noise limits for footpaths or outdoor recreation areas. For short term noise a limit of 70 dBA for 8 weeks is suggested and for the longer term noise should not exceed the background level by more than 10 dBA subject to a maximum of 55 dBA during the day and 10 dBA and 42 dBA respectively at night, see paras 2.19 and 2.20 of CD/L3).

319. In cross examination, Mr Stephenson agreed that footpaths were by their nature a less sensitive receptor than a garden or such public open spaces. He also agreed that 65 dBA was a reasonable noise level for footpaths. It was, therefore, wrong to seek to apply a limit of 55 dBA drawn from WHO guidance relating to balconies, terraces and outdoor living areas which are used in an entirely different way from and are clearly more sensitive to noise than footpaths. Table 8 of the Noise SoCG demonstrates that no footpath will breach the MPG11 level of 65 dBA, even during the peak hour for traffic movement (apart from footpath 17 which at present runs along the carriageway of the C184), which both noise experts at this inquiry agreed to be the suitable test.

320. As a consequence the noise impact of CERC on the amenity of the network of public rights of way should be considered acceptable. Two further points provide additional comfort in drawing this conclusion. First, the predicted noise levels take no account of how a user of a footpath ordinarily experiences noise. People using the footpath, unlike someone resting in their garden, move through the soundscape. For example, a person heading north on footpath 18 will quickly move away from any noise caused by HGVs on the C184 or on the access road. Secondly, the deliveries to CERC will be limited to the working week and Saturday mornings. The evenings and the majority of the weekend together with public holidays, when people are most likely to be relaxing, will effectively return to the predevelopment background noise levels. There will, of course, be a noise impact on the footpath network during the course of construction. This will be by its nature temporary. Mr Daly agreed in cross examination that anything under 65 dBA would be acceptable. The unmitigated noise levels at La Mount Corner (the area subject to the greatest effect) are, at their worst, 77 dBA. Mr Dennis explained, and he was unchallenged on this, that the introduction of mitigation measures would ensure a reduction to acceptable limits. The agreed noise condition will ensure this (see CD/C9).

Dust

321. Although Mr Daly raised the potential impact of dust on footpaths as a specific objection in his proof of evidence (see paras 7.53 and 7.54 of CC/8/2), it should be noted that it was not a matter expressly referred to in the Report or the reason for refusal. Mr Daly agreed in cross examination that this was a matter that could be properly dealt with by condition and, consequently, the issue does not need further consideration here. Mr. Webb, it will be recalled, was satisfied that dust control measures would ensure that dust was kept to a “trivial” level.

322. In conclusion, whilst the proposals will cause some change and some harm to the footpath network, these changes must be understood in context. Policy does not seek to prohibit harm to public rights of way. Rather it seeks to balance the need for new development and the need to avoid unacceptable harm. Where, as here, we are dealing with a needed and critical infrastructure project, a higher
degree of impact can and should be tolerated as compared with development which does not have this importance. In any event, this is a network which permeates and is heavily influenced by the mining industry. As such users of the network will be used to their experience of the network being affected by the characteristics of industry. Neither should it be forgotten that the proposal will also provide some real benefits to the footpath network and these must be weighed against any harm. The appellant’s case, again in accord with the conclusion of the PR (see para 112 of CD/B1), is that any harm caused by the proposal, either directly or indirectly, is outweighed by the need for the development.

**Landscape and visual impacts**

323. The landscape and visual impacts of the proposal have already been comprehensively addressed under the second reason for refusal. Most of these footpaths are located in positions either to the north or west of the appeal site from where the appeal site is seen against the backdrop of industrial buildings, including large vertical elements, and landform which has arisen as a direct result of industry. In the circumstances, users of these footpaths already experience the imposition of industry in the landscape when on the network. The same situation will persist following development.

Fifth reason for refusal: impact on residential amenity due to noise

324. As Mr Stephenson agreed in cross examination, in a small and crowded island such as the United Kingdom it is inevitable that development, including facilities such as CERC, will be required near dwellings and other noise sensitive receptors. The appeal site has a number of advantages in this respect. First, the appeal site lies outside any designated area where PPG24 paragraph 20 (see CD/E16) requires “special consideration” to be given to noisy development: it is agreed that outside such areas there is less concern about noise. Secondly, the appeal site is adjacent to working industry. This is not a site which enjoys tranquillity. Rather it is influenced, in the words of Mr Stephenson, by noise from the clay processing plant and china clay workings as well as noise from traffic, including HGV traffic associated with the china clay industry, on the local roads (see para 2.3 of CC/2/2. At para 5.10.8, Mr Stephenson said that the ambient noise levels on the C184 at La Mount Corner “is currently dominated by HGVs coming and going.”).

325. Thirdly, whilst there are residential properties that will be adversely affected, these are relatively few so that any harm is confined to a limited number of houses. Proximity to sensitive receptors was an explicit consideration (and, indeed, received the highest weighting) in the Council’s own site selection process in 2006 which led to the selection of only two preferred sites in the WDF, one of which being the appeal site (in CD/G3 site 4, the appeal site, proximity to sensitive receptors is adequate). Significantly, the Council has not identified any alternative site where a plant similar to CERC could be provided with no or less impact on dwellings. In short, this is a good location for the proposed development and the Council has recognised it as such having specifically taken noise into account.

326. This was also the conclusion of the Restormel Borough Council’s Environmental Health Officer who said it was a good site for CERC given the relatively high background noise levels relative to other sites within the County and the fact that
industry and HGV noise were already a characteristic of the area (see para 7.4 of SITA/8/2). Moreover, Mr Stephenson in cross examination agreed that as a general proposition it is a sensible approach to locate CERC in an area already affected by industrial noise. He made no attempt to suggest that there was another site where the noise impact would be less than here.

327. It is also important to understand the proper place of noise as a subject in the context of planning decisions. The Government recognizes that noise is an inevitable consequence of a mature and vibrant society (see para 2.1 of CD/L16) and that the planning system should not place unjustifiable obstacles in the way of development, such as CERC, which causes noise. The task for the planning system is to ensure that noisy development does not cause an unacceptable degree of disturbance (see paras 1, 2, 5 and 10 of CD/E16).

328. The consideration of noise is part of the wider balancing exercise that a decision maker must undertake. As Mr Stephenson agreed in cross examination, noise is not an overriding factor. That is clearly right for the Government recognised that there may be circumstances where it is desirable, having regard to other planning objectives, to allow noise generating activities on land near or adjoining noise-sensitive development (see para 18 of CD/E16). It is also clear that some receptors need more protection than others. Paragraph 20 of CD/E16 provides that noisy development in or near SSSIs requires “extra scrutiny” whilst the effect of enjoyment on other areas of landscape, wildlife and historic value should “also be taken into account.” Mr Stephenson confirmed in cross examination that it is not part of the Council’s case that noise from the proposed development would have any harmful effect on ecology.

329. The most recent Government advice on noise reiterates the importance of considering noise in context. NPSE was published by DEFRA during the course of this inquiry (see CD/L16 published in March 2010). The document does not change noise policy but seeks to clarify what is an acceptable noise burden to place on society (see para 2.4). NPSE confirms that noise must not be considered in isolation (see para 2.7) and, in particular, must be considered in the context of sustainable development (see para 1.6 in respect of noise policy vision. Mr Stephenson agreed in cross examination that CERC was sustainable development).

330. Significantly, one of the noise policy aims is to avoid significant adverse impacts. Therefore not only is the level of harm set at significant, the policy is expressed as an aspiration as opposed to a prohibition. It is clear from NPSE that DEFRA have been concerned that noise has been considered in isolation or at least with too narrow a focus and not placed in context in development control decisions. Inevitably, however, acoustic consultants such as Mr Stephenson do just this: they concentrate on noise and do not address the wider but crucial context in which this issue must be assessed. If the overarching principle of noise policy is to achieve a balance between the need for development and avoiding unacceptable harm, where, as here, the need is critical it follows that a higher degree of noise impact can and should be tolerated as compared with development which does not have the same importance.

331. However, a proper balancing exercise has already been carried out in the context of the planning application which was accompanied by a full noise impact assessment as part of the ES. The PR included an extensive analysis (see paras 94 to 105 of CD/B1), which Mr Stephenson agreed in cross examination
addressed all of the sensitive receptors about which he was concerned. The PR analysis concluded that, whilst the proposed facility would have a deleterious effect on the occupiers of a number of adjoining and nearby properties, the harm was not so significant as to outweigh the need for CERC. It will be recalled that Mr Stephenson had already been engaged by the Council to advise on the ES and so the PR’s conclusions would have been made in the light of his advice. It should be noted that, whilst Mr Stephenson did make some criticism of the ES, there has been absolutely no suggestion that the ES was inadequate and, in any event, Mr Dennis’s evidence now augments the ES chapter dealing with noise.

332. The PR’s conclusions were precisely the view of the Restormel Borough Council Environmental Health Officer who, after a similarly extensive analysis of the subject, raised no overall objection to the proposed development, despite acknowledging that CERC would have a noise impact in respect of residential amenity. (See the response of Restormel Borough Council to the Regulation 19 information). Mr Stephenson agreed that he simply had not engaged in the balancing exercise which is precisely the task that the Inspector must now carry out.

333. Before turning to the predicted noise impact of the proposed development a number of points should be made in relation to the policies on which the reason for refusal is founded.

334. First, as agreed by Mr Stephenson in cross examination, the policies of both the SP and the RBLP defer in relation to waste planning proposals in the WLP. In any event, it should be noted that the Restormel Borough Council’s Environmental Health Officer did not find conflict with RBLP Policy 37 which seeks to avoid “serious disamenity.” (Mr Stephenson agreed in cross examination that, if acting properly, the Restormel Borough Council Environmental Health Officer would have taken Policy 37 into account).

335. More significantly, both of the SP policies on which the Council now rely are aimed at preventing significant levels of harm (the word used in NPSE), in the case of Policy 6 in the express context of waste management. This is a direct translation into development plan policies of the recognition in national policy that the task for the planning system is to ensure that noisy development does not cause an unacceptable degree of disturbance and accords with the first policy aim of the NPSE. It should be noted that whilst the NPSE introduces a new term, SOAEL, into the lexicon of noise experts, it is of little substance to this particular analysis. SOAEL clearly relates to the first policy aim in NPSE: the avoidance of significant adverse impacts. However, it does not form part of the policy itself (it is introduced in the explanatory text) and no measure is given to define it. We are told that this is intentional in order to provide the necessary policy flexibility until further evidence and suitable guidance is available (see para 2.22 of CD/L6).

336. Mr Dennis suggested a level of 55 dBA (he said in cross examination that the equivalent levels for NOEL and LOAEL would be 43 and 50 dBA respectively). This is plainly sensible. SOAEL springs from no observed effect level (NOEL) and lowest observed adverse effects level (LOAEL) which are both WHO terms. 55 dBA is, of course, the onset of serious annoyance under the WHO Guidance. Therefore, with the exception of La Mount Corner the development simply does not give rise to SOAEL. Rather the impact of the development would fall somewhere above LOAEL but below SOAEL, such that the second NSPE policy aim
applies and all reasonable steps should be taken to mitigate and minimise adverse noise effects (see para 2.24 of CD/L16). Again, this does not amount to anything near a prohibition but a requirement to minimise.

337. Second, WLP Policy C1 is directed at operational control, that is, to say the principal concern of the policy is to ensure a proper regulatory regime is imposed at the time of the grant of planning permission. The policy itself and para 7.10 of CD/D5 says: "will not be permitted unless it can be demonstrated that: - ...proposed site management measures can be ensured to protect local amenity through minimising emissions of noise...In the case of each potential impact close regard will be given to proposed measures to minimise the impacts and to provide for mitigation where appropriate.") In fact, it is only in this context that the WLP addresses noise directly (see paras 7.15 to 7.17 of CD/D5) and, again, the principal concern is to identify required mitigation and to ensure that conditions are imposed so as to require best operational practice in running the facility.

338. Third, whilst noise and (where possible) its avoidance or minimisation are, of course, material planning considerations, it needs to be borne in mind that there are other statutory controls which will regulate CERC’s noise emissions, such as the important role of the EA in ensuring that CERC represents BAT in respect of noise from the plant and section 61 the Control of Pollution Act 1974 in respect of construction noise.

339. The starting point for the assessment of the noise impact of CERC is now the noise SoCG which sets out the agreed noise levels for the operational and construction phases of the development (CD/C4). It is important to bear in mind that these agreed operational noise levels are significantly different from those in Mr Stephenson’s main proof which had taken no account of any mitigation measures.

340. Next, the limited scope of the noise objection needs to be borne in mind. Essentially the Council accepts that CERC itself within the main site would not give rise to unacceptable noise and the objection is confined to noise outside the main appeal site generated by vehicles serving the site. This would not represent a new type of noise in the area since it is agreed by Mr Stephenson that the existing noise climate is already dominated by HGV noise. The objection was not concerned with noise levels inside dwellings but was confined to the external environment. Here there can be and has been no objection in relation to the most sensitive period of the 24 hour day, namely the night from 23.00 – 07.00 hours.

341. Further, during the next most sensitive period, namely the evening between 19.00 and 23.00 hours, there will be no HGV movements associated with the development. It is only during the normal working day that CERC will give rise to additional HGV movements and, therefore, additional noise. On weekday evenings after 18.00 hours, on Saturdays after 13.00 hours and at all times on Sundays and public holidays, that is times when people are more likely to be enjoying their gardens or using footpaths in the area, noise levels will revert to pre-existing levels. Concern was also expressed about noise generated during the construction period, but Mr Stephenson seemingly never had much enthusiasm for this and was primarily concerned with the measures to control and regulate that noise, which has been achieved in the agreed conditions.
342. Operational and construction noise are dealt with in turn.

Operational noise levels

343. (See table 7 in CD/D4. The effects of operational noise on footpaths are dealt with in under reason for refusal 4).

344. The predicted operational noise levels are set out in Table 7 of the Noise SoCG. (Note that whilst Table 7 does not include the noise from the operation of the facility, it is agreed that the operation of the plant itself is unlikely to cause complaints. Mr Stephenson confirmed this in an answer to a question put to him by the Inspector). An enhanced mitigation scheme has been put forward as part of this appeal including the 2.5m Cornish hedge on either side of the access road and the 3m acoustic barrier situated between the haul road and the rear gardens of Hawthorns and adjacent properties (See GC080 and GC079 respectively. Note that in the case of the acoustic barrier there is an additional conifer screen between the relevant residential gardens and the haul road which will provide some further sound attenuation but which has not been included in the acoustic modelling) and these measures have been taken into account in predicting operational noise levels.

345. Two principal points of note arise from the predicted operational noise levels as set out in Table 7. First, the table indicates that post development noise levels will not, with the exception of two properties at La Mount corner (La Mount and Glengarth) exceed 55dBA, the level identified as the onset of serious annoyance in the WHO Guidance (see table 4.1 on page 68 of CD/L8). However, that level is already exceeded at the front of those properties. Importantly, at the side of La Mount, where the recreational space is located, the levels will (even disregarding the attenuation provided by boundary features) be below the onset of serious annoyance. Further, the noise increase at the front of the properties is agreed to be 3 dBA, a change which Mr Stephenson stated (see para 3.4 of CC/2/2) to be the minimum perceptible under normal conditions and only 2 dBA at the side of La Mount.

346. However, the appellant has always recognised that the scheme will have a detrimental effect on the properties at La Mount corner and so has offered to install acoustic attenuation measures in the form of double glazing and mechanical ventilation. Those measures will significantly improve the current internal environment at those properties. Mr Stephenson agreed in cross examination that the current internal noise level is some 11 to 16 dBA above the level defined as good in BS:8233 (see table 5 on page 19 of CD/L15) and 1 to 6 dBA above the level defined as reasonable. Mr Stephenson also agreed that it would be technically feasible to achieve those recommended levels through the proposed mitigation. The appeal proposal therefore represents an opportunity to improve the internal living conditions in the properties at La Mount corner, which may be considered a particular benefit for the current occupant who is a shift worker and requires sleep during the day.

347. Secondly, for the Treviscoe properties at Barton Court/Road in terms of noise change there is an increase of 5dBA. The DMRB (see CD/L14) classifies such an increase as having a major impact. Mr Dennis explained in evidence (see also SITA/8/5) that the major impact would affect 24 properties although the exact degree of impact would vary across those properties depending on how far the
individual property was from the road. Moreover, the significance of the noise change at this location must be placed in context.

348. There are two important points to make. First, the absolute noise level post development in the same location would be 48 dBA which is comfortably below the threshold for the onset of even moderate annoyance under the WHO Guidance (50 dBA). Mr Dennis pointed out that the guidance in PPG24 on NECs is that 55dBA is the threshold below which noise would not be considered a determining factor for proposed new dwellings. Secondly, the noise change is only marginally above the threshold for a major impact under the DMRB which provides that a major impact exists at a noise change of more than 4.9 dBA. When understood in this context it can be seen that any harm arising from post development noise is limited.

349. In Table A2.1 of his Supplementary Evidence (see table A2.1 of CC/2/5), Mr Stephenson provides a noise level assessment under BS4142 (see CD/L1) which concludes that complaints would be likely at both La Mount and Barton Court. However, the assessment is fundamentally flawed and consequently should be rejected. Mr Stephenson included noise from HGVs on both the access and haul roads. (Mr Stephenson was not overly confident in doing so, he said in his proof of evidence that it was not a matter which was clear cut, see para 5.10.5 of CC/2/2).

350. However, the British Standard is explicitly concerned with noise from factories, industrial premises and fixed installations or from sources of an industrial nature in commercial premises and, as Mr King rightly observed in re-examination, BS4142 is on its face limited to noise from premises (see para 1 of CD/L1 dealing with “scope”. See also the forward which provides: “The standard is intended to be used for assessing the measured or calculated noise levels from both existing premises and new or modified premises.” The access road will be a public highway and not an “access track” as Mr Stephenson repeatedly wrongly described it. The ‘premises’ in any ordinary application of the word will begin at the entrance gate to the main CERC site. In cross examination, Mr Stephenson agreed that a public highway would ordinarily form no part of an industrial premise. (Note too by analogy that the EA’s Horizontal Guidance for Noise IPPPC H3 (Part 1) specifically excludes off site vehicular transport (see para 2.2 of page 6 of CD/L6). This concession by Mr Stephenson has apparently led to submission 6 in CC/0/9 that a mechanism should be in place to ensure that the access road becomes a public highway prior to CERC being brought into use. Such a mechanism is not required since the road will become a public highway, if not before CERC commences operations, then shortly, thereafter. However, the fact the submission is made demonstrates that the Council accepts or at least sees the force in the point that noise generated on a public highway should not be included in a BS4142 assessment).

351. Noise from HGVs on the access and haul roads does not therefore fall within the scope of BS4142. Mr Dennis demonstrated that if one applied the British Standard methodology to traffic using the public highway at La Mount corner complaints would be expected which demonstrated that the document was never intended to be applied in this situation. Significantly, no appeal decision has been referred to in which a public highway outside factory premises or a haul road remote from such premises has been held to be part of the installation for the purposes of the British Standard.
352. Mr Stephenson compounded this error by seeking to compare noise levels generated by CERC HGV movements with the existing L90 noise levels which, of course, exclude the noisiest 90% of noise events; including the existing HGV noise which he recognised dominates the existing noise environment. It is hardly surprising that such a hopelessly biased approach would indicate a change in noise levels that would be likely to generate complaints. Fairly, Mr Stephenson agreed that if noise from HGVs on the access road was removed from the BS4142 analysis in Table A2.1 then complaints would no longer be likely at either La Mount Corner or Barton Court and as a consequence there would be no areas of concern arising from that assessment. Significantly, the noise change assessment in the same table shows that the effect in every case, including La Mount and Barton Court, was considered to be minor or moderate. At paragraph 4.4 of his CC/2/5, Mr Stephenson explained that in many cases noise change best describes the impact on quality of life. Referring back to development plan policy, there is nothing here that would represent serious disamenity or a significant level of pollution.

353. In so far as the two farmsteads, Bodella and Rostowrack, are concerned, the occupiers will have a right to require the landowner to relocate them in suitable accommodation through the relocation agreement (see SITA/0/32).

354. In his closings Mr King criticised Mr Dennis for the manner in which he arrived at the level of 55dbA as the threshold of acceptability. The criticism went nowhere. However Mr Dennis arrived at the conclusion, the fact of the matter is that Mr Stephenson was content to use it as a criterion for his assessment (see table A2.1 of CC/2/5) and as Mr Dennis explained (in paras B21 and B22 of appendix B of SITA/8/3) 55dbA is the WHO benchmark which ensures an acceptable level of protection for the majority of people from the onset of serious annoyance. It is consistent with PPG24 and the NEC scheme where thresholds are chosen to avert significant community annoyance. It is also entirely consistent with the approach in the recent NPSE document.

Construction noise

355. (See tables 3, 4 and 5 of CD/C4).

356. The predicted construction noise levels set out in the SoCG for noise are completely unmitigated and based on assumptions which were so extreme as to have moved from a likely worst case to one which was unrealistic. Indeed, much of Mr Stephenson’s criticism in relation to construction noise was misplaced. Mr Stephenson failed to recognise that there was a lower cut off threshold of 65 dBA under which noise was not a concern. Mr Stephenson’s assessment of noise change starting at levels below 65 dBA was, therefore, wholly spurious.

357. The construction period is of course for a temporary period only and affects a strictly limited number of properties. The appellant has always intended that there should be mitigation measures taken and some evidence was given by Mr Dennis and Mr Coulson of measures that could be taken at La Mount Corner, the worst affected area. Furthermore, as Mr Dennis explained in evidence, the new junction at La Mount Corner will pull the road back from the two properties by some 7 to 8 metres which will result in a decrease in noise of at least 2 dBA.

358. Mr Dennis was confident that the construction of CERC itself and the associated roads could take place within the maximum levels recommended in BS5228, which are now enshrined in the agreed noise conditions. Mr Stephenson
was wholly incorrect to seek to apply the standard of 55 dBA from MPS2 in relation to long term earth movements when the noisiest operation of the bunker excavation would be completed well within 6 months and probably within 8 weeks thereby justifying a short term noise level of 70 dBA.

359. Fairly, Mr Stephenson agreed in cross examination that, in the event of the appeal succeeding and a condition being imposed which requires the prior approval of a noise management scheme, it would be possible satisfactorily to mitigate construction noise. Such a condition has now been agreed. Consequently, any harm arising from construction noise is capable of being dealt with by condition and, accordingly, would not form a proper basis for the dismissal of this appeal.

360. In conclusion, whilst it is clear that some harm to residential amenity will arise as a result of operational noise, the harm will be limited to a small number of properties – principally the two properties at La Mount corner. To some extent that harm will be offset by the opportunity that the appellant offers to the owners of those two properties to improve their internal noise environment over the existing situation. In the circumstances, and with the latest Government advice on the need to place noise considerations in the wider context of sustainable development, the conclusions of the PR that any harm caused by noise from CERC is not so significant as to outweigh the need for the facility is plainly sensible.

**Sixth reason for refusal: inadequate consideration of alternatives**

361. We have to begin by recording the fact that this reason for refusal is very unhappily drafted indeed. It is impossible to discern the nature of the objection. Does it relate to alternative sites or technologies or both? A decision notice should be carefully framed and set out the reasons for refusal in full. In this respect, it is to be noted that Article 22 (1) (c) of the Town and Country Planning (General Development Procedure Order) 1995 provides: "When the local planning authority give notice of a decision or determination on an application for planning permission...and – (c) planning permission is refused, the notice shall state clearly and precisely their full reasons for the refusal, specifying all policies and proposals in the development plan which are relevant to the decision...".

362. Reasons should be complete, precise, specific and relevant to the application (see Circular 03/09 at CD/B16). Despite this statutory requirement the appellant is faced with a reason for refusal which vaguely asserts that the applicant has inadequately considered alternatives. On 24 April 2009 the appellant wrote to the Council in order to clarify the meaning and intent behind the reason. (The letter is at appendix 5 of SITA/10/3). The Council’s response suggested that the members’ concern relates to the performance of the appeal site compared to known alternatives. (See appendix 6 of SITA/10/3. The concern was described in a letter dated 13 May 2009 as "the adequacy of the case for this site having regard to the likely effects of this development in this location when compared to known alternatives which was the crux of Members concern").

363. However, even after hearing the Council’s evidence, the ‘known alternatives’ with which the members are concerned are still a matter of complete conjecture for the Council has studiously avoided putting forward a preferred alternative site or technology. Mr Miles was extremely careful in evidence repeatedly to remind the inquiry that the Council was not putting forward any preferred site at which
they said there would be lesser environmental effects nor was the Council suggesting a better technology. It is, in short, a case put forward with a complete lack of clarity and conviction.

364. Throughout the inquiry, the Council has simply ruminated on mere possibilities without selecting and advancing an alternative. If the Council wish to promote a case that there is a better alternative site it is plainly for the Council to prove that case, especially since CERC represents the key asset in the delivery of the WMS as contained in the WLP. The Council, however, has expressly refused to do so. It is submitted that this is an unsatisfactory approach. (The first indication that the Council would not advance preferred alternative sites or technologies was in a letter from the Council dated 26 January 2010 (see appendix 7 of SITA/10/3). In the event, not even a "non-exclusive list of potential alternative sites" has been put forward).

365. In any event, the criticism that the appellant has 'inadequately considered alternatives' needs to be tempered with a little reality. The planning application was accompanied by detailed appraisals of potential alternative sites, technologies and numbers of EfW facilities, as well as the information contained in the ES (see CD/A2 and CD/A7 to CD7/A10). More recently, the appellant has updated the alternative sites assessment (see CD/A20). It is a suite of work which IEMA described in their consultation response as thorough and gave it the highest score of 'A' (see para 1.4 of tab 50 of file 9 out of 11 in X/1).

366. The entire body of that work endorses the selection of the technology, the site and the number of facilities. Moreover, the appellant responded, apparently successfully given that, as Mr Greenwood points out in evidence, there are no outstanding matters, to a series of requests for further information from the Council (see CDs.A11-A19). It should be noted in particular that the Council requested nothing in respect of further investigation of alternatives.

367. It is important to place the consideration of alternatives properly within context of the decision now before the Inspector and the Secretary of State. None of the policies (SD1 (Ecological Footprint) of the draft RSS, Policies 1 (Principles for Sustainable Development), 3 (Use of Resources) and 6 (Waste Management) of the SP and Policy C1 (Operational Practice) of the WLP) relied upon in the sixth reason for refusal require the promoter of a waste management facility to consider alternatives. The WLP refers (see page 59 of CD/D5) to the EIA Regulations which impose a limited legal requirement to investigate alternatives.

368. The EIA Regulations provide that an ES need only include an outline of the main alternatives studied by the applicant and an indication of the main reasons for the applicant’s choice taking into account environmental effects. (See paragraph 4 of part II of schedule 4 of the EIA Regulations). The Regulations do not require an exhaustive and in depth examination of all possibilities. The approach taken in the documents accompanying the planning application and the appellant’s evidence before the inquiry plainly satisfies the requirement set out in the EIA Regulations and no party has suggested otherwise. It is illustrative of the weakness of the case the Council now puts forward that the statutory requirement to consider alternatives has, unarguably, been satisfied.
Alternative sites

369. The criticism is brought in the face of national policy which does not require a promoter of a scheme for waste management facilities to undertake an exhaustive search of all potential alternative sites (see para 11.94 of CD/I2). As the Inspector at the Ince inquiry recorded: "Policy within Waste Strategy England and PPS10 is for the provision of additional waste management facilities. PPS10 identifies criteria, subject to which planning applications for waste management facilities should be considered favourably: it is not argued in either policy document that an optimal arrangement of facilities should be the key objective." (See para 11.124 of CD/I2).

370. However, it is accepted that the consideration of an alternative site may be necessary in a planning decision where the development would cause harm (and it is common ground that any proposal for a large centrally located EfW facility would cause some planning harm) and where the need for the development is put forward as a material consideration weighing in favour of a grant of planning permission.

371. Mr. Justice Simon Brown (as he was then) said in Trusthouse Forte Hotels Ltd v Secretary of State for the Environment (1987) 53 P. & C. R. 293 the following principles apply when determining whether the consideration of alternatives is a material consideration to which the decision maker must have regard in a development control decision: (1) the starting point is that land may be developed in any way which is acceptable for planning purposes. The fact that other land exists on which the development would be even more acceptable would not justify the refusal of planning permission; (2) however, where there are clear planning objections to development on a particular site it may be relevant and necessary to consider whether there is a more appropriate site elsewhere. This is particularly so when the development is bound to have adverse effects and the argument in support of the application is that the need for the development outweighs any planning disadvantages; (3) the approach of Lord Justice Oliver in Greater London Council v Secretary of State for the Environment (1986) 52 P. & C. R. 158 is helpful. He said the consideration of alternatives will generally be appropriate in cases having the following characteristics: “first of all, the presence of a clear public convenience, or advantage, in the proposal under consideration; secondly, the existence of inevitable adverse effects or disadvantages to the public or to some section of the public in the proposal; thirdly, the existence of an alternative site for the same project which would not have those effects, or would not have them to the same extent; and fourthly, a situation in which there can only be one permission granted for such development or at least only a very limited number of permissions”; and (4) there may be cases where, even although they contain the characteristics referred to above, nevertheless it could properly be regarded as unnecessary to go into questions of comparability. This would be so particularly if the environmental impact was relatively slight and the planning objections were not especially strong.

372. On page 301 of Trusthouse Forte, Mr. Justice Brown sets out a second list of principles relevant to the consideration of alternatives. Some of these are highly instructive when applied to the current circumstances. Mr. Justice Brown held that it was generally desirable that a local planning authority should identify alternative sites (principle 2). The Council has failed to do so here. The identification of alternative sites is even more desirable where the particular
objections are intrinsic to the nature and/or scale of the plant rather than the site itself (principle 3). Where (as here) there are specific and exacting requirements (imposed in this case by WLP Policy L6 (and zealously applied by the Council)) it is less likely that a planning authority could reasonably conclude that the need could be met elsewhere without reference to some identifiable preferable alternative site (principle 4).

373. Principle 5 provides: “Clearly, it is more difficult to make a sensible comparison in the absence of an identified alternative site and it is likely that a planning authority would be more hesitant in concluding that an accepted need could be met elsewhere if no specific alternative sites have been identified, a fortiori, if they have been carefully searched for, identified and rejected.” Here both the Council and the appellant have conducted thorough site searches. The appeal site is one of two preferred sites for an EfW facility in the WDF. Given the Council do not even suggest that the other WDF preferred site should be preferred, it is very difficult to see how the Council’s case on alternatives can be given any weight at all. Moreover, given the urgency of the need, the timescale which would be required to find and bring forward an alternative site, the fact that the appeal site is one of only two preferred sites and the fact that the Council have brazenly declined to identify an alternative, the Council’s arguments on comparability are utterly devoid of merit.

374. The pertinent question for this inquiry is the extent to which the availability of any alternatives undermines the weight to be accorded to what the Council described as a need for waste management facilities which is becoming more urgent and pressing as a result of landfill diversion targets and diminishing landfill capacity (see para 125 of CD/B1). The only properly supportable conclusion is that the weight to be applied to the urgent and pressing need for this development is not undermined in any material way by the Council’s case in support of this reason for refusal.

375. First, as has already been observed, the Council has studiously avoided putting forward any preferred sites whatsoever. Neither has any other party (of the five other Rule 6(6) parties) identified a plausible alternative site. Accordingly, there is no alternative site before the inquiry which is suggested by any party as being better able to accommodate the development. The most, therefore, the Council asks the Inspector to do is to weigh against the urgent and pressing need for the development the mere possibility that there may be an alternative site. How can it be seriously contended that anything other than very little weight should be attached to the mere possibility of an alternative site, especially where the need is very real indeed?

376. If further comfort were to be required it may be drawn from the case law on alternatives. In Environment v Edwards (reported at (1995) 69 P & C R 607) in which a grant of planning permission for a motorway service station was quashed for the failure to have regard to alternatives sites, the Court of Appeal regarded it as crucial that alternative sites had not only been identified but were themselves the subject of appeals also before the Secretary of State. In R (on the application of Bovale Ltd) v Secretary of State for Communities and Local Government (reported at [2008] EWHC 2538 (admin)) the Council had identified three specific potential alternative sites the existence of which were said to undermine the weight which could be attributed to the need argument. Both these examples accord with Lord Justice Oliver’s third characteristic in Greater London Council, namely the existence of an alternative site for the same project which would not
have the same adverse effects. However, no such specified alternatives exist in the current case, rather the Council’s case has been put purely in the abstract and, consequently, cannot be given any real weight.

377. We have to ask, why we are dealing with this issue at all? As Mr Daly agreed in cross examination, even the draft PR which recommended refusal acknowledged that there was, in principle, support for an EfW plant on the appeal site, (see paras 126 and 127 in appendix 17 of CC/8/3). The proposal is consistent with the WMS as contained in the WLP. The Council has said that until and unless the policy contained in the WLP changes, the Council will work towards delivering a single EfW facility in the CCAS (see appendix 2 of SITA/10/5).

378. Moreover, the WLP was subject to a BPEO analysis and endorsed by the local plan Inspector. Neither should it be forgotten that the Council adopted this strategy in spite of the emphasis on placing development at Principal Urban Areas and growth areas in the then regional planning strategy; RPG10. The appellant cannot properly be criticised for not seeking to rewrite the Council’s WMS in a development control decision. But the supreme irony in the Council requiring the inquiry to deal with this issue is that it was the Council who made this very appeal site available to the appellant after having undertaken its own study of alternative sites which concluded that the appeal site was the best option. The Council then entered negotiations with the land owner and procured an option over the land. Having secured the option, the Council, acting corporately, then required the appellant to deliver a 240,000 tpa EfW facility on the appeal site through the contract (which, the appellant repeats, has only recently been reaffirmed by the Council in instructing the Appellant to produce a RPP). (See in this respect, SITA/0/22).

379. In the circumstances the appellant, and indeed others, may be forgiven for thinking the complaint a little surreal. Especially so, when Mr King was heard in his closings attacking the WPA’s own site search report (see CD/G3). Of course, the contract was concluded in cognizance of the preparation of the WDF and the selection of the appeal site as one of two preferred sites for the single centrally located EfW required by the WMS in the submission stage WDF after no less than two rounds of public consultation.

380. Notwithstanding the requirements of the contract and, following the Council’s own assessment of alternatives (see CD/G3), the identification of the appeal site as one of two preferred options in the WDF, the appellant embarked on an extensive examination of alternative sites in order to verify that the appeal site was the most suitable. The appellant’s assessment of alternatives was framed by advice from the Council’s own officers. At a meeting with officers of the Council on 12 June 2007 the Deputy Director Planning, Transportation and Estates confirmed that it was reasonable to restrict the alternative sites assessment study to the CCAS. The scoping opinion issued by the Council on 12 July 2007 said: “the consideration of alternative sites should be guided by, but not wholly constrained by, the Central Area of Search as set out in the Cornwall Waste Local Plan 2002 and should also draw upon the site assessment process that has informed the production of the emerging Cornwall Waste Development Framework 2006”.

381. That is precisely the approach adopted by the appellant. The appellant focused the search on the CCAS in accordance with the WMS but, following the
Council’s advice, extended the area of search by one kilometre in all directions. The area included in the study therefore accords with the advice of the Deputy Director and the guidance in the scoping opinion. (By so doing the study area included the Rock Dryer site which was one of four sites identified in the WDF Preferred Options stage document).

382. Furthermore, the appellant carried out a new alternative site study (see CD/A20) in order to ensure the evidence at the inquiry was up to date. The Council’s criticism of that study is misplaced given that it follows the scoping opinion, the advice of the Council’s own officers and, in any event, adopts a similar approach to the Council’s own site search assessment. The appellant’s assessment uses criteria which reflect the requirements set out in PPS10 and WLP Policy L6. Fifteen sites were short listed and ranked against those criteria.

383. The appeal site was ranked second equal. A site at Victoria (Trenower Farm) was ranked first. However, the appeal site performed the best with regards to the three operational criteria (proximity to primary route network, potential to be served by rail and potential for off-site CHP) reflecting one of the great attractions of the appeal site; the fact that it provides potential to use CHP given its location adjacent to china clay operations which require a constant source of heat. As already identified, national policy indicates that such opportunities should be maximised. Such a favourable juxtaposition of renewable energy generator and optimal heat user will not often arise.

384. Further, of the short listed sites in the assessment, only two, including the appeal site were available. The study concluded that the appeal site was the preferable site given its better performance against the operational criteria. In cross examination of Mr Greenwood, Mr King criticised the study as being predetermined by the combination of the need for the development now and the consideration of land availability. However, there is a compelling need now and such criticism is to ignore the fact that ranked against 15 other sites (before the consideration of land availability), the appeal site came second equal.

385. It is absolutely appropriate thereafter to look at land availability. It would be absurd to suggest otherwise. In cross examination of Mr Greenwood, Mr King referred to the meaning of available in the context of PPS3 and DCLG’s Strategic Housing Land Availability Assessment Practical Guidance. It is instructive to have regard to the definition of ‘available’ in those documents. Paragraph 39 of the latter document provides: “A site is considered available for development, when, on the best information available, there is confidence that there are no legal or 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.” This definition of available endorses precisely the appellant’s approach to site selection.

386. Moreover, the Council’s own site search also, quite properly, had regard to land availability (see para 5.25 of CD/G3) and so it is difficult to see how the WPA can be justified in bringing this criticism to the inquiry, (see para 1 of CD/E6). Mr Aumônier in examination in chief described the timely delivery of
facilities as an absolutely critical part of Government policy on waste management. Land availability is crucial if the planning system is to deliver timely provision of new waste management facilities as is required by national policy. Furthermore, national policy expressly warns waste planning authorities to avoid unrealistic assumptions on the prospects for the development of waste management facilities, or of particular sites or areas, "having regard in particular to any ownership constraint which cannot readily be freed." (See para 18 of CD/E6) Accordingly, the Council’s criticisms of the appellant’s site assessment are misplaced and the approach taken within it is wholly justified.

387. The Council tentatively mooted the sites at Hallenbeagle and Moorswater in evidence as possible alternatives though not, we were frequently told, as preferred alternatives. However, neither site was convincing in the least, even as a mere possibility. On visiting Moorswater the most striking thing is the fact that there is no obvious place for a waste management facility at all. The inquiry has no proper information on land availability with regards the site and, as Mr Penfold explained, it is constrained by the flood plain. There has been no suggestion of a planning application being made and no investigation has been carried out as to the feasibility of rail at the site. Nor is there any major heat user in the locality which would suggest that there are no obvious CHP benefits at that site. Even accounting for the fact that the site is not put forward as an alternative, the above amounts to scant information.

388. A planning application may come forward at Hallenbeagle at some point in the future but not for a MSW waste management facility. The promotional material currently available refers to a 32,000 tonne processing facility. However, the site does not benefit from a contract under which it could take MSW. Mr Miles agreed in cross examination that rail was never likely to be viable at the site. Mr Millington also agreed in cross examination that it would not be practical to serve the site by rail.

389. In any event, neither site has been put forward in any meaningful way. It is thus difficult to see how either can be sensibly considered as an alternative to accommodating a waste management facility capable of dealing with the needs of the County. Indeed, Mr Millington agreed in cross examination that to be given any weight the sites would have to be shown to be suitable, available and practicable and that the inquiry had no such information before it. In the appellant’s submission this is plainly correct.

390. The Inspector asked in particular for the parties to address the weight to be given to the Council’s site selection process when it was looking at a plant with a 70 metres high stack. As Mr Greenwood explained in examination in chief, the Council’s own site search document does not identify a stack height but it does refer (see para 5.2 of CD/G3) to the RWMS for the South West 2004-2020 ‘From Rubbish to Resource’ which provides guidance on the size of site required for an EfW facility of 250,000 tonnes and which states that mass burn incineration plants can be characterised by chimney stacks up to 90 metres tall and associated buildings up to 50 metres high. (See page 81 of CD/F2, although Mrs Butcher refers to 75m at para 8.2 of her evidence, CC/5/4).

391. It is therefore important to note that the Council had in mind the possibility of a stack height of considerably more than 70 metres. Secondly, the evaluation of potential sites takes in a range of factors, including land availability which was determinative. The proposed stack height relates to the nearby SAC. It is vital
to acknowledge that the only other site (Victoria) which performed nearly as well as the appeal site would also require a stack of the same height and, significantly, the appeal site scored better than the Victoria site with regards to visual impact (see CD/G3, the appeal site is site 4 in this document and the Victoria (Trenower Farm) site is site 32).

392. Indeed, given the presence of so many vertical features in the vicinity of the appeal site, some of which break the skyline, and the bowl in which it is located, it is possible that knowledge of the requirement for a higher stack would have led to its being preferred to the Victoria site. There was no suggestion in the Council’s evidence that the requirement for a higher stack invalidated the results of the site search report and, of course, the Council acting corporately through its Cabinet has reaffirmed the contract with full knowledge of the requirement for the 120m stack. It follows that the Council’s site selection process should be accorded full weight given that the decisive factors were unrelated to stack height and that both preferred sites would require a stack of similar height with the appeal site performing better in terms of visual impact.

393. The Inspector also asked whether the site selection process took account of sustainable transport solutions and, specifically, the need to keep vehicle mileage to a minimum. The answer is that it did. One of the criteria was the proximity of sites to the primary road network and the A30 in particular. The site search report (see CD/G3) explains that the majority of waste travelling by road (and there is no extant capacity to travel by rail) utilises the A30 and for that reason it was considered important that the site is close to the A30. The A30, of course, passes straight through the CCAS. Since the revocation of the RSS there is no possible development plan justification to look outside of the CCAS and so there is no doubt that the approach taken in the site search remains entirely valid. A different location for the EfW plant within the CCAS would not give rise to any material difference in vehicle mileage. We analyse reason for refusal eight below and make the point that other factors substantially outweigh any disadvantages in the proposals’ reliance on the transport of waste by road.

394. Finally in relation to site selection, it should not be forgotten that the Secretary of State is quite clear that the choice of site is a matter for the promoter. In the Ineos Chlor decision letter the Secretary of State said: “He [the Secretary of State] considers that the choice of a specific location for a generating station is a commercial matter for the applicant, subject to meeting environmental and planning considerations. However, the Secretary of State notes that the purpose of the Development is to provide heat and electricity to the INEOS Runcorn Site and therefore has to be sited near to that steam demand and have access to the existing infrastructure. He also notes that alternative sites were considered, but were discounted for a variety of reasons including poor road or rail transportation links, insufficient land, loss of amenity and health and safety concerns. No evidence had been produced to support other alternative sites suggested by the objectors,” (see para 3.5(e) of CD/I6). In this case the position is exactly the same: there is no evidence to suggest other sites are to be preferred and, indeed, no alternative site has ever been identified.

Alternative technologies

395. It should not be forgotten that the contract was entered into following a procurement process which attracted a number of bids which proposed different technological solutions (including MBT and gasification). It was the Council who
rejected the bids which offered other technological solutions and selected a bid which proposed EfW. Perhaps, this is why there is no more conviction in the case the Council puts forward with regards to alternative technologies than that which is put forward on alternative sites.

396. In evidence Mr Miles confirmed that the Council does not suggest that the technology employed by CERC is unacceptable. Mr Miles also repeatedly emphasised the fact that the Council were not putting forward any preferred alternative technology. Note too that when dealing with alternative technologies the Report raises no criticism about the proposed technology and points out that neither WLP nor WDF prescribe a particular technology. So again, the highest the Council put their case is that the mere possibility of an unspecified alternative having lesser environmental effects should undermine the weight to be attributed to what the Council itself described as an urgent and pressing need. The Council asks the Inspector to ascribe weight to the mere possibility of alternatives which are unidentified, in which the Council do not have the requisite interest in land and for which the necessary financing is not in place. It is not a persuasive line of attack.

397. Nonetheless, the Council is right not to push a preferred alternative for national policy is clear that the choice of technology is a commercial matter for the promoter. (See para 79 of CD/F1 and see also Mr Aumônier’s proof of evidence at para 4.4 of SITA/2/2 and his reference to para 12.12 of the appeal decision in respect of Wadlow Farm, Six Mile Bottom Road, West Wratting, Cambridgeshire (Appeal ref.: APP/W0530/A/07/2059471). The Government does not generally think it appropriate, subject to encouraging AD for food waste, to express a preference for one technology over the other, since local circumstances differ so much (see para 27 of CD/F1 and Annex E at para 3).

398. In waste policy terms, the key driver is to secure the investment in infrastructure required to divert waste from landfill. And the Government wants to see a diverse mix of technologies in order to get the most environmental benefit from that investment (see page 11 of CD/F1). These key Government objectives in relation to waste are wholly compatible with the Government’s policy on energy as set out in the Energy White Paper which places EfW in a wider energy policy context (see page 76 of CD/F1) and also seeks a diverse mix of energy technologies, including EfW generation, in order to combat climate change and provide secure, clean and affordable energy. (See para 3.5(d) of CD/I6, the Ineos Chlor decision letter. See also the Ince Inspector’s report at para 11.124 of CD/I2 which provides: “Policy within Waste Strategy England and PPS10 is for the provision of additional waste management facilities. PPS10 identifies criteria, subject to which planning applications for waste management facilities should be considered favourably: it is not argued in either policy document that an optimal arrangement of facilities should be the key objective.” As Mr Aumônier points out in para 4.3 of his SITA/2/2, the Government expressly abandoned the concept of the BPEO contained in WS2000 because an optimal solution was all too difficult to prove and all too easy to attack). And, of course, any technology is more beneficial if both heat and power are recovered as is the case with CERC (see para 28 on page 79 of CD/F1).

399. However, whilst the Government is generally unconcerned about the precise choice of technology, it requires authorities to demonstrate a waste management solution which is deliverable, bankable and affordable in an outline business case in support of PFI credits (see page 9 of annex J of SITA/2/3). Indeed, in October
2009 DEFRA confirmed that the Government supports the use of incineration with energy recovery for the treatment of residual waste (see page 10 of annex J of SITA/2/3). In February of this year, DEFRA specifically endorsed the CERC project which it said accords with Government waste and energy policy. In fact, DEFRA’s endorsement of the project could not be described as anything but whole hearted. DEFRA observed:

"1. The development seeks to maximise the diversion of waste from landfill and move waste up the waste hierarchy.
2. The contract does not hinder the achievement of higher levels of recycling.
3. The Cornwall Energy Recovery Centre (CERC) development seeks to recover energy from waste that is not recycled.
4. The CERC development seeks to maximise overall process efficiency by exploiting combined heat and power (CHP) opportunities – supplying heat to local industry and potentially nearby housing development.
5. The CERC generates renewable energy contributing to national renewable energy generation targets and reducing reliance on fossil derived energy.
6. The whole development (recycling and energy recovery) reduces green house gas emissions that would otherwise occur by land filling biodegradable waste. (See Mr Aumônier’s proof of evidence (SITA/2/2) where he deals with the Carbon Balance Assessment (CD/A2) and, in particular, paras 6.27 and 6.28 in which he concludes the proposal would save some 85,700 tonnes per year of CO₂-eq when compared to the do-nothing scenario of landfilling in Cornwall and some 97,600 tonnes per year following the closure of Connon Bridge. Mr Aumônier explained in his cross examination by TCN that climate change is one of the most pressing environmental concerns of our time and that it will be very difficult to reach the Government’s target of reducing greenhouse gases by 80% by 2050 unless we bring into operation an extensive network of renewable power stations like CERC. Note too, that it is DEFRA’s assessment that “The whole development [referring to the Contract] (recycling and energy recovery) reduces green house gas emissions that would otherwise occur by land filling biodegradable waste”, appendix 6 of SITA/10/5).
7. The contract seeks to deliver proven, environmentally sound and economically viable technical solutions.

Since 2003 DEFRA have approved over 20 further outline business cases, all of which contain an element of energy from waste technology – whether through direct combustion or via a pre-processing route. We consider that energy from waste has an important role to play in the delivery of long term waste, energy and climate change objectives and that it is our view that the CERC development continues to be in accord with Government technology” (see appendix 6 of SITA/10/5).

400. In evidence Mr Scanlon explained that it was not only DEFRA in the context of PFI that required tried and tested technologies but it was, in fact, a necessity in order to be able to finance the project. Mr Scanlon explained that the investors generally wish to see at least one but ideally three full scale operational plants of the same technology handling MSW in the UK and which has a proven track record for a minimum of three years. Mr Scanlon explained that the difficulty for
new technologies was in demonstrating sufficiently to investors that the proposed waste management facility will be robust for the entire length of the (often 30 year) contract.

401. Fairly, Mr Miles agreed with the Inspector that there was a clear benefit in using tried and tested technology (see Mr Scanlon rebuttal proof for a detailed assessment of the bankability of the various alternative technologies in pages 11 to 20 of SITA/1/4). Perhaps a robust technology is even more important in Cornwall, the unique geography of which would require the transport of waste over long distances and out of county probably by road in the event of a failure.

402. As Mr Aumônier explained, for these reasons EfW continues to be selected by waste disposal authorities in their outline business cases to DEFRA for PFI credits. Companies offering EfW are in the final stages of bidding or at the preferred bidder stage in Barnsley, Doncaster and Rotherham, Buckinghamshire, Hertfordshire, Leeds, Milton Keynes & Northamptonshire, Norfolk (where an initial proposal for a combined MBT and AD solution was abandoned in favour of EfW when the Council concluded that there were insufficient markets for the MBT outputs) and Oxfordshire. Norfolk is not the only authority to move away from alternative technologies and back to EfW. SITA was originally asked by Northumberland County Council for an MBT solution to produce an RDF followed by thermal treatment but during procurement asked to amend their offer to EfW (see R44 of SITA/1/4). In cross examination, Mr Aumônier also made some corrections to Mr Miles’s table of PFI Contracts (see Mr Miles’s CC/1/10). Mr Aumônier explained that Hereford and Worcester (with which he was involved), Merseyside and Bradford all now have EfW as their preferred technology. This is precisely because EfW diverts waste away from landfill, has been proven to be deliverable, bankable and affordable and is compatible with high recycling rates. (See Box 5.2 and para 23 on page 78 of CD/F1. 15 of the top 20 WDAs by recycling rates have chosen incineration as their principal technology (see R97 of SITA/1/4).

403. What is more, EfW with CHP performed well in Mr Aumônier’s assessment of alternative technologies. (See also CD/A2, Cornwall Options Appraisal). EfW with heat recovery outperformed or matched EfW without heat recovery for nearly all the criteria, with the exceptions of cost and deliverability. Autoclave performed well for most of the environmental criteria. MBT achieved mostly intermediate rankings. The MBT with AD and the do nothing scenarios generally performed poorly (and, in particular, failed to meet the LATS diversion targets). As Mr Aumônier reported in evidence, while autoclave with gasification performed slightly better on the environmental criteria, EfW with CHP performed significantly better on almost all other criteria.

404. On perhaps the single most important criteria – deliverability – EfW was clearly the best technology and, as both Mr Scanlon and Mr Aumônier explained in evidence, there remain real questions over whether autoclaves will be able to deliver in practice. Importantly, Mr Aumônier’s results were confirmed by the Fichtner Report (see CD/O1), which was commissioned by the WDAP, and which concluded that a central EfW was the preferred option. It was following consideration of the Fichtner Report that the Council’s Cabinet endorsed the contract and instructed the appellant to prepare a RPP.

405. Lastly, the appellant turns to consider the related topics raised by the Inspector: the degree to which the proposal would enable other waste options to
be taken up and whether there is flexibility in the contract to enable new
technologies and other opportunities to be taken on board. The contract is
flexible: it anticipates that it is likely that during the contract period changes or
modifications will be required and provides the machinery for variations. (See
page 106, part 1, Clause 70 of CD/G1). For example, Clause 70.1A anticipates a
particular need to deal with biowaste and so the Council could require the
appellant to provide an AD plant. The variation mechanism is not restricted to
this and allows the Council to bring forward any changes to the services it
requires. Mr Aumônier’s need assessment assumed a high level of recycling and
composting, well beyond that which is currently being achieved in Cornwall.
Achieving these higher rates will require additional waste collections and
infrastructure, potentially including composting and AD as anticipated in the
contract. The need assessment demonstrated that, even assuming the
challenging recycling rates were achieved, the amount of residual waste (both
MSW and C&I) requiring management considerably exceeded CERC’s capacity.

406. To comply with Government policy requiring diversion from landfill and to meet
objectives of sustainable development will require more infrastructure to be
provided, particularly for the quantity of C&I waste that CERC will not be able to
accommodate. Such infrastructure might employ any technology or combination
of technologies, leaving the door open to autoclave, various MBT options, AD,
gasification, pyrolysis and other emerging technologies. There would be nothing
to prevent a developer bringing forward a proposal to manage residual C&I waste
using such technology. There would be scope for sites such as Hallenbeagle or
Moorswater, should they ever become available, to be used for such alternative
technologies.

407. Two points must be stressed, however. First, Government policy is emphatic
that it has no particular preference for one technology over another and that it
seeks to ensure a diverse mix of technologies. Secondly, that when dealing with
long term PFI contracts to manage MSW the Government has made plain that it
favours a prudent approach of using proven and bankable technologies such as
direct combustion EfW. (In this respect, see, for example, the letter from DEFRA
dated 6 June 2005 in X/3/2). The Council itself has said it is not appropriate for
a local authority to take risks on the performance of an unproven technology (see
appendix 15 of SITA/10/3).

408. Espousal of AD by the new Coalition Government should be seen in this
context and there is no suggestion that the clear policy statement in WS2007
that it is not helpful to rule out a particular technology such as incineration (see
para 27 of chapter 5 of CD/F1) does not continue to apply with full vigour.
DEFRA’s letter of 22 February 2010 (see appendix 6 of SITA/10/5) emphasises
that the proposal represents a proven, environmentally sound and viable
technical solution and that it continues to accord with Government policy.

409. On 29 July 2010 DEFRA announced a review of waste policies. (The WS
review by DEFRA was considered by the Council’s WDAP on 14 September 2010,
see agenda item 5 of CC/0/11 beginning at page17 and, in particular, at page
22). In the Terms of Reference there is considerable emphasis on maximising
the cost-effective generation of renewable energy from residual waste and
ensuring cost-effective contribution of waste management facilities, if anything,
this reinforces the case in favour of tried and tested, bankable technology such
as direct combustion. In marked contrast, the Council appears to want to turn its
back on cost-effectiveness and urge a decision which would lead the Council
suffering well in excess of £200m in additional costs (as estimated by the WDA in its letter of 11 March 2010 (X/3/2)).

**Seventh reason for refusal: regeneration**

410. The task of attempting to substantiate this reason for refusal fell to Mr Vinson. His written evidence was a curious blend of myth and denial and at times took on surreal qualities. The myth was that certain “more image and locationally conscious businesses” would be deterred from locating in the area by the presence of CERC and that the so-called “CERC tolerant” businesses would be down-market industry/warehousing offering only poorly skilled and poorly paid jobs. However, there was not a shred of evidence to support such an assertion and to the contrary the appellant’s evidence convincingly demonstrated its emptiness.

411. The denial was the failure to acknowledge that CERC would represent the very inward investment said to be “critical for regenerating the clay area”, (see paras 4.19 and 0.2 of CC/3/2) and would actually be fully compliant with a large number of policy initiatives relied on by Mr Vinson, which are aimed at regenerating the CCA and that it had been strongly supported by SWRDA as the lead agency for promoting the regeneration of the area.

412. Mr Vinson’s proof of evidence gives the impression that it was written from a position detached from land use planning considerations. The RES was simply ignored, an unfortunate lapse it may be thought for an economic development manager. As Mr Vinson agreed in cross examination, he failed to give any evidence at all in relation to the development plan policies cited in support of this reason for refusal. He did not even mention the WLP. In doing so, he was seemingly ignorant or dismissive of the fundamental strategy of the development plan to establish a large EfW plant in the CCAS. He made no attempt to reconcile his objection to CERC with the identification of the appeal site in the submission version of the WDF as one of two preferred sites for a major EfW plant, notwithstanding, as he accepted in cross examination, this had been approved with the need for regeneration of the CCA well in mind.

413. Mr Vinson’s objection to CERC was not site specific and, as he recognised, was in effect an in principle objection that would apply to any location in the CCA which might influence the take-up of employment space at Nanpean-Drinnick, yet this was in fundamental conflict with the letter from Mr Mason, the Council’s Head of Planning and Regeneration, clarifying this reason for refusal (see Mr Mason’s letter in appendix 6 of SITA/10/3) that it was not inappropriate per se to locate development similar to CERC in the CCA.

414. When confronted with this irreconcilable conflict between his own evidence and the formal position of the Council, Mr Vinson’s response was that Mr Mason was concerned with planning whereas he was focusing on economic development and that it was conceivable that what was acceptable in planning terms was not in economic development terms. Even if one ignored the fact that Mr Vinson was giving evidence at a planning inquiry, this displays a remarkable ignorance or misunderstanding of one of key roles of planning to foster sustainable economic development. Further, Mr Vinson was seemingly unaware of what his own boss, Tom Flanagan, the Council’s Corporate Director of Environment, Planning & Economy, had written to DEFRA on 16 June 2009 (see the letter in appendix 2 of SITA/10/5) indicating that the Council remained committed to delivering a single
EfW facility in central Cornwall and that the Council strongly supported the benefits that CERC’s CHP would provide to the clay industry and the Eco-town. Again this reveals a fundamental detachment between Mr Vinson’s evidence and the formal position of the Council.

415. Another example of this detachment is Mr Vinson’s failure in his main proof to deal with SWRDA’s strong support for CERC. When compelled to respond to the appellant’s evidence on this, Mr Vinson in his rebuttal (see para 3 of CC/3/4) contended that SWRDA was concerned with the regional dimension and that it was possible for there to be a benefit to the regional economy and yet at the same time harm to the local CCA. This was as extraordinary as it was wrong: SWRDA had been intimately involved in the regeneration initiatives for the CCA and key documents relied on by Mr Vinson, such as SIF (see CD/Q2) and the CCLADP (see CD/Q4), had been formally approved by SWRDA (see page 2 of CD/Q2 the cover of CD/Q4). It is absurd to suggest that SWRDA would not have objected or at least expressed concern had it considered that CERC could prejudice the success of the regeneration of the area.

416. As already mentioned, Mr Vinson failed to give any evidence at all in relation to the development plan policies cited in support of the seventh reason for refusal. In oral evidence he acknowledged that the RLP policies referred to in the reason for refusal had nothing whatsoever to do with regeneration. As the reason for refusal indicates policies 11 and 12 of the RBLP are entitled “Protecting the Borough Heritage” and deal with precisely that. The same applies to some of the SP policies cited. In short, there is no material conflict between CERC and any development plan policy dealing with regeneration.

417. That is perhaps why the reason for refusal seeks to place the SIF at the heart of the reasoning behind this objection. Mr Vinson also relied (see para 3.2 of CC/3/2) on the Conv Prog, the Eco-town Programme and the CCLADP. However, these documents simply do not support the objection. Quite the contrary; in respect of SIF – the document which the Council sought to place at the centre of its objection – the first point to note is that SIF is not part of the development plan or even SPG (see page 55 of CD/Q2). Rather, it is a ‘lobbying document’ designed to establish the area as a local, regional and national priority (see page 4 of CD/Q2).

418. Nonetheless, it is quite clear that the document has express regard to waste planning and, in particular, the possibility of an EfW plant in the CCAS (see page 34 of CD/Q2). Such a plant is not seen as any kind of threat to SIF’s aspirations, but to the contrary as an opportunity to achieve a number of benefits which fully meet the key priorities of the document, such as providing new employment (see pages 44 and 52 of CD/Q2); improving the operation of the china clay industry by the provision of heat and power (see pages 50 and 88 of CD/Q2); providing renewable energy (see pages 42 and 50 of CD/Q2); and improving the local facilities (see page 49 of CD/Q2. The appeal proposals include the provision of on site education facilities and the appellant is also proposing a community fund. There is no hint of concern that an EfW plant would harm the prospects of achieving a business park at Nanpean/Drinnick.

419. It is not surprising, therefore, that Mr Vinson had to agree in cross examination that there was nothing in SIF which was hostile to an EfW plant. However, Mr Vinson went further and agreed in cross examination to a long list of benefits which would be provided by the proposal. He agreed that:
1. CERC would provide direct economic benefits in the form of inward investment into a deprived area, which Mr Vinson described in cross examination as “crucial” and “critical” in his proof (see paras 4.19 and 9.2 of CC/3/2);

2. CERC would provide 48 new jobs which, he was able to agree, would be better paid and higher skilled than those available in the local area. He agreed that such jobs – local, well paid, and more skilled – were fully in accord with the regeneration aspirations. He accepted that the proposal would also help safeguard jobs in the local china clay industry through the provision of cheaper heat as well as a secure source of heat;

3. There will be considerable economic benefits over a three and a half year period from the major construction project with opportunities for local workers and local contractors including supply of local materials as well as the likely spend in the area by construction workers;

4. The proposal will provide renewable energy in particular to the china clay industry and has the potential to provide heat and power to the Eco-town when built. (It is clear that the Council, quite rightly, regard this as a significant benefit: the Council has applied for additional PFI credits on the basis of the supply of heat to the adjacent industry and the Eco-town, see page 3 of CC/0/10); and

5. CERC will provide both a community fund and visitor centre and so help to redress the shortage of community facilities identified in the CCA.

420. These benefits accord entirely with the objectives of SIF as well as the other documents on which SV relies. The Conv Prog seeks to:

"1. Transform the economy to a more knowledge based, high value added economy with a broader range of sectors, and a reduced dependence on low paid jobs;

2. Increase the range and quality of employment opportunities available to the community;

3. Manage economic growth in a sustainable manner; and

4. Take a leading role in investing in the drivers of a low carbon economy, including increased carbon literacy, overcoming market failure, and accelerating technological change.” (See page 8 of CD/Q1).

421. CERC would be consistent with and directly contribute towards achieving all four of these key operational objectives. The conclusions on pages 34 & 38 emphasise the importance of moving away from the area’s low wage economy, capitalising on environmental technologies and renewable energy and seeking more significant inward investment. CERC should be seen as wholly consistent with these objectives.

422. The Eco-town Prog too seeks to promote knowledge-based employment, better paid and better quality jobs (see page 59 of CD/Q3), the generation of low carbon and renewable energy (see page 68 of CD/Q3), as well as identifying the opportunity to provide heat and power to the Eco-town and to examine the opportunities which a waste incinerator may provide (see page 68 of CD/Q3). In the CCLADP there is a particular focus on environmental technologies and renewable energy sources (see page 16 of CD/Q4).
423. Far from supporting Mr Vinson’s position, these documents and the objectives they set out only serve to highlight the great potential of CERC to form a major part of the regeneration of the area. This well designed and distinctive building would represent a major piece of inward investment, would be seen as a potent symbol of confidence in the CCA and would serve as a bold statement that Cornwall had harnessed environmental technology to manage its waste sustainably and produce low carbon renewable energy.

424. Despite the fact that he failed completely to refer in evidence to the RES, Mr Vinson agreed in cross examination that it was a key document (see page 4 of CD/Q8. The RES “is a key document for all regional partners and especially those involved in economic development, regeneration and promoting enterprise in the region”). This document once again strongly promotes both renewable energy and environmental technologies with a particular reference to waste technologies, as well as higher paid jobs and the knowledge based economy (see pages 15 to 17 and 28 to 29 of CD/Q8).

425. Significantly, SWRDA, the Government’s lead agency for the promotion of economic development in the South West, agrees with the above analysis. SWRDA regard CERC as delivering a number of the key strategic objectives set out in the RES (see pages 116 to 118 of appendix 14 of SITA/0/3). Mr Vinson agreed that the SWRDA clearly regard the proposal as consistent with RES Strategic Objectives 1 and 3 and, in particular, that the proposals will contribute to the region’s sustainable waste strategy and will deliver the targeted skills for the economy and business support in a priority sector: environmental technology.

426. Mr Vinson’s principal concern was that the proposal would harm investment in the area by deterring the take up in certain employment sectors of the proposed 12 hectare business park at the Nanpean-Drinnick Eco-town. His suggestion was that the more image and environmentally conscious firms would not be prepared to locate here if CERC was in situ. His concern about this sector focused in particular on the food and drink industry.

427. It must be recorded that Mr Vinson’s concern in relation to the employment land was partially based on his mistaken belief that CERC’s stack would be clearly visible from that land. Both Mr Coulson and Mr Greenwood dispute this, but even if Mr Vinson had been correct in that belief, the inquiry has simply not been provided with any evidence to suggest that there would be any detrimental effect. It almost defies common sense that an image conscious firm that is otherwise prepared to locate within an area so heavily influenced by active and derelict mineral operations would be deterred by the ability (if it existed) to see part of CERC’s stack some 1.6 km away behind a backdrop of clay spoil heaps.

428. There has been no evidence that high tech/knowledge based/image conscious firms have been deterred from locating in areas within sight of an EfW plant. In fact, the opposite is true. A study commissioned by East Sussex County Council and Brighton and Hove Council into the potential economic impacts of constructing an EfW facility in Newhaven, East Sussex recorded in the Study (carried out by DTZ Pieda in 2002 and reported in the ES in paras 11.125 to 11.132 at CD/A8) points to the robust health of a number of business parks located close to EfW facilities including the Hanford EfW in Stoke (see para 11.126), the Allington EfW in Kent (see para 11.127), Chineham near Basingstoke (see para 11.129. Mr Greenwood confirmed the robust health of the
Chineham Business Park at para 3.13 of his rebuttal proof, SITA/10/4, identifying a number of hi tech business names within the Business Park including Motorola, Ericsson and Visa) and Marchwood near Southampton (see para 11.130).

429. Moreover, it is clear that none of the concerns identified by Mr Vinson are shared by the Eco-town landowner Imerys who do not object to this proposal and, indeed, have expressed a keen interest in using the heat and power generated by CERC at both their clay dryers and the Eco-town (see appendix 3 of SITA/1/3). He admitted in cross examination that he could not provide any evidence of high tech environmental companies being deterred from making investments in areas close to EfWs and, of course, it is these types of companies the RES seeks to attract. He conceded that he had not even visited an EfW plant. What is more, he freely admitted that he did not have any direct experience of promoting any form of development in the vicinity of an EfW plant nor had he taken any advice from anyone with such experience. This needs to be contrasted with Mr. Greenwood who in his proof (SITA/10/2) explains that he was closely involved with the planning applications for the three EfW plants built in Hampshire: Chineham, Marchwood and Portsmouth.

430. Mr Vinson’s focus on food and drink processing was an odd choice. Again, his concern was wholly unsupported by evidence and, moreover, he could provide no direct knowledge of a food processor having been deterred by the presence of an EfW. While agriculture and the food & drink industry is important to Cornwall’s economy, employment in these sectors is generally in the lower skill, lower paid and lower productivity categories, exactly the type of employment that all the regeneration policies and initiatives are seeking to move away from. It may be thought unduly cynical to say so, but Mr Vinson’s focus on this sector probably had more to do with the fact that he was here (but for no other employment sector) able to point to a passage in the Study which appeared to suggest that there was some deterrence caused by the presence of an EfW plant.

431. However, the Study concluded that there is no substantive evidence that EfW plants have an adverse impact on the ability of an area to attract inward investment with the possible exception of companies in the food processing sector. As Mr Vinson agreed, this conclusion was at its highest only that there was a “possible exception” in relation to food companies. Moreover, it was based not on any proper evidence but on the “view” of an estate agent formed through his failure to convert two enquiries from food companies about properties on a business park near the Edmonton EfW into deals. It is plain that there may be a myriad of reasons why two companies making preliminary enquiries did not take up a property – not least the presence of an adjacent sewage works.

432. Mr Vinson also referred to the fact that Cornwall Pure Business, the specialist inward investment agency for Cornwall, had an inquiry from a food processor for 20,000 sq. ft. of space although it appears that the company decided in the end not to relocate to Cornwall. As evidence this was wholly unpersuasive. He did not know who the company was. He did not know if the inquiry was made before the CERC planning application or not. He did not even know if the company had been looking in the Restormel area. Finally, he did not know the reason the company decided against investing in Cornwall. In short, Mr Vinson had to agree that the information he provided disclosed no suggestion whatsoever that the company was deterred by CERC.
433. By contrast, the appellant has put forward evidence that EfW plants do not operate as a deterrent to food processors. Perhaps, most striking is the fact that East Sussex County Council granted planning permission for the EfW facility at Newhaven and since that date has also granted planning permission for a fish processing factory only 400 metres from the new EfW facility (see para 3.4 of SITA/10/4). A further example of a food company close to an EfW plant is Blueprint Foods which is located approximately 100 metres from the Portsmouth EfW plant (see para 3.5 of SITA/10/4).

434. A number of further points should be made. First, as Mr Vinson acknowledged in cross examination, in emphasising the importance of the food and drink sector he was going against the clear thrust of all the documents on which he sought to rely, namely to move away from low wage, lower skilled and low productivity jobs to higher tech jobs with particular support for environmental technologies and renewable energies. Jobs in the food and drink sector are not in that category. Mr Vinson’s own evidence demonstrates that the sector does not enjoy anything like high productivity. In the period between 1999 and 2006 the sector required an 18% growth in employees in order to sustain a meagre 0.2% increase in the sectors’ GVA. (In this respect, see the comparison of tables 3 and 5 on page 11 of CC/3/2. This is confirmed in the Sector Productivity and Employment Indices in the 2004 table at page 32 of CD/Q1).

435. In fact, this is a neat demonstration of the problems with the Cornish economy that the Conv Prog and SIF hope to alleviate by the pursuit of higher technology and higher skill jobs. (See page 18 of CD/Q1 “Employment in Cornwall and the Isles of Scilly is weighed towards the less productive sectors, impacting directly on the level of wealth generation across the area. Both Tourism and Food and Drink sectors are below average in terms of productivity, and account for a significant amount of employment across Cornwall and the Isles of Scilly.”; p.32 “productivity is one of Cornwall and Isles of Scilly’s economy biggest economic weakness, with productivity levels (GVA per worker) 24% below the national average”).

436. Secondly, Mr Vinson somewhat overplayed the importance of the sector. The food and drink sector is dwarfed in the County by both the tourism and financial and business sectors (see the table “Key Regional Sectors” on page 32 of CD/Q1). His own evidence demonstrates that the food and drink sector provided only 3.5% of employment in the County in 2006. This number rises to 10.8% if the wider definition of the sector is adopted which incorporates food retailing and wholesaling. (See page 18 in CD/Q1). It is clear from those numbers that the majority of jobs lie in food retailing and wholesaling which have entirely different concerns from food processors and are likely to be less sensitive to the presence of an EfW.

437. Thirdly, Mr Vinson could provide no evidence on how important the sector was to the area around the appeal site. He explained in cross examination that there is no published economic data for the CCLADP itself.

438. Fourthly, and somewhat forlornly, Mr Vinson sought support for his concerns about the food and drink sector from evidence that he anticipated would be given by Mr Doble on behalf of CSWN. However, Mr Doble’s evidence did not provide any real support. Doble Foods are not manufacturers or processors of locally produced food or drink; they are wholesalers and, surprisingly after all the emphasis on “brand Cornwall”, of all the products they handle only 10% is
Cornish. Mr Doble did not suggest that food processors would be deterred by CERC and knew of no such firm that was objecting. His main concern was that an unnecessary risk should not be taken, but it will be recalled the risk that he had in mind was the countryside being polluted with dioxins (which other evidence has demonstrated is fanciful).

439. Fifthly, Mr Vinson’s comparison between the employment densities of CERC and the Eco-town business park was spurious. CERC would not displace any more labour intensive use on the appeal site. CERC would not deter the take up of jobs at the business park even if it were to be developed, which in any event would cover a wide range of employment densities from B2/B8 to B1. CERC’s employment opportunities will, therefore, represent net additional jobs. CERC’s presence will help safeguard jobs in the clay industry (at a time when it is not in the rudest of health) as well as providing support for local shops and services. As an important contributor to the area’s regeneration, CERC may have a still wider catalytic effect on employment locally. Its jobs will be relatively better paid and higher skilled than local employment and directly assist the move to a more knowledge based economy.

440. The reality is that there is no reliable evidence to suggest that EfW facilities negatively impact on regeneration whether generally or in particular by deterring investment from the food and drink sector. Indeed this was precisely the conclusion of the Inspector and the Secretary of State in the Eastcroft decision (see paras 258, 291, 302, 309 and 339 of CD/I1). Reason for refusal 7 has not been substantiated; to the contrary CERC would contribute very positively to the regeneration of the CCA.

**Eighth reason for refusal: transportation of waste by road**

441. This is not a freestanding objection. It is a restatement of the objection which alleges conflict with WLP Policy L6(b). (It should be noted that the Council do not rely on any policy of the WLP in support of this reason for refusal). This has already been addressed in detail. Those arguments are not repeated here, save to say it was the Council who instructed the appellant specifically not to use rail. Those instructions to the appellant not to use rail accord with the clear approach of the Council’s transport policy, the unique geography of the region and the economic realities of putting the required rail infrastructure and rail transfer stations in place as we have already identified. It begs the question that if neither rail nor road is appropriate how exactly does the Council envisage their waste being transported?

442. There are a number of further points which demonstrate the lack of substance behind this reason for refusal. First, in clarifying the intent and meaning behind this reason for refusal the Council explained that it did not object to a single facility solution. Rather, members had been concerned by the proposal’s dependence upon the transportation of waste by road which would give rise to specific impacts in the location of the appeal site (see appendix 6 of SITA/10/3). As Mr Penfold explained in examination in chief it is now clear that the objection as clarified by the Council, at least insofar as it is transport related, has been fully met given the broad suite of agreement between the appellant and the Council as Local Highways Authority and the Highways Agency. (In relation to, *inter alia*, highway capacity and safety, impact on the strategic highways, the routing of waste vehicles, construction stage travel plans and the technical aspects of the haul road).
443. The “specific impacts” were never identified in the Council’s evidence, unless this is a cryptic reference to noise which we have already dealt with. Mr Millington, in fact, agreed in cross examination that his approach of considering the transport implications of alternative strategies of two and five plants was contrary to the intent and meaning of RR8 as clarified by the Council in Mr Mason’s letter of 13 May 2009 (see appendix of SITA/10/3).

444. Secondly, the policy basis on which the Council relies in this reason for refusal has entirely fallen away. The objection rested principally on draft RSS Policy W2 which is no longer of any relevance. Again, this has been dealt with before. However, it should be noted that even Policy W2 does not require rail to be used for the transportation of waste. That policy merely requires the identification of sites for new waste facilities to take account of opportunities for connection to the rail network (a requirement (if it had continued to be relevant) with which CERC patently accords).

445. Policy W2 sought to introduce a sequential approach for locating new strategic waste management facilities beginning with locations in SSCTs. However, as the Council pointed out in their objections to the policy, both the concept of SSCTs and the identified SSCT in relation to Cornwall are artificial constructs due to Cornwall’s unique geography (an elongated peninsula with a dispersed settlement pattern and no single dominant centre or focus). CERC is designed to serve the whole of the County and its dispersed population. In the circumstances, central Cornwall is clearly an appropriate location for the facility. (Note that neither the SWRDA nor South West Regional Assembly, both of which have or had a close interest in the formulation and implementation of the RSS, objected to the application). It is for this reason that both the WLP and the submission stage WDF adopted the CCAS. (The latter expressly rejecting the approach of RPG10 which sought to concentrate on the Camborne – Redruth area, see Policy SS18 of page 37 of CD/D1).

446. The other development plan policies referred to in this reason for refusal do not assist the Council. The Council does even not refer to the WLP. (Note that page 20 of CD/D3 in the supporting text to Policy 6 states that the detailed policy framework for the management of all wastes is set out in the WLP). This is at best bizarre especially given the agreement of both Mr Miles and Mr Daly in cross examination that the most relevant development plan policies are in the WLP. Moreover, Mr Millington agreed in cross examination, when discussing the rail aspect to this objection, that he could not derive support from a policy not referred to in the reason for refusal.

447. SP Policy 1 is a general policy. In so far as it relates to transport the supporting text provides that development should be located at the most accessible location by all means of travel, (see para 23 on page 7 of CD/D3). The appeal site meets this test. It is agreed that the appeal site is located within reasonable proximity and accessibility to the primary road network and, as a matter of fact, it adjoins an operational railway line providing the opportunity to utilise rail in the future. What other means of transport could a waste management facility serving the whole of the County sensibly require? In so far as the reason for refusal refers to RBLP Policy 1, Mr Miles conceded the RBLP policies were not relevant given that in relation to waste development it defers to the WLP.
448. Thirdly, the members were right not to object to a single facility solution given the results of the comparative analysis of the environmental and economic performance of providing the overall treatment capacity required in Cornwall through one, two or five facilities which the appellant provided with the planning application (see CD/A2, Assessment of Number of Facilities – Final Report (March 2008) and also see section 5 of Mr Aumônier’s proof of evidence, SITA/2/2). The analysis concluded that for three of the four criteria, a single EfW plant was the preferred option over the two or five plant scenario.

449. It is correct that the single EfW facility performed least well in terms of transport. However, that performance needs to be placed in context. Transport as a criterion would need to be almost eight times more important than the other criteria in order for the single plant scenario not to be the most preferred. Weighting transport in such a way would be wholly unjustified. The Council, quite properly, has never sought to suggest otherwise (it should be noted that the analysis did not include traffic movements associated with site preparation, construction and demolition. It is anticipated that the single plant scenario would out perform the two and five plant scenarios in this regard. Therefore the transport benefits of the two and five plant scenarios may be over stated).

450. Mr Penfold built on this comparative analysis of the alternatives and looked at what he called the whole life scenario which looked at the laden vehicle mileage over the full extent of the operation of the plant or plants and which accounted for the timescales for their implementation and the remaining landfill capacity in the County. The Council simply did not challenge the validity of undertaking that analysis. Indeed, Mr Millington agreed in cross examination that the inquiry could set aside his tables 4.3 and 4.4 given that they failed to take into account the timescale required to put alternative strategies in place (see pages 19 and 20 of CC/7/2) and went so far as to provide the inquiry with his own whole life assessment in rebuttal (on the basis of a different end date for the contract). (See pages 4 to 6 of CC/7/4).

451. In cross examination, Mr Millington confirmed that he accepted Mr Penfold’s numbers, the only difference between Mr Penfold and Mr Millington were the assumptions used in relation to the timescale for implementing a new strategy (which we deal with below under consequences of failure) and the remaining landfill capacity in the County (which we have dealt with above). For these assumptions Mr Millington was entirely reliant on the evidence of Mr Miles. Aside from the different assumptions, the Council barely criticised Mr Penfold’s work. The criticisms were twofold.

452. First, Mr Penfold was criticised for using laden mileage only – which he did – but that criticism entirely misses the purpose of the analysis. The analysis was designed to compare the alternative scenarios. All the scenarios were treated exactly the same. As Mr Penfold explained the comparative results are unaffected by the election to use laden only or laden and unladen mileage. The criticism therefore goes nowhere. Moreover, as Mr Penfold explained in re-examination it is dangerous to look uncritically at absolute figures because the reality is that most of the trips are not new but are largely a redistribution of existing trips.

453. Secondly, it was said that Mr Millington’s analysis of road miles in relation to the Hallenbeagle site demonstrates that the appeal site is not necessarily the best site for a single EfW. Mr Penfold agreed that was true but as he explained
and the comparative analysis makes it strikingly clear you cannot look at the issue of transportation in isolation. The comparative analysis suggests transport would have to be weighted by a factor of eight times before it was knocked off the most preferred spot. As Mr Penfold said there will be some better and some worse sites but there are many other factors beside vehicle miles.

454. Third, as Mr Penfold demonstrated in examination in chief (see the updates to page 26 of SITA/9/2 made in examination in chief) even if Mr Millington’s contract end date of 2042 is employed the single facility solution is still the most preferred on the basis of the whole life assessment.

455. Whilst the Council made no issue of the fly ash some of the third parties referred to the need to transport the fly ash out of county in pejorative terms. However, such criticism is to overlook, first, what in reality is the small quantities of fly ash which would be produced by CERC and, more significantly, the fact that the key policy in the WMS expressly refers to the need to export fly ash out of the County which robs the point of any force whatsoever (see para 5.31 of CD/D5).

**Health**

456. For the most part, issues raised by the third parties have already been dealt with in the response to the Council’s case. However, the main exception to this is the concern about the proposal’s effects on human health. (TCN also argue that CERC should not be classified as a recovery facility (the Council make no such suggestion). However, this argument is completely flawed for the reasons set out in Mr Aumônier’s second rebuttal proof at paragraphs 41 to 47 (SITA/2/6) and did not survive Mrs Larke’s own cross examination of Mr Aumônier).

457. There is no reason for refusal in relation to health but not unexpectedly there is concern amongst the third parties about the effects of the proposal on health. However, the fact that there are no objections whatsoever to this proposal from the EA, the HPA, the FSA or the Primary Care Trust is an indication that such concerns are ill-founded.

458. In any event health is principally an issue for the EA and the pollution control regime. The Government is quite clear on the proper delineation between the planning and pollution control regimes. Paragraph 10 of PPS 23 (see CD/E15) provides:

"The planning and pollution control systems 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 from different sources 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. It plays an important role in determining the location of development which may give rise to pollution, either directly or from traffic generated, and in ensuring that other developments are, as far as possible, not affected by major existing, or potential sources of pollution. The planning system should focus on whether the development itself is an acceptable use of the land, and the impacts of those uses, rather than the control of processes or emissions themselves. Planning authorities should work on the assumption that the relevant pollution control regime will be properly applied and enforced. They should act to complement but not seek to duplicate it."

459. The Government have reiterated that advice in PPS10 (see paras 5 and 30 of CD/E6), the national policy document which specifically deals with planning and waste management. It tells WPAs to avoid carrying out their own detailed health assessments and instead advises that, drawing from Government advice and research and consultation with the relevant health authorities and agencies, they have sufficient advice on the health implications, if any, of proposals (see para 31 of CD/E6).

460. Paragraph 30 of PPS10 further explains 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. The Council plainly received sufficient advice from the relevant health authorities to be properly informed on this matter and, despite being well aware of the considerable public concerns and objections on health grounds, properly decided that there was no sustainable health related objection.

461. The EA have now published the draft EP for the CERC (the draft permit is dated 20 August 2010. The draft EP is at X/9A, while the accompanying memorandum setting out the decision making process on the EP is at X/9B) which contains a suite of conditions strictly to limit any emissions to air from CERC to levels that the EA deem acceptable. Importantly, the public in general and the third parties at this inquiry in particular have now been afforded the opportunity to make representations on the draft permit.

462. Of course, in drawing the line between planning and pollution control matters the Government were very well aware that the public have an opportunity to make representations in both forums. The appellant’s view, therefore, is that health is plainly not a matter for this inquiry but is addressed by the pollution control regime. In short, the inquiry is obliged by national policy (paragraph 27 of PPS10) to assume that the EA, the statutory body with control over pollution control matters, will properly apply and enforce the environmental permitting regime. (This was expressly the view taken by the Ince Marshes Inspector, see para 11.27 of his report, CD/I2).

463. That said, it is worth pointing out that 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 (see para 22 of chapter 5 of CD/F1). Indeed, 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 (see para 11.24 of his report, CD/I2). 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. The HPA’s position statement is at appendix 6 of SITA/1/3.

464. As Professor Bridges explained clearly in evidence, it is essential to distinguish between the hazardous properties of chemicals and the risks arising from the level and duration of exposure to it. Unfortunately, this is not a distinction that the third parties were able to make. Professor Bridges demonstrated that such risks would be truly negligible. Paradoxically, because of the special sensitivity of the SAC and the requirement to raise the height of the stack, the risk to human health is even less here than would otherwise be the case.
465. However, the public’s concerns or perceptions in relation to health are themselves capable of being material considerations. Appendix A to PPS23 lists issues which may be relevant to the determination of a planning application. The penultimate issue refers to “the objective perception of unacceptable risk to the health and safety of the public arising from the development.” Perceptions that are based on emotions, personal prejudices or information which is factually incorrect plainly cannot be objectively held.

466. Here, there is no reliable evidence to suggest that perceptions of health risk are objectively justified. Thus although perceptions, even those unsupported by objective evidence, are capable of being material planning considerations, very little or no weight should be attributed to such unjustified perceptions of health risk. That position is supported by case law. In Gateshead MBC v Secretary of State for the Environment (reported at [1994] 1 P.L.R. 85), where there was public concern about an increase in the emission of noxious substances from a proposed clinical waste incinerator, Lord Justice Glidewell in the Court of Appeal, with whom Lords Justices Hoffman and Hobhouse agreed, held that if public concern could not be objectively justified then it could not be conclusive. He continued:

“If it were, no industrial – indeed very little development of any kind – would ever be permitted.” (Page 95 of report of judgement).

467. The Inspector in the Ince Marshes case followed that reasoning. 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.” (See Inspector’s conclusions at para 11.28 of CD/I2).

468. On behalf of the appellant it is submitted that there is no reason to take any different approach to the issue in this case. In conclusion, there is no need for this inquiry either to go behind the Government’s position which is based on detailed expert advice or to intervene on a matter which is an express regulatory issue within the competence of the EA.

Other third party matters

POC

469. At the outset two general comments on POC’s closing submissions ought to be made. First, to a very large extent the content of their submissions relates to matters which are the province of the EA in relation to the EP. This applies particularly to the section in their submissions relating to choice in relation to pollution control legislation. It is noteworthy that in their submissions, Mr. Broadhurst states “we have taken this matter up with the EA”. The concerns he raises in relation to BAT are quintessentially EP issues and the EA has confirmed in its draft EP that all emission limits and operational controls it has imposed are considered to be based on the use of BAT except where different conditions are appropriate to comply with the WID or where site specific circumstances require standards that are stricter than those associated with BAT and WID as is the case.
for the long term emission limits for NO2, SO2 and NH3. (See summary of the
draft EP decision, X/9B). In other words where this proposal departs from BAT it
is in the imposition of stricter standards.

470. Similarly, Mr. Broadhurst’s submissions in respect of choice in relation to air
quality, choice in relation to health effects, single or multiple site options and the
factors concerned with the distribution of heat and power are primarily regulatory
issues and not land use planning considerations. The second general comment
(and this comment applies equally to TCN and CSWN’s submissions) is the
persistent failure to acknowledge the strategy which underlies the WLP, the
statutory development plan, and the proposal’s compliance with that strategy
and the key policies of the WLP. Under the plan led system the provisions of the
development plan are, of course, the starting point for the consideration of any
land use planning determination and POC (as well as TCN and CSWN) have
simply failed to recognise and/or address this.

471. Mr. Broadhurst emphasised that there were two key points on which he
suggests that the appeal should be refused. First, is the extinction of Western
Rustwort and, second, the lack of consideration of alternatives. On both these
points we submit that POC’s case was fundamentally misconceived. So far as
Western Rustwort is concerned, the unequivocal position of both the EA and NE is
that the proposal would not be likely to give raise to any likely significant harmful
effect. The appellant has already commented in some detail on the Council’s
case in relation to this matter. As already identified, the key to the survival of
Western Rustwort is the continuation of the china clay industry. There is no
evidence before the inquiry that the continued existence of the china clay
industry is at risk and the appeal proposals make it more likely that the industry
will continue to operate in this area. Moreover, it is to be noted that NE reached
its opinion on this matter having taken advice from its national bryophyte
specialist (see page 92 of CC/8/4).

472. As to alternatives, it is to be noted that Mr Broadhurst confirms in his closing
submissions that the County’s current reliance on landfill was unsustainable,
there was a need for alternative waste management facilities and that this need
required to be addressed as a matter of urgency. But despite this POC have not
put forward any coherent alternative strategy for dealing with Cornwall’s arisings,
still less identified any suitable sites and/or technologies which would be
practicable, cost effective and deliverable in the requisite timescale.

473. The constant assertion that ‘mass incineration’ is an unsuitable or outmoded
technology choice is without justification. First, conventional incineration is
repeatedly receiving planning permission from the Secretary of State following
appeals. It is the technology of choice for the majority of recent PFI contracts
and there is absolutely nothing in Government policy to suggest that
conventional incineration is not an appropriate technology. Neither is there
anything in Government guidance which either prescribes or proscribes a
particular technology choice (the WLP does not either). On the contrary, the
Government seeks a wide diversity of technologies and DEFRA has repeatedly
confirmed in correspondence that the appellant’s proposal is fully compliant with
Government policy (see appendix 6 of SITA/10/5).

474. The ES gave full consideration to alternative technologies and it is noteworthy
that the IEMA review graded this section of the ES as an A grade (that is to say
the best grade it could have achieved). Significantly POC did not present a
worked up business plan (their Rule 6 statement indicated that a worked up business plan would be completed and submitted in February 2010) and the evidence they have presented represents little more than a series of suggestions of what could happen but with no proper consideration of the timescales required and economic feasibility. There is absolutely nothing that could be said to represent a credible and practical alternative strategy to deliver the waste treatment capacity so urgently required in Cornwall.

475. There are some further responses that the appellant needs to make on POC’s closing submissions. First, the proposition that the precautionary principle should apply here is rejected. Paragraph 6 of PPS 23 (see CD/E15) makes it clear that the precautionary principle should be invoked only when there is good reason to believe that harmful effects may occur to human, animal or plant health or to the environment and that there is a level of scientific uncertainty about the risks which would prevent a confident assessment to inform decision making. In the case of modern incinerators subject to the full rigours of EA and EP controls, it is plain that neither circumstance applies.

476. At the Ince Marshes decision the Inspector concluded that paragraph 22 of chapter 5 of the WS2007 was a “full answer to those arguing against incineration of waste on the basis of the precautionary principle” (see para 11.24 of the Inspector’s Report at CD/I2). Indeed, he went on to conclude that as a formal expression of official opinion considerable weight could and indeed should be placed upon it (see para 11.27 of the Inspector’s Report at CD/I2). POC’s submissions in relation to human health are directly contrary to the opinions expressed by DEFRA, the HPA, the Primary Care Trust and, of course, the EA’s conclusions on the EP application (albeit still in draft form).

477. Secondly, the suggestion that the site selection process was flawed because of reliance on the WLP and the CCAS is completely misplaced. That the proposal is within the CCAS and accords with the WLP’s strategy serves to reinforce the appropriateness of the choice of site as of course confirmed in the subsequent WDF process.

478. Thirdly, the arguments that there is conflict between disposal and recycling and that CERC would not recover sufficient material to benefit recycling rates is to misunderstand Mr Miles’s evidence on the putative conflict between CERC and recycling. Mr Miles was very careful to say that there was only a potential for such conflict but this is, of course, a matter which we have dealt with fully already. And so far as POC’s argument is concerned that Mr Miles supports a distributed network of AD plants, Mr Miles was not confirming any particular alternative strategy whether put forward by POC or anyone else. Mr Miles was very careful to explain that he was not putting forward an alternative strategy on the Council’s behalf. Whatever encouragement might be given in emerging Government policy to distributed energy, there is nothing to suggest that centralised energy provision is to be resisted. Indeed, to the contrary, DEFRA has recently confirmed that this proposal is fully compliant with Government policy. (In this respect, see appendix 6 of SITA/10/5).

479. Fourthly, the suggestion that there has been any deficiency in public consultation is rejected. However, we will turn to deal with this issue more fully in relation to STIG’s submissions. Suffice it to say that the appellant does not accept the criticisms contained in POC’s submissions in relation to the Site Liaison
Group for the reasons Mr Greenwood sets out in his rebuttal (see SITA/10/4) and amplified in examination in chief.

480. POC’s contention that “to dump all of Cornwall’s waste on St. Dennis is not fair”, again, fails to recognise that a fair, open and democratic development plan process concluded that the best strategy for dealing with Cornwall’s waste was for it to be treated in a single plant within the CCAS and that that remains the committed strategy of the Council.

481. Fifthly, Mr. Broadhurst asserts that the RPS review of Mr Aumônier’s WRATE analysis exposed flaws. However, it is quite clear from the RPS review that first it fundamentally endorses the WRATE analysis findings and, secondly, went onto model the two recommendations on which POC principally rely. The result of that adjustment to the analysis was that there was no change to the order of preference of the options. (In this regard, see annex L of SITA/2/3).

482. Sixthly, with regard to the Fichtner Report, Mr Broadhurst contends that the WDAP have so far refused to accept it. We do not understand this to be the position. Indeed, it is plain from page 16 of appendix 3 of SITA/10/5 that the Cabinet Member for Waste and Environment remained convinced that Fichtner’s conclusions were robust and there is nothing in SITA/0/31 to suggest that, despite some members being unhappy with parts of the Fichtner Report, the Panel refused to accept its conclusions.

483. Seventhly, it is disputed that POC in its submissions correctly reflects Mr Greenwood’s answer to the assertion about impact on tourists travelling on the A30. Mr Greenwood emphasised that that view of CERC would not be a close view, that tourists would see all the activities of the china clay industry including the Parkandillick works and that the presence of CERC would have no adverse effect on users of Cornwall’s beaches.

484. Finally, Mr. Broadhurst acknowledges what has been all too obvious at this inquiry; namely, the conflict between the WPA and WDA. However, it is not agreed that the WPA represents the Council “as a whole”. Indeed, as has already made plain, the case put forward by the WPA contradicts the corporate position of the Council on fundamental issues.

TCN

485. Two initial comments are made. First, there has been no real explanation from Ms Larke as to how many individuals or organisations fall within the TCN umbrella or for whom she claims to speak (a characteristic shared by POC and CSWN both of whom notably did not explain to what extent they represented the views of others). Secondly, the overriding impression of Ms Larke’s closing submissions was that it was tantamount to a further proof of evidence seeking to repeat and rework her earlier evidence and to repair the damage which Ms Larke so evidently felt that Mr Aumônier’s evidence had caused. In large part it repeated detailed evidence already given and in other respects sought to put forward new calculations in response to Mr Aumônier.

486. Turning to some of the topics which Ms Larke raised, in the first place it is totally wrong to assert that Cornwall does not have a WMS. The WDA in its letter dated 11 March 2010 (see X/3/2) together with the DEFRA letters attached thereto make it abundantly plain that there is a WMS which forms the foundation of and is set out within the WLP. A reading of the WLP itself, particularly
paragraphs 1.3, 1.5, 1.6 and chapter 4, makes it plain that the WLP is not simply a land use planning policy document but contains the Council’s WMS.

487. The suggestion that the WMS and/or the WLP were not the subject of proper consultation or were based on a ‘secretive BPEO analysis’ is completely misplaced. Attention is drawn to the WLP Inspector’s report where the Inspector concluded: “I consider that the study by AEA Technology plc together with the consultation processes at the various stages of the preparation of the plan, constitute the type of ‘systematic, consultative and decision making procedure’ envisaged in the definition of BPEO in PPG10. In particular, the local plan preparation procedure provides an opportunity to assess the strategy and the way in which the BEPO study and the other modelling techniques have assisted this formulation” (see para 132 of CD/G2).

488. Similar conclusions were made by the Inspector at paragraph 491 where he expressly rejected arguments that the BPEO study was fundamentally flawed or an inappropriate tool to assist the development of the waste management strategy for the County. The Inspector accepted that the outcome of the BPEO study was that a “single major EfW facility, specifically an incinerator, would be the most practicable way of dealing with the household waste stream after recovery of recyclables.” (See para 5.22.2 of CD/G2).

489. It will be recalled that Mr Flanagan, speaking corporately for the Council in his letter of 16 June 2009, confirmed that the WMS on which the WLP was based has not changed and that the Council remained committed to it. (See appendix 2 of SITA/10/5). And DEFRA, in its letter of 22 February 2010, confirmed that it assessed the Outline Business Case (“OBC”) for the PFI Contract as containing a sound local WMS that was embedded in the adopted WLP. (See appendix 6 of SITA/10/5).

490. Secondly, Ms Larke in dealing with need asserts that Cornwall’s ability to meet national indicators in WS2007 would be prevented by CERC. This is completely wrong. Mr Aumônier emphasises that the need assessment was based upon the assumption that Cornwall would meet the targets laid down by the WS2007 and other Government policy documents. Questions as to need in respect of MSW and C&I arisings have already been dealt with. It is only necessary to say that Ms Larke’s assessment of those arisings is wholly out of line not just with the appellant’s assessment but that too of Mr Miles for the Council.

491. For example, Ms Larke estimates residual MSW of some 86,000 tpa in 2020. Mr Miles’s assessment for the same year (at his paragraph 3.8) is some 175,000 tpa and the requirement of the RSS is 190,000 tpa. For C&I waste, Ms Larke’s residual quantity was 90,000 tpa which can be compared with Mr Miles’s 127,000 tpa and the RSS’s range of 160,000 and 180,000 tpa. Her suggestion that CERC would crowd out recycling flies in the face of clear Government guidance in paragraph 23 of chapter 5 of WS2007 that vigorous EfW policy is compatible with high recycling rates.

492. It is unfortunate that Ms Larke chose to repeat her evidence about three EfW plants refused planning permission since Mr Aumônier’s rebuttals deal comprehensively with these matters (see para 29 of SITA/2/4 and para 24 to 26 of SITA//2/6). Ms Larke’s comments about the lifespan of Connon Bridge landfill site, even assuming its extension, completely fails to recognise Mr Aumônier’s evidence that it could well be exhausted by 2014. As with POC, TCN has merely
put forward a series of possible alternative technologies and strategies for
dealing with Cornwall’s waste but without demonstrating that there is any
realistic, practicable, cost effective solution which could deliver the required
capacity to deal with what the Council itself regards as an increasingly urgent
need for waste management capacity.

493. Thirdly, Ms Larke invokes the concept of prudence but, in fact, suggests a
course of action which can only be described as extremely imprudent and seeks
to characterise the financial consequences estimated by the WDA of dismissing
this appeal as unnecessary. The suggestion that Cornwall could achieve recycling
rates significantly above the challenging national targets which Mr Aumônier has
assumed the Council would achieve would be imprudent in the extreme. No
prudent WPA or WDA could sensibly proceed on such a basis.

494. Fourthly, Ms. Larke’s assertion that the proposal would not represent recovery
as defined in the R1 formula but only a disposal facility is misplaced. It should be
noted that this is an issue which is not a land use planning consideration at all: it
falls fairly and squarely within the province of the EA and the EP such that the
Secretary of State is not required to reach a decision on the dispute over the R1
formula between Ms Larke and Mr Aumônier. DEFRA clearly regard CERC as a
recovery facility (see appendix 6 of SITA/10/5) and Government planning policy
guidance does not require a recovery facility to meet the R1 formula. Even so,
Mr Aumônier has clearly demonstrated in his main proof (see chapter 7 of
SITA/2/2) and in his second rebuttal (see paras 41 to 47 of SITA/2/6) that the
proposal would meet the R1 test.

495. It will be recalled that Mr Aumônier emphasised that including heat to be
exported to the Treviscoe clay dryers together with the Eco-town (in addition to
the Parkandillick dryers) would boost the efficiency factor still higher. In any
event, Mr Aumônier emphasised the fact that the facility will be constructed so as
to meet the R1 formula. If there were any doubt about this, it needs to be borne
in mind that the EA would only grant an EP if it was satisfied that the proposal
represented BAT. Article 2, paragraph 12 of the EU Directive 2008/1/EC (see
CD/H4) sets out a definition of BAT which requires regard to be had to a wide
variety of matters including those specified in Annex (IV). Obviously, the EA
needs to consider the efficiency of the proposed plant when considering BAT and
would only grant a permit if satisfied it would represent BAT. The draft EP (see
X/9A and X/9B) states that one of the matters that the EA expressly considered
in its BAT assessment was the plant’s combustion efficiency and energy
utilisation. The fact that the permit application was for an incinerator is nothing
to the point. The definition of “incineration” plant in article 3(4) of the WID is
any plant dedicated to the thermal treatment of waste with or without recovery
of the combustion heat generated. Contrary to what Ms Larke’s says, there is
nothing before the inquiry to substantiate her assertion that EA staff have agreed
CERC would not pass the R1 test.

496. Similarly, Ms Larke’s submissions on greenhouse gas emissions are manifestly
a matter for the EA. However, nothing in her submissions has demonstrated that
Mr Aumônier’s characterisation of her approach to this subject as misguided was
other than entirely correct (see paras 6.18 to 6.28 of SITA/2/2 and paras 48 to
64 of SITA/2/6). It will be recalled that it was on this matter that Mr Aumônier
felt compelled to describe Ms Larke’s approach as being sprinkled with “fairy
dust”. Again, the issue of greenhouse gas has been fully addressed by the EA
who explain in the draft EP that they have considered the global warming potential of the proposals as part of the BAT process.

CSWN

497. The extent to which Ms Hawken’s submissions represent the views of anyone other than herself is questioned. Furthermore, some caution is expressed about placing any real weight on her evidence as it was plain that it was based upon and undermined by significant factual errors together with a cavalier disregard of the appellant’s full evidence. By way of example only, her assertion that Mr Greenwood’s evidence stated that CERC’s stack would be the highest chimney in the UK is a complete invention.

498. Again, by way of example, in referring to Mr Scanlon’s proof of evidence she states that the Teesside incinerator was unable to achieve compliance with new emissions requirements. However, Ms Hawken fails to have regard to the next paragraph in Mr Scanlon’s proof in which he says that SITA was due to spend £25m to ensure that the plant was fully compliant with those new standards in 2010 – 2011.

499. Her suggestion that farmers near the Isle of Man have had to give up growing food is completely without foundation. (In this respect, see SITA/0/19 and paras R56 to R67 of SITA/1/4). Further, Ms Hawken referred to SITA operating the Chineham incinerator when, in fact, it is operated by Veolia. There is also no documentary evidence to support what Ms Hawken says about Milk Link and Dairy Crest having to constantly test for dioxins if CERC is built and caution is thus invited in relation to this assertion.

PC-STIG

500. To a very large extent the submissions of St Dennis Parish Council and STIG replicate the concerns and objections of the Council which have been dealt with elsewhere in these submissions. However, there are a few particular issues to which a response is needed.

501. First, the contention that consultation with the local community has been less than satisfactory is rejected. In fact, there has been extensive consultation undertaken by the appellant, by the WPA and by the EA. It is significant that the Council do not suggest that there has been any deficiency in the consultation exercises or any failure to adhere to its Statement of Community Involvement. The extent of community engagement in correspondence and in attendance at the inquiry demonstrates that the local community is and has been fully aware of the proposals and has taken full opportunity to make its views known and influence the decision making process.

502. Secondly, turning to the assertion that the proposed stack would be approximately twice the height of the existing chimneys at Parkandillick, the relative heights are stated in Mr Coulson’s proof at paragraph 5.80 (SITA/6/2) are that the existing stacks are at 221.5 and 223 metres AOD as compared with the proposed stack at 265 metres AOD.

503. Thirdly, Mr Cole in his closing submissions on behalf of PC-STIG states that the photomontages produced by the appellant were highly contentious. However, it is pointed out that there is a set of agreed photomontages (at least between the appellant and the Council) which were prepared by Mr Coulson and, moreover,
that Mr Greenslade appearing on behalf of PC-STIG accepted in cross examination that its photomontages were inaccurate.

It was with some surprise that we learnt at the last moment that Mr Lloyd was going to be making legal submissions on behalf of PC-STIG. The appellant had received no forewarning of this or the authorities to which he was going to refer. As an aside, the juxtaposition between his statement that the WLP was of "enormous importance" in determining this application and four sentences later that "very little weight" can be accorded to it is baffling in the extreme. Also baffling is his reliance on section 54A of the 1990 Act. This reference is out of date. Section 54A was repealed and, in effect, replaced by section 38(6) of the 2004 Act.

However, the appellant’s puzzlement did not cease there concerning these legal submissions. First, it has been no part of the appellant’s case that the proximity principle should be relegated to the status of another material consideration. As such the Adriano case is simply not relevant. Secondly, the Capel case may be dealt with in short order given that Mr Justice Collins did not decide the ground on which Mr Lloyd seeks to rely. Thirdly, Mr Lloyd then leans on the EP Regulations 2007. Two short points stem from this: first, Mr Lloyd strays entirely into the province of the EA in relation to environmental permitting matters which are not the concern of the WPA. Secondly, those regulations have been largely revoked and replaced by the 2010 Environmental Permitting regulations.

However, Mr Lloyd did helpfully take us to the Lewes judgment in which, as he fairly acknowledges, Mr Justice Sullivan accepted that where the potential for rail remained that would satisfy the rail point. Indeed, paragraph 20 of that judgment is instructive:

"...the report acknowledges that the site is suitable for rail transfer, subject to reopening the railway, acknowledges that this mode of transport is to be preferred in policy terms if practicable but concludes, for the reasons given in the report, including cost, that it is not practicable at present. Although the outcome may be disappointing to those who favour rail as opposed to road transport, especially in view of the fact that the potential rail link was one of the factors in favour of the site, it cannot possibly be said that the approach in the report is unreasonable. The potential for rail haulage remains, even though it is not practicable at the moment."

Such reasoning seems to be very apt in the present case and demonstrates that the potential of the appeal site to be served by rail is an important consideration.

The section 106 agreement

We are in the strange position of having before the inquiry a completed legal agreement under section 106 of the 1990 Act to which the Council are a principal party and yet against which the Council seek to make “adverse comments”, (see CC/0/9). In the circumstances, the appellant contends that the Council’s submissions should be given short shrift. The Council is a signatory to the document. It cannot properly on the one hand be a party to a legal document and on the other say that it does not comply with either policy or law. If the Council did not think the document acceptable, for whatever reason, the Council should not have become a party to it. The proper course would have been to
decline to enter the agreement forcing the appellant to offer a unilateral obligation which it could then have attacked.

509. The suspicion must be that the Council is trying to have it both ways: it is keen to secure what the agreement offers (the obligations will be legally enforceable against the appellant even should the Secretary of State disregard them) yet cynically seeks to deprive the appellant from taking credit for the benefits it provides. The Council’s four adverse submissions are dealt with in turn.

Community Fund

510. Put shortly, the Council argues that the community fund is unnecessary to make the proposal acceptable in planning terms so that the community fund is not something that should be accorded any weight by the Secretary of State and which cannot, having regard to Regulation 122 of the Community Infrastructure Levy Regulations, lawfully be a reason for granting planning permission.

511. It is an unattractive argument given that it is national Government policy that section 106 obligations should not be sought by local planning authorities unless, inter alia, the obligation was necessary to make the development acceptable in planning terms, (see para B5 of DCLG Circular 05/05). Moreover, when the Council consulted local residents about the possibility of extending tipping at the United Mines landfill site it offered the prospect of a £1m community trust fund to compensate for any impact that the extension might give rise to. It must then have thought such an offer would comply with national guidance in CLG Circulars which contained identical tests to those now contained in the Community Infrastructure Levy Regulations.

512. In any event, there can be little doubt that the community fund will be of benefit to the community. Mr Greenwood explained in SITA/0/28 and his oral evidence that the fund is to be used for supporting and enhancing the wellbeing of the local communities most affected by the development. Wellbeing was an issue of concern identified in the Health Impact Assessment, (see appendix E of CD/A9). The community will be able to direct the funds to areas of need of their own identification. It will offset some of the harm and negative perceptions caused by the proposal.

513. In the Hall Farm, Beverley inquiry the Inspector and the Secretary of State attached weight to a community fund which the appellant had conceded was not necessary to justify the appeal proposal (see para 98 of CD/I11). The Inspector concluded that the community fund provided welcome benefits which would help counterbalance the harm to landscape and amenity caused locally and for this reason found it a necessary part of the provision in the event of planning permission being granted (see para 107 of CD/I11). The Secretary of State particularly scrutinised this issue and called for a revised unilateral undertaking and found it to be compliant with Circular 05/05 (see para 19 of the letter dated 17 February 2009 in CD/I11). Of course, Mr Greenwood said that without the community fund planning permission could still be granted and so to that extent the community fund could not be said to be necessary. However, as this decision letter demonstrates, an Inspector and the Secretary of State can, of course, reach their own view on necessity.

514. In the circumstances and on the analogy of the decision at the Hill Farm inquiry, given that the community fund would provide benefits to offset harm it is certainly possible to conclude that the obligation is necessary and meets all the
relevant tests in Circular 05/05 and the Community Infrastructure Levy Regulations. Accordingly, the benefits it would bring to the community should be accorded significant weight.

Restriction on waste arisings

515. There is no justification whatsoever for imposing a restriction on importing waste from outside the county. There is nothing in policy to endorse such a restriction. The opposite is true. One of the key planning objectives in PPS10 is to encourage competitiveness. To introduce a restriction on origins of waste would run counter to that key objective and to the clear views of the Secretary of State expressed in the Ineos Chlor decision that the sourcing of fuel is a commercial matter for the operator (see CD/I6).

516. Furthermore, the Inspector at the Eastcroft appeal was very critical of conditions which sought to restrict the origin of the waste, concluding that it would give rise to practical difficulties and conflict with PPS10 (see para 351 of CD/I1). In any event as has already been explained in the context of capacity, there will be quantities of residual MSW and C&I waste well in excess of CERC’s capacity such that there is no real likelihood of the appellant importing waste from outside the County.

517. The terms of the contract ensure that any MSW treated at CERC arises within the County and so the concern, such as it is, is confined to C&I waste. Here Mr Scanlon explained that it was “very unlikely practically” that the appellant would take C&I waste from outside the County as C&I waste tends to go to the nearest local facility. It is just a matter of economics. It is submitted, therefore, that there is no need for a condition or a section 106 obligation to prevent C&I waste from outside Cornwall being treated at CERC. First, there is no evidence that it is at all likely, and secondly there is no evidence that it would be objectionable even if it did take place. Thirdly, it is in any event a commercial matter and, fourthly, the contract provides a mechanism for preventing or limiting such waste being treated at CERC if circumstances were ever to arise to make that desirable.

Haul Road

518. The Council seems to be suggesting that the access road will form part of the site for the purposes of a BS4142 assessment unless and until it is adopted as a public highway. The appellant is surprised that the Council has made such a submission for it is effectively a concession that Mr Dennis’s approach to a BS4142 assessment was correct.

519. The access road will become an adopted highway, if not before operations begin, then very shortly thereafter. The BS noise assessment of CERC once operational must of course be carried out on the assumption that the access road will have been adopted and it would be nonsensical to assume otherwise. The reason adoption would not occur any sooner is both sensible and practical. The access road will be used by construction traffic throughout the building operations. Such traffic would inevitably damage the top wearing course of the road and so, as is normal in situations like this, it is proposed that the final course and therefore the road’s completion to adoptable standards would take place as soon as construction of CERC has been completed.
Rail

520. It is hard to understand the submission that an obligation to commit to use rail or to review the use of rail in the future is necessary to make the development acceptable in planning terms when the Council instructed the appellant not to include rail access and there is no policy requirement for the use of rail. WLP Policy L6 specifically includes an exceptions clause. L6 does not state that where an exception is applied then the matter should be kept under review. If that had been the intention, surely L6 would have been drafted to reflect it.

521. In any event, Mr Miles expressly conceded that planning permission could be granted without rail facilities without breaching Policy L6. In the circumstances, the suggestion that there should be an obligation to use rail or to review its use in the future is wholly unsustainable. That said, the appellant reiterates what has already been said, namely that Mr Scanlon said to Mr King that the appellant will continue to review the possible use of rail and, if it becomes financially viable, would implement the use of rail. It is, though, plainly a commercial consideration and not one for the section 106 agreement.

522. If contrary to these submissions, the Secretary of State considers that the section 106 obligations or any of them do not meet the statutory tests, then all he need do is to make clear that he is attaching no weight to such matters and that they have not influenced his decision. The validity of the section 106 agreement in such circumstances would not, itself, be affected.

Consequences of failure

523. Mr King in opening the case for the Council stated that the appellant and the WDA had “painted in dramatic colours” the consequences of the appeal being rejected (see para 84 of CC/0/1). But there is little doubt that Cornwall will suffer severe financial and waste management consequences if this appeal is dismissed. Rejection of this proposal will materially affect the ability of the Council to comply with local, national and EU waste policy. It will condemn the Council to the wholly unsustainable situation whereby it will be forced to continue its reliance on what Mr King described in opening (see para 83 of CC/0/1) as the “problem of excessive dependence” on disposal to landfill, at present, taking place within Cornwall but shortly to distant landfill sites out of Cornwall. Far from being the option of “last resort” as emphasised in PPS10 and elsewhere in national policy, landfill will remain the primary waste management method in Cornwall, wholly contrary to policies at all levels and made even more antipathetic by the enforced export of its waste to other authorities.

524. The costs of waste management in Cornwall will soar. The WDA is acutely aware of these dire consequences and has set them out in its letter of 11 March 2010 (see X/3/2). Corporately too, the Council has recognised the plight in which it would find itself. As the WDA letter explains, the dismissal of this appeal will plunge the Council into a serious waste management “crisis”. The costs to Cornwall’s council tax payers are estimated by the WDA as “well over £200m.” Members of the Cabinet that took the decision to confirm the contract and instruct the appellant to prepare a RPP are minuted as stating that it was not felt fair to burden the people of Cornwall with the resulting costs over the coming years (see page 16 of appendix 3 of SITA/10/5).
525. However, the WPA have adopted a strangely detached stance: not content merely with a position which is fundamentally opposed to the clearly expressed corporate decision of the Council in relation to its adopted waste management strategy and the continuation of the contact with the appellant, it professes to wish to ignore reality and the consequences of its own misguided decision to refuse planning permission. The desire of the WPA to distance itself from the WDA has been a recurring feature of the WPA’s case and the consternation that the WDA’s letter provoked was all too evident.

526. Mr King in opening suggested that the functions of the WDA and WPA “must be exercised separately from each other” (para 5 of CC/0/1) and that relatively little weight should be attached to delays in the provision of new treatment capacity and the need to negotiate a new contract that dismissing the appeal would give rise to (see para 93 of CC/0/1). This is rejected. It is grossly irresponsible and flies in the face of both WS2007 and PPS10. WS2007, the national strategy, in setting out the main elements of the new strategy, urges that there should be an improvement in local governance with a clearer performance and institutional framework to deliver better coordinated action and services on the ground. (See para 19 of chapter 1 of WS2007 at CD/F1).

527. In contrast, the WPA appears to have its head in the clouds. It seeks to ignore that there was considerable collaborative action between the WDA and WPA in the contemporaneous processes of contract procurement and WDF preparation. In addition, the WLP, to which the Council remains committed, is not simply a land use document but contains the Council’s WMS as the DEFRA letter makes clear (see appendix 2 of X/3/2). Attempts, therefore, to denigrate the role and opinion of the WDA are misconceived. The spectacle of the internecine war as it has unfolded at the inquiry, whilst at times amusing, has been most unedifying.

528. The emphasis on timely and appropriate delivery of needed infrastructure is writ large in national policy. DEFRA have set up the WIDP with the mandate to improve investment and procurement by local authorities and to obtain cost-effective and timely delivery of the major infrastructure required (see page 71 of CD/F1). The Council’s submission that financial consequences of the appeal being dismissed and/or the contract being terminated are either not material planning considerations or deserving of little or no weight are, it is submitted, entirely misplaced.

529. Paragraphs 32 – 34 of Chapter 5 of the WS2007 are all about reducing the costs of waste management and, especially given the dire financial situation facing the nation; it is extraordinary that the Council should profess such a cavalier attitude to the financial consequences of the action that it invites. It is irresponsible to oppose CERC on the grounds that a new waste management strategy is required (see para 7.11 of CC/1/2) when the Council acting corporately is committed to that strategy continuing and it is even more irresponsible to do so when the WPA, notwithstanding its acceptance of an urgent and pressing need for additional treatment capacity, is not putting forward any preferred sites or technology.

530. Mr Miles assured the inquiry that he was not explicitly promoting a new strategy (see para 7.11 of CC/1/2) although appeared to be doing just that. This is the antithesis of the expeditious and sympathetic handling of this application called for by paragraph 38 of PPS10. It represents the opposite of the 5th key
planning objective in paragraph 3 of PPS10 to reflect the needs of waste collection authorities, waste disposal authorities and business.

531. Mr King submitted that regard should be had to the potential of alternative strategies (see para 90 of Mr King’s opening at CC/0/1): not only do we question whether the WPA has authority to make the point given the Council’s commitment to the strategy and policies of the WLP (see appendix 2 of SITA/10/5), but draft NPS EN-1 (see para 4.4.3 of CD/E17) advises that alternative proposals which are vague or inchoate should be ignored. The fact that Mr Miles’s proof had been sent to Messrs. Mason and Flanagan without response from them in no way resolves the fundamental contradictions which lie at the heart of the WPA’s case.

532. And, of course, with regard to the contract we have the bizarre situation of the WPA seeking to disown its provisions and ignore the consequences of its termination should the appeal be dismissed, whereas the Council acting corporately as recently as February 2010 has reaffirmed the contract and instructed the appellant to prepare a RPP in accordance with the provisions of the contract and in accordance with the Development Plan to which reference has already been made.

533. In these circumstances, it is absurd to suggest that the financial consequences to the Council’s taxpayers, should this appeal be dismissed, is not a material planning consideration. This is a position which flies in the face of national policy. As we have already said, national policy recognises that the timing and delivery of waste management facilities is, as Mr Aumônier described it in examination in chief, absolutely critical to delivering sustainable waste management (by reference to paras 1 and 2 of CD/E6). A key objective of WS2007 is to secure the investment in infrastructure needed to divert waste from landfill (see para 23 of chapter 1 of CD/F1). The delay and the costs arising from it if the appeal is rejected are plainly contrary to one of the key national policy requirements in delivering sustainable waste management (see para 13.47 of CD/I3).

534. Given the importance placed upon delivery in national policy, the fact that cost to the public purse has been regarded as a material – and weighty – consideration in previous Secretary of State decisions in relation to waste management facilities and, as Mr Greenwood recognised in answering Mr King’s questions in cross examination, the Government’s current drive to reduce spending, it is frankly untenable to suggest that either the delay of itself or the costs caused to the Council and the community by that delay are not material considerations or deserving of little weight. On the contrary, as noted above, the Council corporately recognised the need to avoid placing additional financial burdens on the public.

535. Corporately the Council estimate the delay to be at the very minimum nine years before construction could commence. (See page 12 of appendix 3 of SITA/10/5, the minutes of the Cabinet meeting on 10 February 2010). That period is entirely sensible and comprises three years for the development of a new WS, three years for the termination and re-procurement of an integrated waste management contract and three years for the preparation, submission and determination of a planning application.
536. If the Secretary of State dismisses the appeal on the basis that a new approach to waste management is required, any alternative proposals would only realistically be brought forward once a new waste management strategy has been adopted. A prospective developer for major waste infrastructure is extremely unlikely to risk a planning application in the absence of a clear waste management strategy, in particular as Mr Scanlon explained (see para 12.23 of SITA/1/2) where the Council has now refused two planning applications for EfW facilities. Mr Miles’s contrary position is that, should the appeal be dismissed, a developer could bring forward a planning application for an alternative waste management facility in the absence of any new waste management strategy should now be set aside. Mr Miles based his position on the “well advanced” nature of the draft RSS (see para 12.5 of CC/1/5).

537. Of course, matters have moved in precisely the opposite direction and the principal basis on which Mr Miles suggested a developer could bring forward an application has now evaporated. There is really no prospect that the policy approach of the draft RSS would somehow live on after the abolition of regional planning, especially given the WPA’s consistent opposition to such an approach and the WLP strategy (which the Council remains committed to) itself having rejected the similar spatial approach of concentrating development at growth towns.

538. Mr Greenwood described the Council’s estimate of three years for the preparation of a new strategy as a reasonable working assumption. This was plainly a fair description. The Council’s estimate is based on its own experience and the advice of its independent consultants, Fichtner. As Mr Greenwood described in evidence, that experience is largely of failures to meet targets in the production of development plan documents. Previous estimates it has given to Mrs Burden, the Inspector who looked at the WDF submission document, and DEFRA were hopelessly optimistic. There is no basis for believing in a sea change in the Council’s track record. It is now known that the timetable for the preparation of a Core Strategy has been knocked back by about a year (see CD/X12).

539. Moreover, if the appeal is rejected on the basis of the need for a new approach to waste management and, in particular, if a distributed/dispersed system of waste management is considered preferable, this will give rise to the need to identify a multiplicity of different sites. It is unlikely that the Core Strategy would itself make those allocations and instead that process would be undertaken in a Local Development Document which allocated sites. Mr Greenwood estimated that such a document would, of itself, take at least two and half years. In the circumstances, it may be that the period of three years is rather generous to the Council. What can, it is suggested, be of no doubt is that given the history of planning applications for waste management facilities in the County, no developer is going to jump the gun and take the substantial risk of making an enormously expensive application in the absence of a new strategy. Even more so now that the draft RSS will never be adopted.

540. It is difficult to know precisely what the WPA’s position is in relation to the period required for the procurement of a new contract. All Mr Miles says is that allowing for site acquisition, re-procurement, construction and taking into account the likelihood of overlap between the procurement and planning the site could be operational in seven years (see para 12.12 of CC/1/5). Additionally, he suggests that a planning application could be brought forward in the order of 18
to 24 months (although it should be noted that Mr Miles's estimate of the period required for the planning application appears to follow on from his reliance on the draft RSS and his experience of a proposal in Cardiff which involved a merchant facility and was not the subject of a PFI procurement). (See in this respect, para 12.9 of CC/1/5).

541. Given a three year construction period, which the WPA has not called into question, it appears that Mr Miles believes that, in addition to the adoption of a new WS being largely irrelevant to the question of delay, the procurement and application could be done within four years. No justification whatsoever is provided for this estimate, save perhaps for the suggestion that there may be some overlap between the procurement process and the planning application. However, such a suggestion is wholly unrealistic for no waste management company would be likely to expend money on a planning application before it knew whether it had won the contract under which the facility would be built and operated. The result is that the three year period for the procurement of a new Contract has not been challenged by the WPA properly or at all. It is worth noting Mr Scanlon’s doubt that the procurement competition would be as vigorous as the competition which led to the award of the contract to the appellant given the history of planning applications for waste management facilities in the County and the “vastly increased at risk costs” of bidding in these competitions since 2006, (see para 12.23 of SITA/1/2).

542. In short, apart from Mr Miles’s experience of a totally different project, the only justification put forward by the WPA for ignoring the Council’s corporate position on the period of delay, as identified in Cabinet minutes (see appendix 3 of SITA/10/5) – which it should not be forgotten is supported by the WDA (see X/3/2), the Council's consultants Fichtner (see page 33 and 34 of CD/O1), as well as the appellant – is the draft RSS which is no longer of any relevance whatsoever. The only possible conclusion on the evidence before the inquiry is that a delay of at least nine years is realistic. On any view that is a very grave consequence of dismissing the appeal. Even if some time could be shaved off this period it is still a delay with enormous and unwelcome ramifications for Cornwall.

543. The WPA did not challenge the resultant costs of the delay save for disputing the length of delay and the amount of landfill capacity remaining in the County. These matters have already been discussed. The estimated cost of a nine year delay is £166 million. (The estimate is based upon a maximum rate for landfill tax at £72 per tonne in 2014, nil growth in the waste stream and a maximum rate of LATS of £50 per tonne permits, see pages 13 and 14 in appendix 3 of SITA/10/5). Additionally, the Council will have to fund termination costs of the contract with the appellant of between £35 million and £50 million.

544. Furthermore, the WDA would be unlikely to receive PFI credit support on any subsequent proposals for waste infrastructure development as funding for new PFI schemes has expired. Government support to the current project equates to around £3.35 million per year for the 30 year life of the contract and is provided in respect of the treatment of residual waste through EfW in accordance with the WDA’s approved final business case to DEFRA. A change to the residual technology would be likely to be viewed as a material change to the final business case resulting in the loss of PFI credits. The costs to the ratepayers in Cornwall should this appeal be dismissed will be vast at well over £200m.
Benefits

545. By contrast, this proposal offers significant benefits which all support the grant of planning permission. (The letter from DEFRA dated 22 February 2010 neatly captures some of these benefits, see appendix 6 of SITA/10/5). This proposal will:

1. Manifestly this is sustainable development: CERC meets the urgent and pressing needs of the people of Cornwall now without compromising the ability of future generations to meet their own needs. On the contrary CERC will safeguard the future for new generations of Cornishmen by helping to reduce green house gases, by generating renewable and low carbon energy and thereby lowering the need to burn fossil fuels, by treating waste higher up the waste hierarchy and reducing the cost of waste management in Cornwall now and in the future;

2. Deliver, in a timely and cost-effective manner, the key asset in the adopted WLP;

3. Help avoid a serious waste management crisis in the County which would place a very substantial cost burden on the Council’s tax payers;

4. Drive waste up the waste hierarchy and the County away from its unsustainable dependence on landfill;

5. Use waste as a resource by:
   - Contributing significantly to the Government’s aim to produce 15% of the UK’s energy through renewable energy and reducing reliance on fossil derived energy; and
   - Reducing the demand on natural resources and thereby allowing European and National targets to be met and exceeded.

6. Offer the opportunity for the synergistic treatment of MSW and C&I waste in accordance with national policy;

7. Use residual waste as fuel to provide electricity and heat;

8. Provide new local employment and help to sustain existing economic activity thereby contributing to the efforts to regenerate the CCA;

9. Supply steam to the adjacent china clay dryers significantly reducing energy costs for their operators and their reliance on fossil fuels for their considerable energy needs;

10. Set up a visitor centre providing information about waste management; and

11. Represent the fundamental element of an integrated waste management solution for the County for a 30 year period which will deliver proven, environmentally sound and economically viable technical solutions to avert what would otherwise be a waste management crisis in Cornwall.

Conclusion

546. In conclusion, this is manifestly a scheme deserving of, to use the language of the most recent PPSs, “sympathetic and favourable consideration” by the Secretary of State. For all the reasons cited above we invite the Inspector to
recommend to the Secretary of State that this appeal be allowed and planning permission granted, subject to conditions and the section 106 obligations.

The Case for Cornwall Council

Introduction

547. The Council, acting as WPA, submits that this is a proposal rooted in the distant past. The appellant, and the Council as WDA, have pursued a solution to Cornwall’s waste management needs which may have seemed reasonable 5 or 10 years ago but is no longer so.

548. We know that the appellant’s parent company, SITA, is wedded to mass-burn incineration. It has bid for 5 MSW contracts in the last 5 years, and all of these included EfW plants comparable in their technology to CERC. All of its existing MSW contracts include, as the primary form of treatment, mass burn incineration, as Mr Scanlon confirmed in cross examination. Publicly, nevertheless, it claims that “there is an exciting future for gasification and other energy recovery technologies in the UK”. (See CC/1/11).

549. It is also clear that other waste management providers are prepared to offer, as part of their contract bids, alternative technologies (such as IVC and MBT) either on their own or in conjunction with mass burn incineration. (See CC/1/10). AD is to be particularly encouraged by the new government. (See POC/0/56). But, under the Project Agreement, the ability of the Council to require the appellant to provide new facilities for the treatment of biowastes is significantly qualified. (See CD/G1 pages 106-107 clause 70, especially 70.1 (c), (e) and 70.1A(b)(i)).

550. SITA’s involvement with what became the contract (i.e. the Project Agreement) for Cornwall started in 2000, but the substantive discussions appear to have started in October 2003. The principal driving force behind the procurement process which led, eventually, to the new contract was the need to reduce the amount of waste sent to landfill; and, right from the start, it is plain that EfW through mass burn incineration was the most likely – indeed the favoured – option. This was confirmed by Mr Scanlon in cross examination. (See SITA/1/2 paras 3.3 and 3.10).

551. The tender process took place between November 2003 and October 2005, when SITA submitted its best and final offer. The contract was signed a year later. (See SITA/1/2 para 3.16). But, plainly, it was much earlier than 2006 that the decision was taken by SITA, encouraged in this direction as they had been by the WDA in the Council, to promote a mass burn incineration solution in the form of a single, large, centrally located plant. That decision in fact appears to have been taken in late 2003 as Mr Scanlon agreed in cross examination; not surprisingly, perhaps, given the provisions of the WLP, which had been adopted in 2002. This matter will be touched on again.

552. There was a substantial amount of material submitted in March 2008 with the planning application which dealt with matters such as alternative technologies, the number of facilities that should be provided, and alternative sites. This however was produced in order to justify a decision that had already been taken. The flaws in this material will be addressed later. However, there is no evidence that these were examined by the appellant before the choice was made to
promote the single centralised solution – in particular, before the contract was signed. It can therefore safely be concluded that they were not.

553. The purpose of WLP Policy L6, and of the contract, is to deal with MSW. Whilst both allow for the possibility of treating C&I wastes at the plant, neither requires it; this can therefore properly be described as an ancillary function of the plant rather than forming any part of the reason for building it. (See CD/D5 paras 5.29, 5.30 and 5.32 and CD/G1 page 1 background paras A to C). Thus, as Mr Scanlon agreed in cross examination, any spare capacity that there may be to treat C&I waste is a commercial bonus for the appellant, and would bring a financial benefit to the Council.

554. It is to be noted that the appellant, whilst maintaining that under no foreseeable scenario is it likely to be necessary to import C&I waste from outside the County in order to satisfy the incinerator’s appetite, have nevertheless not offered to enter into a planning obligation to prevent this from happening. The reason for this is that the appellant wants to leave the option to import C&I waste from outside the county. This was confirmed by Mr Scanlon in cross examination.

555. The WPA does not submit that planning permission should not be granted unless and until the appellant agrees to enter into such an obligation; but rather that the fact that they have not done so, and the reason for this, supports the Council’s contention that the plant is oversized to deal with MSW, and therefore that importation of substantial quantities of C&I waste is likely to be needed in order to keep CERC running at full capacity. Furthermore, because there is a commercial market for C&I waste, it is uncertain whether sufficient quantities will be secured by the appellant to feed the plant - hence the possibility of needing to secure supplies from outside the County. This issue is addressed in further detail later in the Council’s case.

556. Much time has been taken up in the appellant’s evidence to the inquiry that there is something unusual or even perhaps bizarre about a case in which a council enters into a contract which requires the provision of a particular facility, then refuses planning permission for it. Even if that were correct, it is difficult to see what relevance this could have to the Secretary of State’s decision on the appeal. Mr Scanlon was unsure what its relevance might be, and Mr Greenwood did not seek to take this particular issue any further in his evidence.

557. The fact is that the Council as WDA and the Council as WPA exercise different powers and functions that are derived from different statutory sources. The fact that the Council is a single corporate body is really quite beside the point. Thus, the Council as WDA had the power to enter into the contract with the appellant in October 2006; and the Council as WPA had the power to refuse planning permission for the development for which application was made in pursuance of the contract. In no way could the contract fetter or affect the exercise of the WPA’s discretion whether or not to grant planning permission; it was open to the WPA to refuse planning permission; and the appellant understood this at the time the contract was signed, as Mr Scanlon accepted in cross examination.

558. Therefore, having exercised its discretion to refuse planning permission, the WPA was not only entitled but obliged to call evidence at this inquiry to support the reasons for refusal. The members of the then County Council’s Planning (Development Control) Committee decided to refuse permission contrary to
officer recommendation – albeit that the recommendation was changed late in the day – but this is commonplace and something which, again, they were entitled to do. (See CD/8/2 paras 5.27 and 5.28).

559. Thus, complaints that the Council has run a case at the inquiry which may be inconsistent with things that had previously been said by officers are entirely misplaced. Much of Mr Greenwood’s evidence was taken up with pointing out alleged inconsistencies in the Council’s case and this appears to be the sole purpose of much of this material. However, he accepted that the Council was entitled to make the case it has and that the only relevance of the point (which the Council does not accept in any event) was that the application had not been sympathetically handled, in accordance with the advice in PPS10. (See CD/E6 para 38). Aside from the fact that this appears to have no bearing on the planning merits of the proposal, the Council entirely rejects that suggestion, not least because the appeal proposals are, in the Council’s view, in conflict with policies in the WLP including Policy L6. The real complaint appears to be that the Committee refused planning permission, which (as submitted above) it was entitled to do.

560. Nor, for similar reasons, is there anything wrong with the WDA helping the appellant to prepare their case in support of the appeal. But the extent to which this has happened remains unclear. We know that it was originally intended that a WDA witness would be called as part of the appellant’s case, albeit (it seems) not as one of the appellant’s witness as such. It seems at least plausible that there were discussions between the WDA and the appellant about the content of such evidence, perhaps more than that, and then (when the WDA decided not to provide a witness) about the content of Mr Owens’ letter of 11th March 2010. (See X/3/2 for Mr Owen’s letter). It is not known whether the appellant requested a WDA witness to give evidence, or whether drafts of (initially) the evidence and then the letter were provided to the appellant for comment.

561. In any event, Mr Owens’ letter sets out the position of the WDA, which (as is to be expected) reflects the provisions of the contract; just as the evidence called on behalf of the WPA reflects the terms of the reasons for refusal. In the end, it seems that the appellant seeks to make no point other than that the WPA’s position is different to that of the WDA; and that they were “pleased when Mr Mason came in and changed the recommendation” in the report to the Planning (Development Control) Committee, as Mr Scanlon confirmed in cross examination. No doubt they were equally disappointed when the Committee did not agree with him; which is why the matter now comes before the Secretary of State.

562. There is a particular issue concerning the materiality of the possible financial consequences of the refusal of planning permission which it would be convenient to address at this stage. Mr Owens’ letter refers to the possible costs to the Council of terminating the contract. Other evidence refers to potential landfill tax liabilities and fines. Whilst the planning consequences of the refusal of planning permission are plainly relevant to the Secretary of State’s decision, the financial consequences to particular parties are not – or, at the very least, these can only attract very limited weight. Thus, if the Secretary of State concludes (as the Council urges) that, notwithstanding the benefits they might bring, the proposals are unacceptable and planning permission should thus be refused, the Council submits that the possible financial consequences for the Council, the appellant and its parent company and anyone else cannot outweigh that conclusion and
justify the grant of permission in the face of a finding that the development would cause significant planning harm.

**Planning Policy Background**

563. The development plan, for the purposes of section 38(6), now comprises the CWLP, the MLP, the RBLP and SP.

564. The WLP was recognised in the appellant’s Environmental Statement as being out of date. (See para 2.9 of CD/A7 and last para on page 31 of CD/A13). Mr Greenwood, in para 6.282 of his proof of evidence, said that the WLP was “the most relevant development plan document for considering the appeal”. The Council agrees that the WLP policies, whatever weight they are to be given, are of more direct relevance to the appeal proposals than any other development policies. However, he only attempted to resile from the statement in the ES when he gave evidence on day 31 of the inquiry. His retraction was unconvincing and appeared to have been done not because a genuine error had been made but because it was, in hindsight and in circumstances where the WDF had not progressed in the manner anticipated at the time the application was made, damaging to the appellant’s case.

565. The WLP is certainly out of date in the sense that it is based on targets set in the earlier national WS dating from 2000, and on the now revoked RPG10; and on information on waste arisings which is at least 10 years old. (See CD/D5 chapter 3). It is also out of date in the sense that it predates PPS10 and WS2007. The Consultation Draft was published in March 1998, and the Revised Deposit Draft in June 2001, the latter having taken account of a BPEO assessment, which is of course an approach which is now no longer used. (See CD/D5 para 1.6). The adopted Plan is, in fact, 8 years old; and the work that was undertaken for its preparation took place longer ago even than that.

566. It is impossible rationally therefore to contend that the WLP remains up to date.

567. More specifically, the strategy embodied in the WLP for a single, large, (geographically) centralised EfW facility designed to deal with all of Cornwall’s residual MSW, and on which the current application is based, is itself 10 years old. The real problem for the appellant and the WDA, in continuing to promote that solution, is that the strategy was not subjected to any kind of reconsideration or review at the time when SITA was selected as preferred bidder (2005), the contract was signed (2006), and the planning application was made (2008). As already submitted, the alternative technologies and alternative sites assessments were done years after the decision had been taken to run with that strategy.

568. The dinosaur for which the appellant seeks planning permission has therefore survived by dint of ignoring the march of evolution around it; but this inquiry has exposed it for what it is. It must now quietly but firmly be laid to rest.

569. The WLP nevertheless remains part of the development plan and therefore, for the purposes of section 38(6), the appeal proposals must be measured against its policies in order to determine whether it complies or is in conflict with them. But Mr Greenwood is quite wrong to suggest at he did in re-examination that it “carries full weight as the development plan”. Section 38(6), and also section 70(2), has nothing to do with weight, which is something which must be
considered as part of the decision-making process. The adopted development plan may carry full weight, if it is up to date and not in conflict with national planning policy; and it may carry little weight if it is not up to date and is in conflict with national policy. The latter is the case here.

570. Aside from the abandonment of BPEO, the WLP does not (indeed could not, as it predates these) fully reflect current national policy priorities as set out in PPS10 and WS2007 in particular. These include developing integrated strategies that best utilise available technologies for maximising recycling, minimising adverse environmental and amenity impacts, reducing the need to transport waste, using rail wherever possible, and making use of previously developed land in preference to greenfield sites. (See para 4.35 of CC/1/2). The Council submits that, in the light of these priorities, the WLP must now attract relatively less weight.

571. Nevertheless, and setting aside matters of weight, WLP Policy L6 is plainly the key policy for the purposes of this appeal. Its supporting text (see paras 5.29 – 5.37 of CD/D5) is instructive in a number of ways.

572. The reason given for the choice of a single EfW plant was “in order to obtain the necessary economies of scale”. It is immediately apparent therefore that the choice was driven by economics rather than sustainability objectives, which receive greater emphasis in more recent national waste planning policies.

573. Recognition was given to the fact that a single EfW plant will be “substantial in scale and have key locational requirements”, including “a large flat site (minimum of five hectares)....excellent transport linkages in terms of both rail and road, good opportunities for connection to the local electricity distribution network and good proximity to potential heat consumers”. Thus it was that the later alternative site searches undertaken by the appellant and the Council only looked for sites with these characteristics.

574. The point was also made in the WLP that rail “offers potentially significant environmental advantages over movement solely by road vehicles”. These advantages have never been assessed by SITA or the WDA.

575. An explanation was also given of the basis for setting a maximum plant capacity of 200,000 tpa. This capacity would avoid prejudicing the achievement of a recycling target of 33% by 2010. This is patently hopelessly out of date. Reference was made to an anticipated C&I waste input of 20,000 tpa, but the policy and numerical basis for this is unclear, particularly in the light of paragraph 5.29, which introduces the section on EfW by making it clear that the proposals of the WLP in this respect are aimed at dealing with the County’s MSW.

576. In fact, as will be submitted below, the facility is likely to require the importation of a substantially greater amount of C&I waste than was anticipated in the WLP. Thus, what is actually proposed is a major integrated facility which was not anticipated by the very policy document – the WLP, and policy L6 in particular – which the appellant argues provide the policy bedrock for the proposals.

577. It was also made clear in the WLP that it was the locational requirements identified in paragraph 5.30 that “led the County Council to identify an Area of Search located in the centre of Cornwall”, which “offers a concentration of locational factors that are not found to the same intensity or level anywhere else
in Cornwall”. (It is noted that para 5.35 of CD/D5 incorrectly refers to para 5.29). The presence of the Cornwall Minerals Railway and the Newquay-Par railway line was identified as one of several important factors.

578. The appellant’s refusal to appreciate the way in which the criteria in Policy L6 are intended to operate meant that Mr Greenwood in particular was forced to interpret and apply elements of the policy in a way that goes beyond the rationally defensible, in an attempt to argue that certain criteria are met when in fact it is plain that they are not.

579. The final words of the supporting text indicate that “not all sites will achieve the optimal range of factors listed in Policy L6”. The final paragraph of the policy itself, which follows the list of criteria, explains that "Where the proposals for an EfW plant do not meet all of the above criteria, careful consideration will be given to the exclusion of individual requirements of this policy and components of the design of the scheme”.

580. It is clear therefore that, in order for a particular proposal to be acceptable, not all of the criteria necessarily have to be met. But, where they are not met, this surely must be acknowledged and weighed in the balance.

581. In the light of this, it is not surprising to find that the criteria themselves are expressed in unqualified terms. Either a particular criterion is met, or it is not; and, if the latter, the question must be what weight to give that failure in the overall assessment of whether the proposal in question complies or conflicts with the policy. The criteria are also expressed with clarity, with the possible exception of (a) which involves an element of subjective judgment, "demonstrate reasonable proximity and accessibility to the Primary Route Network". Taking far-fetched linguistic and grammatical points on their wording has done the appellant no credit at all.

582. The Council contends that three of the Policy L6 criteria are not met (namely, (b), (g) and (h)); and that the failure in each case is significant, such that the Secretary of State should conclude that, in this respect, the application does not comply with the development plan. These conflicts will be addressed under each of the relevant topic headings.

583. The appeal scheme also does not comply with Policies L6A and L6B. Whilst it is right to acknowledge (see above) that the WLP, in identifying the CCAS as the area within which a single large EfW plant may be located, recognises that the scale of the plant will be substantial, it does not give carte blanche to locating an even larger plant than was anticipated at the time on any site within the CCAS without a careful assessment of its consequences in terms of landscape impact, visual impact, residential amenity and other impacts. Indeed, the WLP notably avoids allocating any potential or preferred sites.

584. Hence, Policies L6A and L6B set out criteria relating to landscape and visual impact (including on recreational users as well as local residents), and require high quality design. There are also other policies in the WLP which are relevant to the appeal proposals and which include criteria relating to impacts on landscape character (Policy E8), air quality (E11) and other “potentially damaging effects” (C1).

585. As to Policy C1, those effects include the protection of local amenity (C1(c)), the prevention of significant landscape and visual impact (C1(d)), avoidance of
prejudice to amenity from development traffic (C1(e)), and avoidance of
detriment to local amenity or the natural and historic environment through the
cumulative impact of individual effects (C1(h)).

586. The context for Policy C1 is the minimisation of impacts and the provision of
appropriate mitigation – see the last sentence following the list of criteria.
However, the policy is plainly not intended to allow waste management
development to proceed even where the impacts, having been minimised and
mitigated, are still materially harmful. There will then be conflict with the policy,
which may or may not be outweighed by factors such as the need for the
development. For example, in terms of noise impacts, the WLP says that: “An
evaluation of the predictions will indicate where mitigating action is required to
make the proposals acceptable”. (See para 7.16 of CD/D5). It must follow that,
where mitigation cannot make the proposals acceptable, then planning
permission must be refused on noise grounds, unless the harm is outweighed by
the benefits of the scheme.

587. Where reference is made in the WLP policies (for example) to “harm”, “adverse
impact”, “loss”, “prejudice”, then of course the harm, impact, loss or prejudice
must be material, or not insignificant, in order to count in the balance against the
grant of permission. The planning system is not concerned with non-material
effects.

588. There is however no warrant for suggesting that the harm must be overriding
as Mr Greenwood sought to do in his evidence. (See para 9.10(f) of SITA/10/2).
He subsequently withdrew this in cross examination. If there is material harm,
then it must be weighed in the overall planning balance. Whilst that is a matter
for first of all the Inspectors and then ultimately, the Secretary of State, they will
derive no assistance from Mr Greenwood, who claimed to have weighed the
adverse impacts against the claimed need and benefits but in fact had not done
so because his evidence did not include any assessment of the severity of those
impacts. (See SITA/10/2).

589. There is a genuine difficulty here for the Secretary of State in terms of the
weight to be given to the conclusions drawn in the appellant’s evidence, because
some of the individual witnesses themselves, in assessing the severity of the
harm which the development will cause, took account of the need for the
development, as advised to them by Messrs Aumônier, Scanlon and Greenwood.
That is self-evidently the wrong approach: it has no warrant as a matter of
professional practice nor is it supported by any relevant guidance. The
consequence is that the decision-maker in this case does not have an
independent and objective assessment from those witnesses as to what the
severity of the relevant impacts will be. Furthermore, as a result of the approach
taken, the appellant’s case effectively double-counts the benefits of the
development insofar as it is claimed to meet a need for additional waste
management facilities in Cornwall. This matter is addressed again later.

590. RPG10 gave priority to the provision of waste management facilities at or near
the Principal Urban Areas; of which none was identified in Cornwall. (See Policy
RE5 of CD/D1). References elsewhere in RPG10 to the CPR area as a centre for
growth are beside the point because Policy RE5, which is specific to waste
management, does not identify CPR as a priority location for the provision of
waste facilities. Hence, those involved in the preparation of the WLP were not
constrained by Policy RE5 to identify the CPR as a (or the) preferred location for
waste management development. Plainly, CPR is not centrally located in the County; therefore, given the single large EfW plant strategy, the CCAS effectively defines itself, as the WLP itself says in para 5.35 (see CD/D5), and CPR rules itself out.

591. Before 6 July, the draft RSS would have attracted significant weight, given that it had been through EiP, the Panel had reported, and modifications would have been published by the Secretary of State. Clearly, that can no longer be the case. The policies themselves can now only attract little (if any) weight as policies; but their direction, and the reasons underlying them, remain of material significance as indicating a possible future direction for local waste policies.

592. Incidentally, Mr Greenwood’s suggestion in cross examination, on the basis of paragraph 4 of the Q&A paper attached to the CLG letter of 6 July 2010 (see CC/0/4), that the evidence that informed the preparation of the waste policies in a draft RSS cannot be a material consideration, is contrary to common sense, logic and indeed to normal tenets of planning law. It is to be noted that Mr Greenwood, in advancing his client’s case, felt obliged to cling to such a hopeless argument. The only rational answer to the question, if evidence that informed the preparation of an adopted RSS remains material, why should evidence that informed the preparation of a draft RSS not be material?, is that there is no reason why it should not be.

593. Proceeding therefore on the basis that the evidence base for the draft RSS is material to the Secretary of State’s decision on the appeal, whilst the numerical “indicative allocations” in Policy W1 (including for Cornwall) were based on data that also informed the RS, and were therefore not up to date, much more significantly for present purposes Policy W2, which (adopting a sequential approach) identified the SSCTs as the appropriate location for strategic waste management facilities throughout the region. The rationale for this was given earlier in the draft RSS. (See para 3.3.1 of CD/D2 and para 7.3.8 of CD/D9). If, as Mr Greenwood has said in cross examination, policy supports a departure from past practices of moving waste from the urban to the rural areas, then the appeal proposals manifestly fail to achieve that.

594. Thus, there is no reason to think that development policy A was not derived from a sound evidence base – certainly the Panel and the Secretary of State thought that it was. In turn, the approach to the provision of strategic waste management facilities (as set out in para 7.4.8 of CD/D2) was derived from the identification of the SSCTs. The appeal proposals would have failed the sequential approach set out in draft RSS Policy W2.

595. There is, furthermore, no apparent and certainly no necessary inconsistency between the approach taken in the RSS to the provision of waste management facilities on the one hand, and PPS10 and WS2007 on the other.

596. Moving to the local waste policy level, it is clear that a new waste policy framework is needed. It is also clear that the shape that the framework takes will depend to a significant degree on the outcome of this inquiry. There would have been little real purpose in taking the WDF forward whilst the current application was in prospect and still not finally determined.

597. Like the draft RSS, the WDF has no future as such. It will never be adopted; no further work has been, or will be, done on it; it has effectively been abandoned. The WDF reiterated the strategy for a single centralised EfW facility
set out in the WLP, except that by then the appeal site had been identified as one of two preferred sites in the CCAS for the location of such a facility. Significantly, there does not appear to have been any reappraisal of the strategy itself, merely (as part of the plan preparation process) a site search exercise which took as its starting point the WLP strategy of identifying a site for a single large EfW plant in the CCAS (see CD/G3).

598. The approach taken in the WDF to the provision of sufficient capacity to meet Cornwall’s waste management needs was therefore to identify preferred sites (See preferred option 4 on page 19 of CD/G3). That is entirely different from the sequential approach, based on the SSCTs, taken in the draft RSS.

599. The Council submits that the WLP is out of date, and that it is not likely that the Council’s new waste policies will follow the same strategy – unless of course the direction of the emerging Core Strategy’s waste policies is taken out of local control by a decision taken by the Secretary of State to allow this appeal. On the other hand, the new policies may, or they may not, adopt a sequential approach along the lines set out in the draft RSS. But the latter is plainly an option which will need to be considered.

600. It is relevant to note in this context that Cheshire WLP Policy 6, which was the most directly relevant policy in the Ince appeal decision (see para 2.34 of CD/I2), was a criteria-based policy relating to applications for waste management facilities “of a national/regional scale, or strategic nature”, and included as criterion (iii) “the degree to which the proposal accords with the sequential approach to land use”. The draft RSS for the South-West was therefore not breaking new ground in adopting a sequential approach, albeit one that was specific to the circumstances of the region in general and Cornwall in particular.

601. Mr Greenwood asserts that draft RSS policies can attract no weight, but refuses to accept the unavoidable logic of that position, which is that the policies of the WDF must equally attract no weight either. The Council contends that, in respect of both policy documents, they can attract only very limited weight.

602. Nothing that the Secretary of State (or CLG) has said in relation to the abolition of regional planning has been directed at the merits of particular policies in adopted or draft RSSs. Similarly, nothing that the appointed WDF Inspector Wendy Burden said in her note following her meeting with County Council officers about the draft WDF (see appendix 9 of CD/8/3) was directed at the merits of any particular proposal within the draft; so the merits of Preferred Option 13 (see page 42 of CD/D10) were never examined, and that remains the case. In any event, no further work was done on the WDF following that meeting, and there is no prospect that any further work will be done on it in the future.

603. Thus, reference to the WDF as the “emerging waste plan” by Hallenbeagle Estates in a recent consultation document (see SITA/0/29) is factually incorrect. The document does however provide evidence that landowners/developers are not being constrained from bringing forward sites and proposals for waste development in the absence of an adopted (or even emerging) strategy for waste management development. Equally the Council is engaging with the promoters of that site, which again is evidence that they are prepared to do this before any new strategy is in place. As Mr Greenwood accepted in cross examination, there is no reason why landowners, prospective developers and the Council should not continue to act in this way, whatever the outcome of the present appeal.
So far as national energy policy is concerned, certainly the CERC proposal is compliant with policies that seek to increase the amount of energy derived from waste instead of sending the waste to landfill. Hence, energy recovery lies higher in the waste hierarchy than landfill but lower than waste reduction, re-use, recycling and composting. However, the term “EfW”, when used in the WLP and indeed anywhere else, such as PPS10 and WS2007, signifies any kind of energy recovery technology, not just direct combustion (See for example box 5.1 on page 77 of CD/F1).

In this respect, the new government has recently made it clear that it wants to see a “huge increase in energy from waste through anaerobic digestion” (see PoC56). The energy NPSs remain in draft, and do not yet reflect that change in emphasis in government policy. Furthermore, there is to be a full re-consultation in the autumn on the draft NPSs, and the Sustainability Appraisals in particular are to be re-examined. For all of these reasons, the energy NPSs in their current form can attract only very limited weight.

The Council intends to bring forward new waste policies in its Core Strategy. It is now proposed to amend the previous LDS timetable such that the draft Core Strategy is due for publication in December 2011, submission in July 2012 and adoption in April 2013. (At its meeting on 24 September, the Council’s PPAP received a document which, it is recognised, revises this timescale). The decision on this appeal will inevitably have major implications for its provisions. If the appeal is allowed, the shape of the policies – indeed their detailed content – will have been largely predetermined. If the appeal is dismissed, it can reasonably be anticipated that the Inspectors’ Report and the decision itself will contain clear guidance about the most appropriate direction for waste policies in the County in the future. Whilst one can see that the need to consider and respond to that guidance could (depending on when the decision is issued) delay the publication of the draft Core Strategy, it is likely nevertheless that the decision will speed up the overall process of plan making and adoption.

All of these policies, together with others relevant to the appeal application, have been fully addressed in the evidence of Council witnesses. It needs to be pointed out that not all policies, for example, in the RBLP, have been trawled through.

(Inspector’s note: The Council’s comments received as a result of the High Court’s decision in the Cala Homes (South) Limited case are summarised as follows. Following Cala Homes (South) Limited v Secretary of State for Communities and Local Government [2010 EWHC 2866], RPG10 has once more become part of the development plan. However, the Council did not wish to amend or otherwise add to its submissions in relation to the document. A difference is drawn between this and the draft RSS, which is an emerging plan again and thus may be accorded limited weight. The Council accepts that the Government’s intention to abolish RSSs through legislation dealing with its localism agenda makes it very unlikely that the draft RSS will ever proceed to adoption. Nevertheless, there is yet to be absolute certainty on this). (Inspector’s note: see document CC/0/14).

The relevance of the contract

The contract entered into by the appellant and by the then County Council in October 2006, is the child of WLP Policy L6 and the County Council’s Site Search
Report of July 2006. Its essential features, therefore, if not its every personality trait, were predetermined by that parentage. In turn, the contract predetermined the content of the appeal application.

610. The existence of an agreement of this kind is an inevitable part of any project, and planning application, such as this one. But, crucially, the existence of the contract and its terms cannot predetermine, or even significantly influence, the outcome of the appeal, which must be determined in the light of relevant planning considerations at the time that the decision is taken. The contract includes obligations on the appellant to deliver the CERC, but it does not and, of course, could not oblige the Council to grant planning permission, which is a matter for the unfettered discretion of the Council as WPA, and now the Secretary of State. Changes may be made by agreement between the parties, and nothing in the contract is guaranteed to take place – the proposals in it for new facilities all of course require the grant of planning permission. For these reasons also little weight can be placed on the terms of the contract as such.

611. That is not to say that the consequences for the contract of the decision on the appeal, and therefore for the provision of waste management facilities and services in Cornwall, may not be taken into account in terms of the decision on the appeal. It seems likely, if not certain, that if the appeal is dismissed then the contract will have to be re-tendered; although, as Mr Scanlon agreed in cross examination, this will depend on the basis on which the Secretary of State has decided to refuse planning permission for the CERC.

612. The primary question for the Secretary of State is however whether the CERC is acceptable in planning terms. Planning permission may of course only lawfully be granted if the Secretary of State has been able to ascertain that the proposals will not harm the integrity of the nearby European nature conservation sites. Beyond that, if CERC would have impacts which cannot be satisfactorily mitigated, then planning permission should be refused unless the urgent need for new waste management facilities on this (very large) scale, together with any other benefits it may bring, clearly outweigh those adverse impacts. As will be submitted below, the Council contends that alternative ways of meeting the need have not been properly examined, and that this greatly reduces any force that the appellant's argument might have that “there is no plan B”. There are very few other benefits that could weigh materially in the planning balance.

613. The timing of the provision of such alternative facilities is the essential matter at issue here. Mr Scanlon’s clear evidence is that, under a RPP, what he calls a “replacement facility” could be in place – that is, operational – by 2017; and, if the contract has to be re-tendered, by 2020. (See paras 12.14 and 12.20 of SITA/1/2). He also accepted that, in the latter event, alternative technologies, possibly in addition to an element of EfW by mass burn incineration, may well feature in the methods chosen for the treatment of residual waste.

614. The Council’s position on getting things going again is set out in Mr Miles’s rebuttal evidence (See section 12 of CC/1/5 and especially para 12.12). As already submitted, the route which the plan-making process should take, in terms of identifying a strategy and sites for the provision of waste management facilities, is likely to be much clearer once the Secretary of State’s decision on this appeal is known. There is also evidence, in terms of the Hallenbeagle site, that site owners and developers are willing to promote waste development, involving the provision of facilities on a significant scale, even in the absence of
up to date waste policies, and that the Council is willing to engage with them. There is no reason why that should not be the position generally.

615. Also, alternative facilities to the CERC, such as AD, would be likely to involve substantially less land take, and may prove less locally controversial than mass burn incineration; albeit that this could continue to feature as part of a revised contract solution for Cornwall.

616. The Council submits, therefore that, even if the contract has to be re-tendered, it is realistic and reasonable to anticipate that replacement facilities could be in place by 2017. In effect, dismissal of the appeal would result in a delay of around 3 years.

617. A draft RPP is in course of preparation. The outcome of this process is unknown, but, from the material now before the inquiry, the following is to be noted. The work on the draft RPP is to include a New Base Case model, and the document is to be prepared in accordance with Schedule 6 to the contract. That process will also include new waste flow forecasts and consideration of trade waste for the CERC – “if this is the appropriate technology chosen”. (See CD/G1 for schedule 6 of the contract and CC/0/5 pages 16 and 17 for the WDAP minutes of 14 June 2010).

618. A 200,000 tpa reduced capacity plant is to be included in the Options Matrix for the draft RPP; and although whether this would comply with procurement law remains to be determined, “if the change came about as a result of the public inquiry then it was likely that it would be within procurement law”. (See CC/0/10 page 3 of the minutes of the WDAP meeting of 27 April 2010. See also Mr Scanlon’s letter of 23 September produced at SITA/1/8 in which he asserts that a 200,000 tpa plant would ”raise issues under the European procurement regulations, and its capacity will therefore remain the same under the draft RPP; but he does not say that it would be unlawful, nor is there any evidence that legal advice has been given to that effect). The intention is to prepare the draft RPP before the outcome of this appeal “to enable the WDA to accept it and execute the revised documentation as soon as planning consent is granted if members wish to proceed with the CERC” (see CC/0/11 page 49 for 14 September report to WDAP).

619. Mr Scanlon’s letter of 29 July 2010 (see SITA/1/7), in response to questions Mr Greenwood was unable to answer about the draft RPP, even though in his rebuttal evidence Mr Greenwood included WDAP minutes relating to this matter, asserts that “the type of technology will be the same”. That is to prejudge the outcome of the draft RPP process, since it is plain from the WDAP minutes that the CERC may not remain the chosen technology. Indeed, his letter avoids answering the question, which was whether different technologies would be evaluated. He also asserts that the capacity of the plant will remain the same, which is again to prejudge the issue, since minutes make it clear that at least one reduced capacity option is to be considered.

620. Councillor German’s letter of 30th September 2010 (see X/3/18) questions what he calls the absolute terminology used by Mr Scanlon. Mr German expects the RPP to put forward alternatives in the light of the Secretary of State’s decision, assuming this addresses issues of location, capacity and/or technology. He also expects the RPP to be developed even if the appeal is dismissed.
621. Mr Scanlon’s letter also asserts that, should the appeal be allowed, the appellant has “every intention” of implementing the planning permission. But the process of preparing the draft RPP is to include a new Base Case model and new waste forecasts, and consideration of alternative technologies and capacities. There is therefore material uncertainty about whether the proposal as put forward in the appeal application will be built, even if planning permission is granted. It also appears that there is a real prospect, should the appeal be dismissed, that an RPP may be agreed by the appellant and the WDA, and therefore that re-procurement may not, in that event, be inevitable.

622. One other aspect of the contract merits mention at this stage. Whilst the WDA has the ability under the contract to require the appellant to provide a new facility for the treatment of biowastes, that ability is significantly qualified (see clauses 70.1, 70.1A (especially 70.1A (i) on pages 106 & 107 of CD/G1). There is in fact no evidence before the inquiry of any reasonable likelihood that this provision will be successfully activated at any time in the future.

623. Finally, as to the weight to be given to the delay to which the rejection of the appeal would give rise – whatever that may prove to be – as Mr Miles has said: “There is ... no suggestion within PPS10 or other guidance that unacceptable schemes that give rise to significant harm are somehow ascribed acceptability on the basis that appropriate and acceptable alternatives may take longer to achieve. The contract cannot and should not be allowed to drive decisions on land use acceptability”, that is, on the land use acceptability of this particular scheme. (See para 12.15 of SITA/1/5).

624. The provisions of the contract, in so far as they include provision for the type and quantities of waste that must or may be accepted at the CERC, are also relevant to the Secretary of State’s determination of the application. These matters are addressed further below.

Landscape and visual impacts (Reason for refusal 2)

625. It is plain from Mr Coulson’s written evidence (for example, see paras 3.7 and 11.15 of SITA/6/2) that, in assessing the landscape and visual impacts of the appeal proposals, and in concluding that these are acceptable, he took account of the need for the facility, as identified and explained in the evidence of others. This is indefensible as a matter of approach. It is not for the landscape expert to attempt to reach a view on the overall planning balance, and in so doing inevitably to fail to identify the true extent of the landscape and visual impacts of the development in question.

626. Mr Coulson agreed in cross examination that this was not the right approach, but claimed that this was not in fact what he had done. His response was disingenuous, and he accepted that this was not what his written evidence had said.

627. Criticisms of individual witnesses may not normally hold much interest for Inspectors and the Secretary of State, who are rightly more concerned with ensuring that they have sufficient reliable information on the basis of which to make a properly informed recommendation and decision. But that information will usually (and certainly in the present case does) include expert judgment given in evidence; and in this case that judgment cannot be relied on because it is tainted by the taking into account of a matter that was not relevant to the
making of the judgment. It follows that Mr Coulson’s assessment of the overall impact of the development – that is, that in landscape and visual impact terms it is acceptable – is flawed and cannot be relied on.

628. It appears that the choice of the appeal site as the location for the single EfW facility envisaged by the WLP was made without any direct expert landscape input. The contract, which committed the appellant and the former County Council to the project, was signed in October 2006; Mr Coulson was instructed the following month.

629. So far as the landscape context of the site is concerned, two things are plain (this can be seen in the aerial photograph GC070 at SITA/6/4):

(i) The appeal site lies within, albeit on the edge of, an area of agricultural land forming part of the countryside;

(ii) That area is physically divided from the industrial area to the south and south-east by the railway line.

630. Whilst the visual character of the appeal site is certainly influenced by the adjacent industrial area, it does not lie within it, nor does it directly abut it. It is notable that neither the planning application material nor Mr Coulson’s evidence included a landscape character assessment, relying instead on county-wide assessments which did not of course direct their attention to the appeal site, but only to much broader landscape character areas within which considerable variety is to be found.

631. Within the Cornwall and Isles of Scilly Landscape Assessment 2008, a number of different landscape character areas are identified: the appeal site falls within Character Area 17, which is a relatively large area encompassing a number of different landscape types (see CD/J7 page 1 of 5 dealing with Character Area 17). CA17 is described as “a rugged area of great variation and drama”, and the scale of the “dominant visual elements” (such as the white spoil heaps and quarries) is said to “contrast dramatically with the small scale field patterns”. That contrast is reflected in the list of Key Landscape Characteristics. It is within this latter area of small scale farmland that the appeal site is to be found. Character Area 20 lies immediately to the north: this includes Goss Moor and Breney Common, and the description of this area refers to the views from here south to Character Area 17.

632. The earlier Cornwall Landscape Assessment (1994) says much the same thing and explained that clay mining had “created a dramatic landscape of unique character”, and that “the scale of these features contrasts dramatically with the small scale field patterns which date to the medieval or post-medieval period and remain as agricultural land ... [which] read as mini-landscapes” (see pages 55 & 56 of CD/J2). It is this latter sub-area in which the appeal site lies. These findings are strongly supported by the Countryside Agency’s Countryside Character Volume 8: South West, in which reference is made, for the Hensbarrow Character Area (no. 154), to “a pattern of irregular small pastoral fields enclosed by Cornish hedges, scattered farmsteads and hamlets”, as well as the “lunar landscape” produced by china clay extraction (see page 188 of CD/J8). Again, in this landscape of contrasts, the appeal site lies in the former not the latter area.

633. The appellant relies on the guidance given in relation to wind farms (see CD/J8) to support the argument that the landscape impact of the CERC will be
acceptable; but in fact the visual characteristics of wind farms are quite different, in terms of their bulk and massing, from the CERC buildings and structures. The only comparable feature is the stack, which (with its often visible plume) would send out a quite different message to the viewer from the turbines at a wind farm. The latter is perceived as ‘clean’; the former is not.

634. In any event, the wind farm guidance does not suggest that any site within landscape character area Character Area 17 will be suitable for a wind farm. Not all of the landscape within that area is large in scale; in particular, the sub-area in which the site lies is a small-scale agricultural landscape which is unaffected by the clay workings. It is perfectly clear that the “large scale” landform to which reference is made in the 2008 Landscape Assessment means the clay workings and their remnants only (This was accepted by Mr Coulson in cross examination. See also CD/J7 dealing with Character Area 17).

635. The factual position is that no part of the “main” appeal site (that is, excluding the access and haul roads) has ever been developed in any way. It is therefore previously undeveloped land which lies within and on the edge of an area of agricultural countryside unaffected by the clay workings. It is submitted that Mr Coulson’s assertion that countryside “would normally be taken to mean an area of land with a predominantly rural context” is entirely without foundation or justification. Industrial buildings, structures and activities associated with the china clay industry lie close to the site, but the minerals railway marks a clear division between these and the countryside beyond. This is a very fair assessment of the site.

636. Mrs Butcher, unlike Mr Coulson, has undertaken a landscape character assessment which focuses on the appeal site (see appendix D of CC/3/5). No substantial issue has been raised in relation to the methodology and findings of this, including the information given on figure 5 (see the figs in appendix D of CC/5/3). It is maintained that her fig 5 represents a very helpful, accurate and sound basis for assessing impact. The Secretary of State is therefore invited to accept the substance of Mrs Butcher’s LVIA as a sound basis on which to assess the landscape and visual impacts of the appeal proposals.

637. So far as the influence of the adjacent industrial buildings and structures on the character of the appeal site is concerned, this is a matter for assessment on site and by reference to the photographs and photomontages. Mr Coulson is however wrong to rely on PPS7 in this respect (as he does in para R1.29 of SITA/6/5) because the site does not lie in or next to an existing town or village. It is “away from existing settlements” because the Parkandillick works are physically separate from St Dennis. Rather it lies adjacent to (albeit separated by the railway line from) the works, which do not themselves form part of any settlement as Mr Daly made clear in cross examination.

638. About two-thirds of the site was allocated for potential development in MLP Policy CC4 (see CG/G7), in the form of development “ancillary to the extraction of china clay”, and subject to a qualification that such development must not “give rise to significant detrimental effects on the environment, local amenity or communities which cannot be satisfactorily mitigated”. Policy CC4 does not therefore apply to the CERC; and even if development were to take place on the appeal site, in accordance with the policy, on a similar scale to that which already exists to the south of railway, that would still be of a significantly lesser height
and bulk, and would therefore be bound to have a materially lesser impact, than the CERC.

639. In any event the allocation has not been taken up in the 12 years since the MLP was adopted, nor is there any evidence that, were the appeal to be dismissed, it might be. Thus, as was agreed by Mr Greenwood in cross examination, very little weight can be attached to policy CC4 in making the decision on this appeal.

640. The proximity of existing industrial buildings and structures will, of course, have implications for the visual impact of the development. From some viewpoints, the visual impact of the development will be reduced from what it may otherwise have been by dint of the fact that it will be seen against the backdrop of that existing development, rather than the countryside. On the other hand, from some viewpoints the CERC will be seen as an extension into the countryside of existing development, which may have the effect of increasing its visual impact.

641. In any event, the fact that the site lies close to existing industrial development as well as being within and adjacent to a wider area of countryside does not mean that it has any lesser landscape value significance, in terms of landscape character, than a site that is entirely surrounded by countryside. Indeed, as was accepted by Mr Coulson in cross examination, the site may be of greater landscape value or significance for that reason.

642. Turning therefore to the impact of the appeal proposals on landscape resources and character, the ES itself includes a fair summary of what remains the appellant’s position: “The landscape character of the area is a mix of industrial and rural landscapes valued for its balance of landscape types. The farmland which would be removed is part of the relict agricultural landscapes and so would affect the balance of rural and industrial elements. Although there are large scale industrial buildings, including the neighbouring Parkandillick Dryers, the height and massing of the main building exceeds that of any existing building in the area. The chimney is also significantly larger in scale than other chimneys in the area. The industrial nature of the proposals is broadly in character with the area but the scale is larger than the characteristic industrial structures”. (See para 9.152 of chapter 9 of CD/A8).

643. The Council agrees with much of this; but it does not agree that the nature of the proposals is broadly in character with the area. Whilst acknowledging the differences in scale, this judgment ignores the fact that the site itself is in the countryside, close to but (in landscape character and visual terms) separate from existing industrial structures. The landscape impacts of the proposals can be divided into:

(i) The impact of the CERC itself – involving the loss of 6.6ha of agricultural land of grade 3a and 3b quality (see fig 4 of appendix D of CC/5/3) and the loss of the Cornish hedge that runs across the middle of the site;

(ii) The impact of the access road (800m long/1.7ha of land) – involving the loss of agricultural land and lengths of Cornish hedge;
(iii) The impact of the haul road (2km long/5ha of land) – involving the loss of 8400 sq m of existing vegetation. (See figs 4.15b and 4.15d in chapter 4 of CD/A7 and also CC/5/6 and CC/5/7).

644. In relation to the haul road, this would run across restored land which includes existing woodland at the Trerice Bridge end of the route subject to a TPO. The existing track, which appears to be little used at present (Mr Coulson in cross examination said that whilst he saw vehicle tracks he had never seen a vehicle on the track), will need to be widened along much of its length; and the nature of the road will be quite different, with its tarmac surface and drainage. The character of the landscape through which the haul road will run will therefore be materially altered and urbanised by the road itself and the substantial number of HGVs that will pass along it.

645. There remains some uncertainty about precisely how much of the existing Cornish hedge on the “main” site is to be retained. The relevant figure in the ES appears to show that some of the Cornish hedge which SCL say is being retained is in fact the line of a stream (see figs 4.18 & 4.19 in table 4 of CD/A7). Clarification of this was promised but none has been forthcoming.

646. Overall, the Council submits that the change in local landscape character will be seriously adverse. However, it is also necessary to take account in this context of the character of the historic landscape and the impacts the development will have on this. Consideration is given to this in the next section.

647. So far as the visual impact of the appeal proposals is concerned, there is in fact little substantial disagreement between the main parties about this. In broad terms, the visual impact of the development will be adverse or significantly adverse from the majority of the agreed viewpoints (see CC/5/8). Mr Coulson said in cross examination that this was “inevitable if you put the CERC in a field”. But at the heart of the Council’s case lies the contention that you do not have to build a facility on the scale of the CERC; and that, if you do, or if you decide to build a smaller facility or combination of facilities, then they do not have to be put on non-previously developed land in the countryside.

648. Because of the scale and location of the CERC, it is not capable of being effectively screened; so, perfectly sensibly, given the choice of plant scale and location, the appellant has not set out to do this. It also follows that the visual impacts of the development are much the same in years 1 and 15. Mr Coulson confirmed in cross examination that there was “little one can do” to mitigate the visual impacts of development on this scale, other than setting the building into the ground, aligning the process buildings with the contours, carefully selecting materials and colours, using a curved roofline, and separating the stack from the buildings. Without these mitigating measures, Mr Coulson said, he would not have advised the appellant to proceed with the application.

649. Whilst the Council has reservations about some aspects of the design, it does not suggest that a greater level of mitigation would be able substantially to address the adverse visual impacts of the development. In other words, it accepts that more or less as much has been done as is reasonably possible to mitigate those impacts. But this simply serves to underline that this is the wrong development on the wrong site.

650. Mr Coulson’s claim, which is plainly of real importance to the appellant’s case, that “the construction of this new, high quality building provides opportunities for
improvement to some of [the] views” (see para 5.20 of SITA/6/2), is not borne out either by an examination of the photomontages or by reference to his visual impact assessment.

651. The claim relates to views in which the Parkandillick works will be obscured, or screened, to some degree by the CERC. Examples are GC019, GC030 and GC032 in Mr Coulson’s bundle of documents submitted with his evidence (see SITA/6/4). But the visual impact of the CERC on these views has been assessed by Mr Coulson himself as moderate or substantially adverse. The Council’s view is that it does not sit well within its context, whilst Mr Coulson says that CERC will improve the view. The point is that, in all such cases, industrial development is brought closer to the viewer; and, what is more, the new development is development on a substantially greater scale than the existing buildings and structures on the Parkandillick works site, in terms of height, massing and bulk. Also, the CERC stack, being very much taller than the existing ones, tends to predominate in these views.

652. One of the core principles of the design approach taken by the appellant has been that the main building housing the incinerator itself should be “a landmark building that is a positive influence on the locality” (see para 4.38(a) of SITA/6/2). In cross examination, Mr Coulson agreed. However, the building will not in fact be a positive influence on the locality, and the main process building will not be a landmark building in the sense defined by CABE in “By Design” (see page 90 of CD/J11), not least because the development will harm rather than enhance views.

653. No doubt, a scheme could have been designed with the same components as the appeal scheme but whose visual and landscape impact would have been even greater; but that does not justify acceptance of what remains an unacceptable proposal in visual and landscape impact terms. The "landmark" approach, even if wholly successful (which the Council considers it is not), can therefore only serve to mitigate to some degree the adverse impacts of a development on this scale.

654. Compared with the existing buildings and structures on the Parkandillick works site, the CERC buildings and structures are substantially larger in terms of their height, bulk and massing. This can of course be observed on site, and there is no issue about it; but the appellant has usefully provided a drawing and an aerial photograph which not only indicate relevant building heights but also show the footprints of the various buildings and structures on both sites (see GC069 and GC070 of SITA/6/4).

655. The main incinerator building is over 40m higher (22.5m higher in AOD terms) than the nearest existing building on the Parkandillick site, around 20m higher than the tallest building (“west of big silo”) on that site, and some 11m taller than the silo itself. This is a significant factor in terms of its visual impact relative to the Parkandillick buildings, even though the top of the incinerator building would be at a similar level AOD to the silo and the building to the west of the silo. The bulk and massing of the incinerator, taken both on its own and together with the other principal CERC building, are also far greater than any of the existing Parkandillick buildings.

656. The CERC stack, at 120m, is twice the height of either of the existing stacks on the Parkandillick site – and these are already very tall structures. The appellant’s drawing is potentially misleading in this respect because the dark blue colouring,
which applies only to the three stacks, covers a range of 65m. In point of fact, the CERC stack would be over 40m higher, in AOD terms, than the two existing stacks. The extent of its visual influence, and of its visual impact, will therefore be very much greater than those of the existing ones. Mr Coulson’s GC062 shows clearly that this will be the case.

657. The CERC buildings and structures are also massively larger than any other buildings or structures in St Dennis itself or the surrounding landscape.

658. The Zone of Visual Influence of the stack will be very extensive – very much more so than the 75m stack that was originally proposed (see fig 9.8 from the ES in table D of appendix 4 of CC/5/3). The areas from which the 120m high stack is likely to be visible are far more widespread within a 15 km radius from the site than for a 75m high stack. Nor of course does any of the Zone of Visual Influence take account of the plume from the stack, which will be visible for much of the time (see plume visibility assessment in table A of section 9 of CD/A9) – which shows the plume being visible for 47% of daylight hours. The Council does not accept that the plume would not be visible at night. This is a matter best judged by the Inspectors from their site visits). This means that a view of what will plainly be evident as an industrial chimney emitting pollutants, known to those familiar with the area as a stack associated with a waste incinerator, will be available from large swathes of the central part of the County. This would without doubt be a significant and highly damaging impact.

659. The change from a 75m to a 120m high stack took place in late 2007 (see para 5.14 on page 23 of CC/8/2). The only reason for that change was to avoid breaching the EA’s 1% threshold in terms of effect on the SAC, and thus (as the appellant saw it) to avoid the prospect of an appropriate assessment having to be undertaken as Mr Barrowcliffe accepted in cross examination (see appendix 12 of CC/8/3, item 4.1 paras 2 & 4 of CC/8/4 and page 2 of CC/0/10). In a sense, therefore, the appellant had no realistic option other than to increase the stack height. It does not appear however that the very significant implications of the change for the visual impact of the development were considered at that stage – indeed it was Mrs Butcher who first drew attention to this in her evidence.

660. It has been clarified that the December 2004 and September 2005 drawings produced in Mr Coulson’s evidence (see GC070 and GC072 of SITA/6/4 and also SITA/6/7 and SITA/6/8), later reproduced and annotated with the correct scale, were sent by SITA to the former County Council at initial tender and preferred bidder stages. It is evident from the “indicative outline of adjacent plant” shown on the second of these (notated “Preferred bidder”) that this is a drawing of an EfW and bottom ash plant on the appeal site, with a 75m stack. The stack on the earlier drawing appears to have been around 50m high.

661. SITA was therefore selected as preferred bidder on the basis that the development would include a 75m high stack. That too would have been the basis on which the site was identified as one of two preferred sites in the (now defunct) WDF. Since then, the stack has increased in height by 45m. Not surprisingly, this has significantly increased its visual impact. It is possible that these two events would not have occurred had it been known that the stack would in fact need to be 120m high, in order (as the appellant saw it) to avoid possible harm to the nearby SACs; although that is of course speculative. What is more certain, however, is that the development, with a 120m high stack, has unacceptable visual impacts across a wide area.
662. The Secretary of State is invited to conclude that the CERC will introduce into a rural landscape a development which is on a scale that is quite alien to the area. Its impacts will therefore be widespread and significantly adverse, notwithstanding the presence of existing industrial development close by.

**Impacts on historic landscape and listed buildings (Reason for refusal 3)**

663. There is a significant degree of inter-relationship between these impacts and those addressed in the previous section. It is nevertheless convenient, not only because they were the subject of separate reasons for refusal but also because each of the main parties has called separate witnesses to address each of those reasons for refusal, to address them separately.

664. Unlike Mr Coulson, Mr Trehy was prepared to own up to the fact that, in reaching his conclusion that the impacts of the development were acceptable, he had taken into account what he understood to be the need for the development, as explained in the evidence of others (see paras 2.21 & 6.13 of SITA/7/2). He also agreed that this was the wrong approach, since it is for the decision-maker, armed with reliable information about the impacts of the development, to weigh those impacts in the planning balance against any benefits (including meeting an identified need) that the development might bring. In the context of development that affects the setting of heritage assets, PPS5 actually makes this division of labour very explicit (see Policy HE10.1 of CD/N14).

665. Mr Trehy’s conclusion that the impacts of the development on the historic environment are acceptable is therefore of little value to the Inspectors and the Secretary of State.

666. It is important that the Secretary of State should properly understand the position of EH in relation to the application. Whilst it is true that EH did not raise a formal objection to the application proposals, their letters (set out in appendix 6 of SITA/6/3) raise some serious criticisms of and concerns about them. For example, in their letter of 11th November 2008 EH “confirm that it is our belief that the proposals are disappointing in that they fail to recognise, let alone address, the impact that the proposals will have on the wider landscape of the St Dennis area”; they refer to the CERC as an “alien feature, unconnected with traditional or previous land use”; the impact on views from Castle an Dinas “will be considerable”; they express disappointment that the appellant had been “unable to identify a suitable brownfield location for the plant”; and place importance on appellant’s reliance on “good rail access”, which in fact forms no part of the current application. That letter also says that EH’s “original response still stands”, and this includes concerns about impacts on the Engine House, St Dennis Church, and other historic features.

667. It is entirely fair to say therefore that EH are not in the least supportive of the application; indeed they are very unenthusiastic about it.

668. The landscape character of the area has already been addressed in the previous section of these submissions. The Landscape Character Areas identified in the Cornwall and Isles of Scilly Landscape Assessment (2008) are themselves made up of smaller, discrete historic landscape areas: and the appeal site lies not within an area of china clay workings or associated development but within the intimate, small-scale landscape of the Fal Basin. The ES was right to record that “the land of the development site is part of the ancient field system at
Rostowrack, itself of probable early medieval origin, and the field boundaries, roads and tracks are therefore of ancient origin”; that the cultural heritage receptors in the study area are of largely high sensitivity; and that there will be a substantial impact on the high to medium archaeological potential of the AEL”. (See paras 14.45, 14.46 (table 14.2) & 14.49 of chapter 14 of CD/A8).

669. The appeal site lies within an area classified as AEL, and must be treated as such by the Secretary of State. (The AEL is shown on figs 1151-1155 of appendix D of CC/5/3). Where the blame lies for Mr Trehy’s erroneous belief that it had recently been reclassified as REL seems entirely irrelevant to the Secretary of State’s decision. Mr Trehy was keen to indicate that it was not his fault.

670. It is fair to conclude, from the available evidence, that whilst the original medieval landscape has been altered through the removal of some field boundaries the overall field pattern substantially remains (see HLC Zones drawing in appendix B of CC/6/3 and also SITA/0/15 and fig RF1 in SITA/7/5). On the appeal site itself, the most notable remaining feature is the Cornish hedge running across the middle of the site which has to be removed as part of the development, as Mr Trehy agreed in cross examination. The survival of the medieval and pre-medieval settlement patterns and field systems in this area is one of its most significant historical characteristics; and the historic hedges and walls have been specifically identified in historic landscape assessments as one of the distinctive features of this area.

671. Therefore CERC, through its impact on the ancient field systems and settlement patterns, and its physical intrusion into the historic landscape, will have an adverse impact on the setting of non-designated heritage assets (see PPS5 Policy HE8.1 contained in CD/N14) – this in addition to the impact on designated assets and the direct impact on archaeological fabric.

672. The appeal site has little visual relationship with the working CCAs to the South and West of it (these are shown in figs 1151 – 1155 in appendix D of CC/5/3). As agreed with Mr Trehy in cross examination, the substance of the impact of the development on the historic landscape is in fact on the agricultural land within the Fal Basin and the area of Castle an Dinas.

673. In relation to the impact of the CERC on the settings of heritage assets in the locality, PPS5 has helpfully clarified the definition of “setting” (see annex 2 of CD/N14 and also paras 114-117 of the Practice Guide, CD/N15). This is a broad concept, and the identification of the setting of a heritage asset thus involves more than merely identifying the places from which the asset in question can be seen. Hence, for example, from some locations (such as footpath 5 to the west of the site) the appeal site forms part of the wider landscape setting of the Church. Nor does the RBLP (see paras 42.1 and 42.3 on page 253 of CD/D4) identify the ALAHV as the only area that is “crucial” to the visual setting of the Church.

674. Whilst Mr Trehy agreed with this, it seems that nevertheless in his evidence he may have defined the setting of St Dennis Church too narrowly. The photographs he produced in this respect (see plates 10 to 17 in appendix 3 of SITA/7/3) are all within the immediate surroundings of the Church, showing either views towards the Church itself or away from it. More distant views towards the Church are also important, and some of these will be seriously adversely affected by the CERC; as will views out from its immediate environs.
(see GC022, GC024, GC028 and GC059 of SITA/6/4). For example, someone who visits the Church and stands at the gate looking west will have a clear view of the CERC. In that view the visitor will be strongly aware that the Church is close by, and that they are standing on land that falls (to use Mr Trehy’s expression) within its curtilage. The CERC will appear massive and wholly incongruous in this view.

675. From both the Church and from Castle an Dinas, the CERC would be clearly visible. It would be the single largest built feature in the view – indeed, as EH have said, it would become the dominant feature in the view. It would thus compete with and undermine the dominance of the Church, and would extend the existing adverse visual influence of the Parkandillick works out into the countryside. These are serious and, in the Council’s view, unacceptable impacts.

676. It is to be remembered when looking at any of the photomontages that, whilst they are accepted as accurate, nevertheless they cannot and do not convey the impression that the viewer will get when standing in these locations and looking at the CERC and other features in the view, such as the Church. In the photographs and computer generated images, even buildings that are relatively close to the viewer appear smaller and less immediate, and their impact on the viewer is less direct, than is the case in reality. That effect tends to increase for buildings and objects that are further away. This can of course be checked on site but the Council believes that the CERC itself, and features in the historic landscape such as the Church, will appear more visible and apparent than the computer generated images suggest.

677. Applying EH’s Conservation Principles (set out on pages 28 to 32 of CD/N3), it is agreed that the Church has significant evidential, historical, aesthetic and communal value – including of course spiritual value. It is apparent from Mr Trehy’s photographs (see his plates 14 and 16 to 18 in appendix 3 of SITA/7/3) that historically the Church has dominated, and continues to dominate, the Upper Fal valley and Goss Moor. Once the Church is viewed in the context of its immediate surroundings, the viewer will be aware of that dominance and have a real sense of its significance; and that awareness will remain with them as they move around the area. Mr Trehy agreed this in cross examination. Although some views of the Church are filtered or screened by trees, that can change over time as trees die, are blown over or are felled, topped or lopped. Account therefore needs to be taken of this in assessing the impact of CERC on the setting of the Church.

678. There is also an important functional relationship between the Church and its surrounding landscape, in that tithes were paid to the Church, and local people walked the paths that led to the Church and assembled there regularly. So, whilst the clay tips are also clearly evident in the landscape, the complexity and depth of the functional relationship between the Church and the landscape around it is much greater than in the case of the clay tips and workings.

679. The Church is therefore a heritage asset of major significance, whose setting will be significantly harmed by the proposed development.

680. Whilst it seems that the appellant would wish it otherwise, it remains the intention of the Council to designate a Conservation Area in St Dennis, in accordance with the recommendation in the CISI report. Mr Trehy takes no issue with either of these propositions. (See recommendation 1 in para 9.1 of
CD/N12). The delay is due to shortage of resources, not to any lack of will. Whilst designation has not yet taken place, it is a material consideration that St Dennis has been recognised as having special architectural and historic value, and this too will be adversely affected by the presence of the massive CERC development close by.

681. So far as the effect of the development on the Parkandillick Engine House is concerned, Mr Trehy confirmed that the assessment contained in the ES remains correct: that is, that "the proposals will be a significant addition in [certain] views and are of dominant scale even within the already industrial landscape. The large visual change results in a medium/small change to the setting of the engine house as experienced from this wider area, which given its high sensitivity is a moderate to substantial effect" (see para 14.55 of chapter 14 of CD/A8).

682. The Engine House stands within the recognisable landscape of old china clay workings; and much of its character and interest derives from its immediate setting. In views from footpath 5 to the west of the site, it stands above and somewhat separate from the rest of the works (see plate 5 in appendix 3 of SITA/7/3). Presently, in this view, the foreground is agricultural land, with the industrial development with which the Engine House is associated lying between that land and the Engine House itself. The CERC would introduce a much larger and entirely unrelated group of buildings and structures into the foreground of the Engine House’s setting, thus radically altering and harming it.

683. As to the more immediate setting of the Engine House, from locations close to GC058 (see SITA/6/4) the viewer will be aware of the extension of built development into the countryside, and beyond the area of the china clay works. From this area, therefore, there would be an adverse impact on the background setting of the Engine House.

684. Turning now to the impact of the access road and the CERC on archaeological features, any loss of Cornish hedge represents a loss of archaeological fabric that cannot be replaced. The physical extent of that loss has already been addressed above.

685. So far as the proposals to construct new lengths of Cornish hedge are concerned, noise attenuation requirements mean that considerable lengths of new Cornish hedge of 1.5m and 2.5m in height are proposed (see GC080 in SITA/6/4). This will, in visual terms, create an unbalanced effect. Furthermore, a 2.5m high hedgerow is untypical both of the area and of Cornish hedges generally (see page 17 of CD/J19. This refers to a typical height of 1.5 m whilst can be up to 2.5m maximum), and these lengths of new hedge will have an excessively dominating effect (see GC081 to 83 in SITA/6/4).

686. Only the eastern part of the land along which the access road will run was surveyed in the geophysical survey submitted in response to the Regulation 19 request (see para 9.41 of appendix 9 of CD/A11). For area 8 (West of La Mount), a possible ditch was identified, which will be affected by the new junction and the removal of vegetation. EH too have expressed concern about the effect of the access road on buried archaeology (see second para of the last letter on page 2 of appendix 2 of SITA/7/3 and also appendix 6 of SITA/7/3).

687. As to the debate which has taken place about the MB in the vicinity of the access road, this is a complex matter which necessitates the examination of evidence which itself is complex and sometimes difficult to interpret. This is
often true of archaeological evidence, the examination of which at planning inquiries can be time consuming – as has occurred in this case. Whether or not this proves to be a matter that is decisive in the decision-making process, it is plainly relevant and thus required investigation at the inquiry.

688. In the light of this, Mr Trehy’s criticisms of Mr Cahill in this respect were utterly misplaced. The matter was raised and addressed in Mr Cahill’s proof of evidence, quite briefly; Mr Trehy responded in his first Rebuttal proof; Mr Cahill produced a plan in response and made some comments in his evidence in chief; he was cross-examined on the matter, and, following cross examination, Mr Phillips indicated that the appellant intended to carry out some further work; Mr Trehy then produced a second rebuttal proof, containing new evidence in which the matter was dealt with at some length; and Mr Cahill responded to that. (For the stream of evidence on this matter see pages 18 and 34 of CC/6/2, section 3 of SITA/7/4 and paras RP26 and 27, CC/6/5, paras 4 to 21 of SITA/7/6 and CC/6/6).

689. This all seems reasonable in the circumstances. Thus, Mr Trehy’s persistent wish to lay the blame on Mr Cahill for placing disproportionate emphasis on this issue is not only unfair but also, the Council suggests, must be seen as a feeble attempt to divert attention away from the fact that the potential significance of the effect of the access road on archaeological features along its route was not even acknowledged, let alone addressed, in either the ES, the Regulation 19 response, or Mr Trehy’s proof of evidence.

690. Turning to deal with the substance of the matter, HER is a vital source of information but cannot be, and does not purport to be, definitive for all time. Thus, if new information comes to light, the HER may be amended so as to include it. In particular, further research or investigations may reveal previously unrecorded features. In the light of work carried out in connection with this inquiry, the HER has in fact now been amended to include the Trerice Early MB, as Mr Cahill believes it to have been.

691. Nor is Della Hooke’s book, very well respected as it is, to be treated as definitive. Indeed, Ms Hooke herself says so: “The present volume attempts to present the boundary clauses in mapped form but it is evident that these can never be more than approximate solutions. Indeed, the purpose of this study is to present the material in such a way that others, perhaps with more detailed local knowledge, may add to the work already carried out.” (See page 1 of appendix 15 of CC/6/6).

692. As to the BS, its present location strongly supports Mr Cahill’s contentions as to the route of the MB. Mr Trehy sought to rebut this by introducing increasingly far-fetched theories that the stone had been moved on various occasions, but there is absolutely no evidence that this has ever been done, nor any rational explanation given as to why it should have been done.

693. The height of the stone above ground level is c.30cm. It is situated on made ground, and the extent of the stone underneath the ground is not known. Mr Trehy agreed it could continue down for over 20cm (see para 7 of SITA/7/6). That would be entirely consistent with Herring and Smith that “few [BSs] are higher than 60cm”. Indeed, Mr Trehy conceded in cross examination that it might be as much as 60cm high.
694. The mapping evidence on which Mr Trehy relies to support his contention that
the stone has been moved in the past in fact does no such thing. The email from
Mr Trehy’s colleague Mr Van Etten of 5 May 2010 (see SITA/7/8) suggests that
the stone was moved 3 times since 1880. This includes a move of 33cm before
1907, then a move back to within 2cm of its previous position by 1972. The
overall range of the variations in the alleged position of the stone is only 87cm –
the size of the dots on the maps signifying the stone are bigger than this. The
whole thesis is preposterous. What Mr Trehy and Mr Van Etten failed to
appreciate is that, as Mr Cahill has shown (section 3 of CC/6/6 and in other
documents already referred to), other features – not just the stone – appear to
have moved between different versions of the OS maps; and that, if the
discrepancies are rectified by aligning the field boundaries as closely as possible,
then the stone stays in the same place.

695. No explanation is given, nor any suggestion proffered, as to why these tiny
moves should have been made. Mr Trehy does suggest that “it is probable that
the stone was moved when the track was created” (see para 8 of SITA/7/6),
namely, according to Mr Trehy in cross examination, in the 1980s or possibly
1990s. But on the 1972 O.S. map the track is not shown yet, according to Mr
Trehy’s improbable theory, the stone has already moved to its present day
location (see map on last page of SITA/7/6). Therefore, on Mr Trehy’s own
evidence, the stone cannot have been moved when the track was laid. Mr Trehy
also conceded that, contrary to the contention made in his evidence (see last
sentence of para 8 of SITA/7/6), the deliberate moving of the stone so that it lay
directly underneath the line of the new fence (see plates 1 to 4 of SITA/7/6)
makes no sense at all.

696. The stone bears the inscriptions “CL”, “H”, and “F”. If, reasonably, these may
be taken to signify the three land ownerships which met at the stone at the time
it was put in place, then that would be consistent with ownership by Lamb (who
owned Treviscoe), Hawkey (from whom John Nicholls inherited or purchased
Trerice), and Falmouth (who owned Bodella). (See sections 1 and 2 of CC/6/6).
Each of these letters still, today, faces in the right direction. So, if the stone was
ever moved, then perhaps improbably considerable care was taken when it was
re-placed to ensure that the exact orientation of the stone remained correct.

697. There is therefore no actual evidence whatever that the BS has ever been
moved at all; let alone moved from La Mount Corner, which is where in cross
examination Mr Trehy contends the MB met the Parish boundary from the north .
The evidence, on the balance of probabilities, points altogether in the opposite
direction: that is, that the BS was and is located at the point where three
landholdings met.

698. As to the tithe map (see a copy of the tithe map at appendix 3 of CC/6/6), this
clearly shows that the property boundary between Trerice and Bodella ran in a
northerly direction from the BS. However, no track running north from La Mount
corner is shown, even though some footways and roads are shown on it (see
page 15 in appendix 2 of SITA/7/7) – unsurprisingly, since the property which is
served by it (Little Trerice) was built in 1839 and does not appear until the 1880
O.S. map. The Council submits that this tithe map can reasonably be treated as
“generally good evidence of the topography of the roads [it] portray[s],
especially those which form boundaries of titheable land” (see para 8.13 of
SITA/7/7); and Mr Trehy accepted in cross examination that, on the balance of
probabilities, the track and Little Trerice both came into existence between 1842 and 1880.

699. Unfortunately for Mr Trehy, this means that his 1049 MB follows a track that came into existence sometime in the middle of the 19th century; nor does it follow any older landholding boundary.

700. The overwhelming probability therefore is that the MB followed the route proposed by Mr Cahill (as shown on CC/6/5), and that the BS marks the point at which the MB met the Parish boundary. These are matters of considerable historic interest and significance. The stone itself will have to be moved as a result of, and the location of that meeting point will be obliterated by, the construction of the access road. These are significant adverse impacts of the development which were not accounted for at all in the ES or in the appellant’s evidence, and even now are not acknowledged by dint of a wilful misinterpretation of the available evidence.

701. The embankment that runs along much of the route of the access road is another important archaeological feature whose significance the appellant has failed to recognise. The 1809 O.S. map (see appendix 12 of CC/6/6) shows a roadway, bordered by rough ground, running along the route of the Parish boundary. Today, from the railway, a hedged track runs north-west along a raised dike or embankment; then it turns west and continues towards La Mount corner. At the point where the more recently constructed track ends, it is clear that the dike or embankment has been altered through the dumping of material and reshaping of the ground.

702. The more recent vehicular track runs immediately to the south of the Parish boundary. There remains, on the north side of the boundary, an embanked feature (this can be seen in appendices 13 and 14 of CC/6/6). This constitutes an (albeit somewhat altered) continuation of the embankment which has for very many years run along the Parish boundary; and, as Mr Trehy said in cross examination, of the roadway shown on the 1809 O.S. map.

703. The same feature continues to the West of La Mount corner, which everyone agrees marks the line of both the Parish boundary and the MB.

704. The conclusion may reasonably be made that the CERC access road runs along the line of the ancient Treviscoe dike, which itself runs along the line of the Parish and (in part) Manorial boundaries. This feature will be destroyed by the construction of the access road and the new junction at La Mount corner. The point at which the Parish boundary turns towards the railway line will be lost, as will the BS, which cannot be re-placed at any point along the Parish boundary.

705. Also, the construction of the access road will require a significant depth of excavation which could destroy other features of archaeological interest and importance that lie under the ground. This was agreed by Mr Trehy in cross examination.

706. Cumulatively, therefore, the construction of the access road will lead to the direct loss of a number of archaeologically significant features. These losses, to which significant weight should be attached, were not addressed in the ES or, initially, in the appellant’s evidence.
Turning to the haul road, the impact of its construction on the Trerice Bridge area was fairly stated in the ES as follows: “given the general high potential and sensitivity in the study area, a large change, resulting in a substantial effect on archaeology, is predicted” (see para 14.48 of chapter 14 of CD/A8). That assessment remains valid. This was confirmed by Mr Trehy in cross examination.

What archaeological and other features of historic value lie along the route of the haul road is not known. However, in its vicinity – that is, within the AGHV – there are a number of such features present, such as the remains of the mill leats, the brickworks, the site of the medieval ford and the road system leading to it, parts of the medieval field system, the stamping mill, the route of the minerals railway (now a grassy track) and siding, the bridge itself, and the woodland (see fig 1 of SITA/7/6 and also appendix C “1880 OS Map – sites at Trerice Bridge” of CC/6/3).

The haul road is likely therefore physically to affect some of these features, as well as (possibly) affecting presently unidentified features along the route of the road itself, the importance of which is thus unknown. Whilst the haul road follows in large part the route of the existing track, the construction of the haul road will require a significant degree of excavation as well as a widening and resurfacing of the track.

The haul road will therefore sever the AGHV and will significantly affect its setting and character, both visually and aurally.

Overall, therefore, the application material and the appellant’s evidence significantly underestimate the impact of the proposals on the historic environment. Some of these impacts, such as the loss of Cornish hedge within the main site and along the route of the access road, the harm to the setting of St Dennis Church, and the loss of features of archaeological interest and importance along the route of the access road, are seriously adverse in themselves. Cumulatively, the impacts are plainly unacceptable.

Impact on public rights of way (Reason for refusal 4)

The physical impact of the development on public rights of way, and its impact (including from noise) on users of those rights of way, is plainly relevant to the determination of the application. So far as the impacts on views from footpaths are concerned, the advice in the LVIA Guidelines does not mean that footpaths are not sensitive receptors, or that they do not have to be assessed. Indeed, it is apparent from this advice that users of footpaths may be amongst the most sensitive receptors.

Mr Daly’s evidence includes a comprehensive description and assessment of the existing rights of way network in the area, the relevant policy context, and the impact of the development on this network (see section 7 of CC/8/2). The site visit has also given the opportunity, with the benefit of such visual material as is available, to assess the position on the ground. What follows does not therefore repeat that evidence, upon which full reliance is still placed, but identifies the main impacts and urges the Secretary of State to attach significant weight to the impact of the CERC on footpaths in his decision.

Mr Coulson’s visual material includes photomontages from several nearby footpaths, but none shows the panoramic views across the countryside that can be obtained from many places on the local footpath network. But the sheer scale
of the development is apparent in some of the montages: for example, in GC016 (in SITA/6/4), the “large scale industrial building” is around 20m lower than the CERC building, and 95m lower than the stack.

715. Some of the existing predominantly rural views on the local footpath network will be all but obliterated by the development and the planting that is proposed around it (for example, fig 2 of CC/5/3). Walkers, particularly along footpaths 2, 5 and 17, will see and hear lorries passing along the haul road and access road. The noise mitigation measures along the access road will bring about a radical adverse change in the amenity value of the paths in this area (see plan SK006 Rev E in SITA/0/20 and GC080, 081 and 082 in SITA/6/4). The lengths of new Cornish hedge will dominate the immediate environment and will cut off views that are currently available across the wider countryside.

716. The proposals include the diversion of footpath 5 around the site (see appendix 19 of CC/8/3 and plan SK004/D in SITA/0/20). The new route around the site will be 400m, or around 6 minutes, longer than the existing one. It would be 50m longer still should the new footpath go around the pond. It would make a more attractive route if it did. Instead of open countryside on one side and the minerals railway with the Parkandillick works beyond on the other, the walker will find him/herself next to 2.5m high solid acoustic/security fencing, with the massive CERC buildings and associated stack and vehicles very close by.

717. Not only therefore will the immediate environment of this footpath be radically altered, and entirely for the worse; but also the new route will be materially less convenient than the existing one.

718. The appellant has offered to provide a gravelled and drained surface for the new footpath. This, whilst perfectly appropriate for a new footpath running round a massive industrial installation, would be very much out of character with the other footpaths in the area, underlining the essential inappropriateness of this rural location for a development of this scale and nature.

719. The noise impacts on footpaths resulting from the CERC operation will also be significant. In the average hour, the noise environment along most of the footpaths in the vicinity of the site will not be that of a quiet rural area (see table 8 of CD/C4. Note that 4 dB(A) is to be added to the post development noise levels for the peal hour). Whilst the users of footpaths 2, 17 and 18 do currently experience the effects of traffic noise at times – that is, when noise levels are at the upper end of the range (that is, 55-62 dB(A)); post development, all the footpaths will experience this for most of the day. In all cases, both the lower and upper limits of the range will increase either significantly (3 dB or more) or very significantly (up to 25 dB); even more so in the development peak hour.

720. The increase in noise levels will be especially significant on footpaths 5, 14, 15 and 31. The agreed figures do not include noise from on-site activities, which will particularly affect the diverted route of footpath 5.

721. For those walking along the footpaths that run along or close to the access road, noise levels will be very intrusive – just as they are for those properties that lie close to the road (see \( L_{\text{max}} \) noise levels in para 8.1.5 of CC/2/2).

722. All of this means that, in effect, there will be no escape from the noise from CERC-related HGVs for those who enjoy walking the local footpath network. The development will introduce much higher noise levels across a significantly wider...
area. Hence, using the footpaths will be a far less pleasant experience than it is at present, resulting in an adverse change in their character.

**Impact on residential amenity due to noise (Reason for refusal 5)**

723. From PPG24 (see paras 10 and 18 of CD/E16), the question is what constitutes an “unacceptable degree of disturbance” from noise. The assessment of whether it is “acceptable or desirable” to allow noise-generating activities on land close to noise-sensitive development is not for the noise expert but for the decision maker. This was agreed with Mr Dennis in cross examination.

724. PPG24 also identifies the effect of noise from new development on all areas of landscape, wildlife and historic value – including therefore the effect on footpaths within such areas – as material to planning decisions (see para 20 of CD/E16). Whilst Mr Dennis may be right (see para 4.4 in SITA/8/2) in general terms that, provided the predicted noise change falls within the relevant noise criteria then the noise impacts of a development will not normally justify the refusal of planning permission, not only will this depend on the particular circumstances of the case but also the converse is equally true: that is, that if the relevant noise criteria are breached, the noise impacts of the development are likely to provide a sound reason for the refusal of planning permission.

725. The first and second noise policy aims set out in the NPSE (see para 1.7 of CD/L16) distinguish between adverse impacts and significant adverse impacts. These concepts are explained in paras 2.20 to 2.24 of the Explanatory Note. It appears from this to be the intention in due course to set some specific SOAEL values for different noise sources, receptors and times.

726. In terms of WLP Policy C1(c), it is plain from the supporting text (see para 7.16) that, for proposals which (even with mitigation) the noise impact on local amenity would not be acceptable, then (subject to other planning considerations) planning permission should be refused.

727. Turning first to deal with construction noise, substantial agreement has been reached on this since the evidence of Mr Stephenson and Mr Dennis was completed. The appellant’s proposals for the mitigation of construction noise remained less than clear until Mr Dennis gave his evidence in chief and was then cross examined. Mr Dennis’ evidence had fallen into error in relation to the construction noise threshold to be derived from BS5228, which he very fairly acknowledged. The long and the short of it now is that Mr Dennis has demonstrated to Mr Stephenson’s satisfaction that the proposed construction noise limits, which accord with those recommended in BS:5228, can be met (see CD/C9). Those limits are 65 dB(A), with a limit of 70 dB(A) for temporary activities not exceeding 8 weeks in duration.

728. This does not however mean that the Council’s objection to the development on this ground has entirely been met. Following mitigation, the construction activities will still be very noisy and quite lengthy in duration, and as a result will have a significant effect at certain properties both in terms of absolute noise levels and changes from existing noise levels – Bodella Farm, Rostowrack Farm and Barton Court especially.

729. Whilst the impacts of construction noise would not themselves justify the refusal of planning permission, therefore, they still carry material weight in the planning balance.
730. Without the now proposed noise mitigation measures, as Mr Dennis confirmed in cross examination the development would be unacceptable, in terms of both construction noise and operational noise. After a period of uncertainty which extended beyond the start of the inquiry, therefore, the noise mitigation measures are accepted by the appellant as a necessary part of the development.

731. Turning therefore to operational noise, this remains a significant ground of objection to the CERC notwithstanding the mitigation proposed.

732. The broad policy background has already been referred to above. So far as assessment methodologies are concerned, there has been disagreement about whether noise from HGV movements on the access road that would be generated by the CERC can be included in the BS4142 assessment of the installation.

733. There is plainly no technical reason why noise from HGVs on the access road should not be included and this was agreed by Mr Dennis in cross examination. Thus, Mr Dennis’s predicted noise levels at residential properties resulting from operational activities within the “main” site include HGV and other vehicle movements on the site.

734. It is clear from the terms of BS4142 itself that “noise of an industrial nature” can include noise from HGVs. “Premises” are not defined in the document, although they must be industrial in character or a “fixed installation” (see para 1 on page 1 of CD/L1); and very often the immediate curtilage of an industrial installation will include areas for parking, vehicular circulation, lorry unloading, and access roads (see paras 2 and 4 of page ii of the foreword to CD/L1). But there is nothing in BS4142 that states or suggests that the relevant “premises” must end at any particular point, or that traffic on an access road part of which lies outside that immediate curtilage is to be excluded from the assessment. Nor is there any indication in the document, nor any reason, why the status of such part of an access road as a private road or as public highway should have any bearing on the applicability of BS4142 to any premises; nor indeed that the boundaries of the planning application site have any bearing on the question where the “premises” end.

735. HGV traffic along the access and haul roads could only be destined for, or coming from, the CERC. So if someone wished to make a complaint about that traffic, they would know that they could and should do this directly to the operator – either directly to the on-site management or perhaps via the liaison group.

736. For CERC related traffic, there are certainly other relevant assessment methodologies aside from BS4142. But why should it not be relevant at all (as Mr Dennis asserts) for regard to be had to the outcome of a BS4142 assessment that includes noise resulting from traffic generated by the development, even on roads that lie outside the immediate development site but which will carry only development-related traffic? The answer is that there is no convincing reason why it should be entirely excluded from consideration.

737. Thus, the Council submits that it must be relevant to have regard to the outcome of such an assessment as part of the information on the basis of which a judgment can be made as to the severity of the noise impact from the installation including the traffic it will generate on roads that give exclusive access to the site.
738. That outcome is described in Mr Stephenson’s evidence (see table A2.1 in CC/2/5 and section 7.1 of CC/2/2).

739. For all-encompassing ambient noise during the daytime, the WHO Guidelines identify 50dB(A) \( L_{Aeq} \) as marking the onset of moderate annoyance on the part of a significant number of members of the community (see para 4.2.7 of CD/L8). The threshold for the onset of serious annoyance, on the same basis, is 55 dB(A) \( L_{Aeq} \).

740. In terms of mitigated noise levels from development traffic, excluding therefore noise from operations on the main site, the position is as follows (see table 7 of CC/C4):

(i) At the front of La Mount, the ambient noise level will move from just above the threshold for the onset of serious annoyance to well above it. Noise levels at this location are unaffected by the proposed noise mitigation measures;

(ii) At Bodella, ambient noise levels will move from the threshold for the onset of moderate annoyance to well above it, and closer to the threshold for the onset of serious annoyance;

(iii) At Treviscoe (Barton Court – where 24 properties will be more or less equally affected), ambient noise levels will increase from well below to just below the threshold for the onset of moderate annoyance;

(iv) At the rear of Hawthorns, ambient noise levels will increase from below to above the moderate annoyance threshold.

741. Mr Stephenson’s supplementary evidence includes a policy compliance assessment table which gives average and peak hour operational noise levels, with mitigation (see table 2.1 of CC/2/5). This assesses post development noise levels against the guidance and standards in BS8233 and the WHO guidelines, the IEMA guidelines, BS4142 and DMRB. From this it can be seen that the impacts of the development will be moderate to severe. It is perhaps particularly to be noted that, at the 24 Barton Court properties, under DMRB there will be a major impact.

742. Mr Dennis’s use of 55 dB(A) \( L_{Aeq} \) as the threshold of acceptability (see para B22 of appendix B of SITA/8/3 and as confirmed by Mr Dennis in cross examination) is not, on the face of it, consistent with the WHO Guidelines, which define this as the threshold for the onset of serious community annoyance. The explanation for this appears to be that Mr Dennis, in setting his suggested threshold, has taken account of the circumstance (as he understands it) that the CERC is “an infrastructure project of wider regional significance”. Yet, quite aside from the fact, as the Council submits, that this is a project of County-wide but not regional significance, given that it seeks to deal with Cornwall’s waste but not waste arising in any other part of the SW region, an approach whereby the noise expert judges acceptability on the basis of planning need, rather than leaving this to the decision-maker, is wrong in principle and is unsupported by any relevant guidance or decisions of the Secretary of State. It is the same error into which others amongst appellant’s witnesses have fallen, as previously submitted.
743. The regional significance (or otherwise) of a project can in any event have no bearing on how those individuals affected by noise generated by it will react. In other words, the project cannot be made acceptable for those affected by it by dint of its importance. Mr Dennis appeared to acknowledge in cross examination the force of these points when he conceded that 55 dB(A) should be the maximum acceptable level, and that 50 dB(A) should ideally not be exceeded.

744. That position is supported by BS8233, which indicates that in gardens, the desirable upper noise level is 50 dB(A) $L_{Aeq}$, and that 55 dB(A) represents an absolute upper limit (see para 7.6.1.2 on page 18 of CD/L15). These figures are entirely consistent with the WHO guideline levels, and inconsistent with the acceptability criterion of 55 suggested by Mr Dennis in his written evidence.

745. Moreover, the “good” and “reasonable” resting condition levels in living rooms in BS8233, allowing for the attenuating effects of a partially open window (see table 5 of page 19 and table 10 of page 27 of CD/L15), correspond to external noise levels of between 40 and 55 dB(A). This suggests that the upper bound of external noise levels, if a reasonable noise level internally is to be achieved, is 55 dB(A).

746. Taking the two properties at La Mount corner in the average hour, and assuming that windows are partially open, internal noise levels will be between 44 and 49 dB(A) (see table 7 of CD/C/4: 59 dB(A) $L_{Aeq}.59$ minus 10-15 dB(A). This is 14-19 dB(A) in excess of the “good” internal criterion level in BS8233, and 4-9 dB(A) above the “reasonable” criterion level. Thus, the development will make noise conditions within those properties, which are already quite poor, very materially worse.

747. The appellant has, in these circumstances understandably, offered by way of mitigation to install double glazing and mechanical ventilation to each of those two properties. This is effectively acceptance of the fact that, without these measures, the noise impacts on the occupants of those properties would be unacceptably great. The appellant’s Summary of Relocation Documentation in Respect of Bodella and Rostowrack Farms (see SITA/0/32) indicates that, in certain circumstances, the agricultural tenancies of both farms may be surrendered, in which case the Council acting as WDA may be required to purchase them and the occupiers be relocated. These arrangements are unusual and are surely recognition of the severe noise impacts that the construction and operation of the development will have on the occupiers.

748. In terms of noise change, Mr Dennis has reproduced in his evidence the table from the draft IEMA Guidelines (see table 12 of page 43 of SITA/8/2 and page 67 of CD/L13) which define a noise change of 3 dB(A) or more as representing a moderate impact, and of 5 dB(A) or more as representing a substantial impact. The agreed post development ambient noise levels at the relevant properties show changes of 3-5 dB(A) for the average and peak hours at Hawthorns and the front of La Mount (moderate), 5-8 dB(A) at the Treviscoe properties (substantial), 3-6 dB(A) at Bodella (moderate-substantial), and 2-3 dB(A) at Rostowrack (slight-moderate).

749. Mr Stephenson’s DMRB assessment (see table 2.2 of CC/2/5 and also table 19 of SITA/8/2) shows that the 24 properties at Treviscoe (Barton Court) will experience a major noise impact, even with the proposed mitigation measures in place.
These impacts, therefore, taken as a whole, and having regard to the range of
available and relevant noise impact criteria, are properly characterised as
significantly adverse.

Mr Dennis’s attempt to rely on the NEC procedure in reverse is misconceived
and should be given no weight because PPG24 makes it clear that it cannot (not
merely that it is not intended to) be used in this way (see Mr Dennis’s approach
in para B19 of appendix B of SITA/8/3 and also the reference in PPG24 to NEC
procedure in para 8 of CD/E16).

Turning now to consider the character of the noise which will be experienced
by local residents, it is not considered that the noise of HGVs along the haul road
will not be “steady and continuous” (as is suggested in para B15 of appendix B of
SITA/8/3). Each individual HGV pass-by will be separately audible. Thus, as was
agreed by Mr Dennis in cross examination its potential to annoy will be greater
rather than less, at any given noise level.

It is of course to be borne in mind that HGV movements to and from the CERC
would not take place in the evenings (after 6pm), at night, or at weekends after
1pm on Saturdays. However, all that can really be said about this is that the
noise impacts would not be as severe as they might otherwise have been.

Also, the time base for a daytime $L_{Aeq}$ is 12-16 hours (see the penultimate para
in para xiv of CD/L8). CERC traffic will operate 11 hours a day (7am-6pm).
Hence, no adjustment to the criterion value would be justified. The WHO
Guidelines are clear that the guideline values should be reduced for evening
periods; thus, arguably, they should also be reduced for the weekends (here,
Saturday mornings). Night-time noise is subject to different guideline values
altogether. Mr Dennis is therefore wrong to have suggested (see para A.23 of
appendix A of SITA/8/3) that application of traffic noise guidance to these
proposals might have overestimated the magnitude of the impacts.

Taking a commonsense view, it is plain that the change from the current 15
HGVs per hour to 74 in the development peak hour (see table 7.2 of page 41 of
CC/2/2) passing adjacent or close to the affected properties will be a very
significant one. There will therefore be a clearly noticeable adverse change in the
character of the noise environment at all of the affected properties, as was
agreed by Mr Dennis in cross examination. The noise impacts of the
development remain severe, even with the proposed mitigation measures in
place. This consideration would itself justify the refusal of planning permission
and must attract significant weight in the decision on the appeal.

**Non-provision of rail link into site (Reason for refusal 1)**

As will be identified later, under alternative sites, the undoubted opportunity
that exists to provide a rail link into the site was an important factor in justifying
the identification of the site both by the former County Council and by the
appellant as one of the preferred sites, or indeed the preferred site, on which to
satisfy the requirement in WLP Policy L6 for a single centralised EfW plant. In
reality, the site may as well not lie next to the line of the minerals railway, as
there is no proposal to serve the site by rail, nor any realistic prospect that this
will happen at any time during the life of the plant.

Policy L6(b) requires that the plant “is to be served by rail”. One would have
thought that this was straightforward: either the CERC is to be served by rail, or
it is not. In fact, it is not. Therefore the appeal scheme is in breach of this criterion of Policy L6. However, because of the final words of the policy, which have been addressed above, planning permission is not necessarily to be refused as a result, but the breach is to be weighed in the overall planning balance.

758. The Secretary of State may agree that this is a reasonable and sensible approach, and one which accords with the wording of the policy. But no. The appellant has sought to advance an interpretation of Policy L6(b) which is patently unsound and unsupportable, for reasons which remain entirely unclear.

759. The appellant accepts that the plant is not to be served by rail, as a matter of fact; but argues that nevertheless the criterion is not breached because it doesn’t indicate at what point in time the plant “is to be served by rail”. This is a point made by Mr Greenwood in cross examination.

760. The Council submits that the criterion is perfectly clear, and requires the question to be asked: does the application include a rail link into the site so that waste can be transported to it by rail? The answer in the present case is no. Had it been intended that the criterion should require the design of the facility to include provision for the plant to be capable of receiving waste by rail in the future, it could and no doubt would have done so – just as the now defunct Preferred Option 13 in the draft WDF did. After all, it was carefully crafted to suit this proposal. (See page 42 of CD/D10).

761. But even on the appellant’s interpretation, the application is in breach of the criterion because the application is wholly devoid of any commitment even to review the option of a rail link at any time in the future, let alone actually to provide it or to provide any element of the physical infrastructure which would be needed to enable waste to be brought to the site by rail.

762. Mr Penfold’s original evidence sought to establish that, in physical terms, sufficient space has been left in the appeal proposals for a rail link to be provided in the future – that is, that the scheme has been designed so as not to preclude that option entirely. The Council was not satisfied that this was the case, so more work was done and the result was the agreed statement on rail (see CD/C/6). Then, when Mr Penfold gave evidence in July, it became apparent that option 1 as described in that document was not feasible after all, and that the only feasible option was a combination of nos. 2 and 3.

763. A note has recently been put together by Mr Penfold which usefully sets out the up-to-date position, together with a drawing which shows what has become the only feasible option (see SITA/9/8). Mr Millington and Mr Sharp (the consultant retained by the Council to advise on rail related matters) accept on behalf of the Council that this is physically feasible, but as the note fairly indicates its actual feasibility is hedged about by a number of significant uncertainties and obstacles. The need to avoid entirely the use of the IMERYS rail facilities has made matters more complex, and whilst this requirement has been accounted for in the final option drawing there would remain the need to acquire, or acquire permanent rights over, Network Rail land, and to acquire further land from Tregothnan Estates, as well as reaching operational agreement with Network Rail. Alterations to the CERC access road and weighbridge would also have to be made, and these works would require planning permission.

764. Returning to the applicability of Policy L6(b), on the appellant’s interpretation of it there is literally nothing that needs to be done in order to satisfy the
criterion, other than to demonstrate that the proposals do not actually prevent rail access from being provided at some unknown time in the future. This robs the criterion of any effective meaning and is, on any commonsense approach, plainly not what was intended.

765. The breach of the criterion is a material one because of the lack of any form of commitment, however tenuous, to the provision of rail access to the site. This is curious, not least because the provision of rail access would be likely materially to reduce some of the other impacts that the development will have – notably those from HGV noise on local houses and footpaths, and the visual impact of large numbers of HGV movements.

766. The WDA may be able to seek to secure the provision of rail access in future. It is also the case that it was the WDA not SITA who decided that rail should not be included in the application – Mr Scanlon confirmed in cross examination that the WDA “didn’t want to pay for it”, albeit that, as Mr Penfold agreed in cross examination, SITA could have chosen to do so – although this has little apparent relevance to the question whether or not the proposals are in breach of criterion (b) in Policy L6. But the WDA have shown no more commitment to the introduction of rail in the future than has the appellant: they say that the provision of rail access is not viable at present (see second para of page 6 of X/3/2), but there is no evidence before the inquiry to demonstrate that this is so, nor why it is so, nor to show if or when it might become financially attractive or viable in the future. If the environmental benefits of rail usage for the delivery of waste are to be secured, then there may be adverse financial consequences which it is nevertheless highly desirable – even necessary – for the WDA or the appellant to undergo. A more costly project is not necessarily one which is financially unviable.

767. In reality, the prospects of a rail connection being introduced at any time in the future are very remote. The cost of retrofitting the necessary infrastructure is likely to be significantly greater than if it were to be provided in the first place, and it would of course be much more disruptive as well. As Mr Scanlon agreed in cross examination, the same applies to the provision of rail infrastructure at the WTSs. And the later rail access is provided in the life of the CERC, the less attractive it becomes because there is less time to recover the costs of the investment.

768. Presently, the appellant operates 12 HWRCs in the County, and 5 WTSs (see fig 3.1 in appendix A of CC/1/13). Three further HWRCs are planned (at Carveth Farm, Truro and Penzance) and another WTS at Pool. Planning permission has recently been granted for the new facility at Carveth Farm. Planning permission has also been granted for a new HWRC and WTS at Launceston. The majority of the existing facilities have already been upgraded, under the terms of the contract. None is served by rail, nor is it intended or planned that any of them should become so in the future. There are no financial or other incentives in the contract to retrofit or install rail facilities at any of the existing or planned WTSs or combined HWRC/WTS sites; or to acquire any new, rail served sites. This was confirmed by Mr Scanlon in cross examination. This is clear evidence of the WDA and the appellant’s complete lack of commitment to realising the potential for the use of rail for the transportation of waste in Cornwall.

769. It follows that, despite the fact that the appeal site is very well placed, as everyone agrees, to receive waste by rail, and that this was an important factor
in the choice of the site for the single centralised EfW facility (see further below), there is actually very little realistic prospect of the CERC becoming served by rail at any time during its life. In short, unless the necessary site infrastructure is provided now, or at least a commitment made to review the position in the light of changes in circumstances, the use of the existing rail line adjacent to the site is never going to happen. Indeed, Mr Scanlon conceded in cross examination that there was nothing to suggest that the site is likely to become rail served within the next 5 years, and that it was not possible to look beyond that timeframe.

770. Given the weight of policy support to the use of rail to transport goods (including waste) by rail, the fact that the proposals do absolutely nothing to make provision for the importation of waste (or the export of by-products of the incineration process) by rail is a serious failing.

771. In the circumstances, the Secretary of State is invited to attach significant weight to the proposal’s failure to meet criterion (b) of Policy L6.

**Dependence on transportation of waste by road (Reason for refusal 8)**

772. Included in the documentation submitted in support of the planning application for the CERC was a report entitled “Assessment of Number of Facilities” (see CD/A2). As Mr Penfold confirmed in cross examination, no assessment of this kind had been done before the contract was entered into. It was, therefore, part of the *post hoc* justification for a decision (that is, to promote a single large centralised mass burn incineration plant) that had already been taken several years previously.

773. In the first place, the Assessment is extremely limited in scope, comparing as it does a single EfW plant scenario with two other scenarios, with 2 and 5 EfW plants, and calculating the HGV mileages incurred under each scenario. It therefore has very limited value in any event.

774. Mathematically speaking, there is no substantial issue on the evidence of Mr Penfold and Mr Millington in relation to this matter; the dispute arises on the assumptions made, for which both witnesses depend to an extent on the evidence of others.

775. The Council contends that regard must be had in this respect to unladen as well as laden vehicle mileages. In not doing so, Mr Penfold has failed properly to reflect the true difference between one scenario and another. His methodology favours the scenario that performs least well – that is, the single large centralised facility scenario – because by including only laden mileages the difference between this and other scenarios is minimised. He conceded in cross examination that Mr Millington was right – or at least not wrong, which perhaps amounts to the same thing – to include unladen vehicle trips as well, albeit that some of these trips will already be on the road network.

776. Mr Millington’s evidence shows the differences between the three principal scenarios if unladen vehicle trips are taken into account (see table 4.2 of page 17 of CC/7/2). The single plant scenario performs significantly worse than the others, both in percentage and overall distance terms. The latter is important because it relates directly to CO₂ emissions.
777. Mr Penfold also accepted in cross examination that his assumption, in the 2
and 5 plant scenarios, that each plant has the same capacity need not be so in
practice. If the capacity of each plant were to be varied so as to reflect more
closely the quantity of waste arisings in the area of the plant, the mileage
savings in those scenarios will increase.

778. Mr Millington’s evidence shows the outcome, in very simple terms, of adjusting
the capacity of each of the plants in the two-plant scenario to reflect this
consideration (see para 4.15 onwards and especially table 4.3 in CC/7/2). He
also demonstrates, as Mr Penfold accepted in cross examination, that the appeal
site is not necessarily the best location, in terms of HGV mileage travelled, for a
single EfW plant (see table 4.5 on page 22 of CC/7/2).

779. Mr Millington’s evidence also shows that, with 2 EfW plants each with a
capacity that reflects the quantum of waste arisings in its area, could give rise to
greater savings in terms of HGV mileages than suggested by Mr Penfold,
depending on where they are located (see table 4.6 on page 23 of CC/7/2). Mr
Penfold’s sensitivity test (see section 5.6 of SITA/9/2), critically, does not
examine this but rather adjusts his calculations to reflect to a degree the
possibility of dealing with waste at WTSs which are nearer to the source of the
waste.

780. In relation to Mr Millington’s latter two scenarios, as has been consistently
made clear, including in response to queries raised in the Council’s Statement of
Case and in Mr Miles’s evidence, neither Hallenbeagle nor Moorswater has been
put forward as an alternative site for an EfW plant either on the scale of the
CERC or at any other size. The Council as WPA has not undertaken a further site
search exercise: there is no obligation on it to do so, nor would this have been
appropriate given its position that the CERC is oversized and in any event is the
manifestation of an out-of-date policy.

781. These sites are advanced rather as examples of locations where, if the WLP
strategy or a variation of it (that is, two plants rather than one) is still to be
pursued, then the Assessment submitted with the planning application and
covered in evidence by Mr Penfold is flawed, and that the HGV mileage savings in
the two alternative scenarios would be substantially greater as compared in the
single EfW plant scenario than he would suggest.

782. Nor have the potential savings in road mileages as a result of importing waste
by rail been considered. That is because such provision forms no part of the
current application.

783. Mr Penfold’s whole life assessment (see section 5.5 of page 24 of SITA/9/2) is
dependent on the assumptions that (a) alternative facilities to CERC would not be
in place for 9 years following the dismissal of the appeal, (b) waste would have to
be transported to landfill out of the County after 2014, and (c) the new waste
contract, like the existing one, would expire in 2035. Mr Millington, in responding
to Mr Penfold’s assessment, assumes that (a) such facilities would be in place
within 7 years from the dismissal of the appeal, (b) further landfill capacity could
be provided in Cornwall beyond 2014, and (c) the new contract would run (like
the present one) for 30 years, that is, to 2042 (paras 2.4 to 2.11 of CC/7/2).

784. Both witnesses depended on others for those assumptions, and these are
addressed elsewhere in these submissions. But again, the mathematical
outcomes of both exercises, on the basis of the respective assumptions made,
are not at issue. Mr Millington’s assessment shows that the two-site approach would generate 15% less vehicle mileage than the one site approach.

785. Mr Penfold’s outcome, that 2 sites would generate substantially more vehicle miles than one, is difficult to accept given that his own evidence shows that two sites would generate fewer daily HGV miles than one. The reason for this turnaround lies in the assumptions he has made, which (as submitted elsewhere) are not reasonable ones.

786. The Council therefore submits that, even taking Mr Penfold’s assessment on its own very limited terms, a single large centralised EfW plant would be likely to generate a much higher number of HGV miles than would two or five plants. That is so both on a daily and annual basis, and over the whole life of the plant(s). That means that it appears that the single EfW option is the least sustainable of the options considered, and would generate significantly higher levels of CO₂ emissions.

787. Taking reason for refusal 8 together with the related breach of WLP Policy L6(b), the Council submits that it is plain that the proposal is overly and unnecessarily dependent on the transportation of waste by road. Alternatives have not been adequately examined by the appellant, and it is likely that other scenarios, including but not limited to a larger number of EfW plants located closer to the source of the waste arisings which they were designed to treat, would result in significantly fewer HGV miles driven and would therefore represent a more sustainable solution.

**Assessment of alternative sites and technologies (Reason for refusal 6)**

788. This is a proposal which justifies itself by reference to meeting a need. It is a proposal which recognises that it brings with it harm – both intrinsically, because of the nature of the development itself, and specifically, as a result of being sited in this particular location. There is then a planning balance to be struck: this is a proposal which seeks to overcome that harm by praying in aid the benefit of meeting that need.

789. It may be – and Council urges it should be – that the harm is considered too great to be outweighed by the need even in the absence of any alternatives (technology and/or location). But, where need is being argued to overcome harm, inevitably the following question becomes relevant: can that need be met in another way or in another place without bringing the harm that this scheme brings?

790. It is well established that the existence or otherwise of alternative sites can be a material planning consideration (see, for example, GLC v SSE (1986) 52 P&CR 158 (CA), per Oliver LJ at 172). This is so even where no actual alternative site is identified (Trusthouse Forte Hotels v SSE (1987) 53 P&CR 293, per Simon Brown J at 301). It is submitted that, by the same logic, alternative technologies to meet the need must also be considered – and discounted – if an applicant is to persuade the decision-maker to place weight on a ‘need’ case.

791. Given the unacceptable impacts that the development would have, the CC submits that the onus is on the appellant to show that the need for the development is pressing and that there are no realistic alternative sites and/or technologies available to meet that need.
792. So far as alternative sites are concerned, the appellant’s Assessment of Alternative Sites, submitted with the planning application and updated in January 2010 (see CD/A20), was one of the suite of application documents the purpose of which was of course to inform the decision-maker, but also to support and to justify the planning application – that is, to confirm or validate a decision that had already been taken. As Mr Greenwood put it, its purpose was “to check that the choice of site in the contract was reasonable and appropriate”.

793. The appellant’s Assessment has a number of deficiencies which mean that it fails to demonstrate that there are no alternative sites on which the need for additional waste management facilities in Cornwall could be met.

794. In the first place, the appellant’s Assessment comprised a search for possible alternative sites for the CERC, and not for any other form of waste management capacity, whether on a single site or on multiple sites.

795. Secondly, the site search exercise had no input from a qualified landscape architect. Rather, what was done was to look (and look only) at whether the site in question was rural or industrial in character (see Paras 3.52 to 3.54 on page 28 of CD/A20). It is entirely clear from the document that no account was taken of the physical characteristics of the plant (including therefore the height of the stack), nor of anything beyond the wider site context.

796. It is also clear that the tests that were applied in this respect were not written in an objective manner but rather with the appeal site very much in mind. Hence, sites within a “generally undeveloped area” – that is, those “surrounded by farmland or other undisturbed rural open land” – would fail the landscape and visual intrusion criterion; and sites “close or adjacent to … industrial or mineral extraction locations will partially meet th[e] criterion”. Development of an EfW plant at the appeal site requires an exceptionally tall stack due to the proximity of the European Sites; and whilst it lies in the countryside it is not surrounded by it, and it is not within but is close to existing industrial/minerals development. The outcome was therefore inevitable.

797. Because the appellant’s Assessment of Alternative Sites was aimed only at identifying potential sites that could accommodate the CERC, sites of under 4ha were excluded from consideration. Smaller sites would be capable of accommodating alternative technologies which would not require anything like as much land take as a 240,000 tpa mass burn incinerator. This was accepted by Mr Greenwood in cross examination. For the same reason, and because of the outdated approach embodied in the WLP, it only looked to identify potential sites within the CCAS (plus a 1km buffer).

798. The criteria used in the appellant’s Assessment were not weighted, at least not until the end of the process. Yet it is plain that some criteria (e.g. landscape and visual impact, for example) merit being given greater weight than others, as Mr Greenwood accepted in cross examination. His preference was to “keep it simple”. For Rostowrack Farm (see pages 37 to 39 of CD/A20), the potential impacts from the construction and use of the access road and the haul road were not considered at all. Specific criticisms of the criteria used, and their application, are set out in Mr Miles’s evidence (see paras 6.60 to 6.91 of CC/1/2), and whilst it is unnecessary to repeat them the Secretary of State is invited to take these into account as well.
799. The ranking exercise was in any event a waste of time because the outcome of the exercise was effectively predetermined by the “need to act now to provide the CERC” (see para 5.7 of page 79 of CD/A20). Sites were treated as available only if they were owned or controlled by the Council or SITA or if there was agreement in writing from a 3rd party landowner that he would be prepared to make the land available. In fact, there were no landowners in the latter category, and it appears that little effort was made to identify any. IMERYS, a major landowner in the area whose holdings include redundant clay workings which might be capable of accommodating major waste development which would be relatively hidden from view, are simply reported as having previously “not support[ed] identification of preferred sites on its land”, and that “it is understood that this position is unchanged”. The position of other landowners was reported as unknown.

800. Thus, Trebilcock Farm (at Victoria) and the appeal site were the only sites identified as available to meet the claimed need. The appeal site in the end came out top because “it performed best against the crucial operational criteria”. It was therefore at this final stage that a type of weighting was introduced, albeit that no justification was given for preferring operational criteria – namely, proximity to the primary route network, potential to be served by rail and potential for CHP – over the planning and environmental criteria. Perhaps that was because there is none.

801. The Council strongly submits therefore that the approach taken in the appellant’s Assessment of Alternative Sites was carefully constructed in order to yield the outcome that had already been predetermined by the contract. The exercise was in any event fundamentally inadequate because it was concerned only with finding sites for a single large mass burn incineration plant in the CCAS.

802. In the circumstances the Secretary of State is invited to conclude that the appellant’s Assessment is inadequate and in any event seriously flawed, and that little weight can be attached to it.

803. The former County Council’s Site Search Report of July 2006 (see CD/G3) was also confined to identifying potential sites for a single large EfW plant in or close to the CCAS. Here the criteria were weighted; but, notably, whilst the availability of rail access was given the highest importance there was no criterion relating to the objective of keeping vehicle mileage to a minimum by locating waste management facilities close to the main sources of waste, because, as Mr Greenwood said in cross examination, the document was simply following through the WLP strategy.

804. The Report was based on generic assumptions about large scale EfW plants derived from the RS for the South West (2004-2020) (see CD/F2). The indicative guidance in the RWMS had regard to the actual heights of EfW stacks, and a summary of stack heights was presented as an appendix to the March 2009 Committee Report (see appendix 3 of CD/B1). From this it can be seen that the CERC stack would be substantially or very substantially higher than any of the other EfW stacks in England, existing or proposed, identified in this document. The stack height as originally proposed (75m) lay in the upper band of the indicative height guidance (60-80m). It should not be forgotten that the stack height started off considerably lower.
805. The unsatisfactory nature of the Report can be seen from a brief consideration of the entry for Rostowrack Farm (see site 4 in appendix 2 of CD/G3). It lies within the CCAS, which gives it a top score of 5 and top weighting of 5; yet a site outside the CCAS might do the job of dealing with Cornwall’s waste just as well, depending on its characteristics. For rail access, the appeal site scores 4 points with a weighting of 5, even though rail access is not proposed as part of the current application, nor is it proposed that it should be provided at any time in the future (see para 5.5 of CD/G3). In terms of landscape impact and visual impact, the site scores 3 (“adequate”) with a weighting of 3 for each of the two criteria. Whilst a landscape architect was (in this instance) involved in attributing the impact scores, these are plainly an overestimate (that is, the scores should have been lower) because a 75m rather than a 120m high stack was assessed. The ecological impact was given a score of 4 on the basis that the development “would have no direct detrimental impact on” an SAC, SPA, SSSI or NNR (table K in para 5.14 in CD/G3), but this is now at the least open to question.

806. For heat consumption (this was agreed in cross examination by Mr Greenwood. See table P in para 5.19 in CD/G3), the site is given a rating of 5 (with a weighting of 5). It is apparent that it must have been assumed that the Parkandillick Dryers would provide a market for the whole of the heat output from CERC (this was accepted by Mr Greenwood), which is far from being the case. In fact, Goonvean is expected to use 2.3 MWth out of 82 MWth (i.e. less than 3 percent) (see para 5.17 of SITA/1/2. It is to be noted that sites 20 (Treviscoe/Rostowrack) and 21 (Goonvean Works) are closer to the Eco-town than the appeal site (site 4) but scored only 1 each for heat consumption.

807. The four summary reasons given in the County Council’s Site Search Report for identifying Rostowrack Farm as a Preferred Site (see appendix 4 of CD/G3 and also page 37 of CD/A20 – under the heading of “Compatibility with adopted planning policy”, the site’s “partial allocation for plant development in the MLP” is noted; but the fact that the allocation is not for plant associated with waste management is not) do not stand up to examination. This is particularly so when it is appreciated that, following the scoring exercise, the site came 13th equal – indeed the site was by some margin the lowest-ranked site to come through as a Preferred Site (see appendix 3 of CD/G3). In fact, it was a lot lower down than the next Preferred Site. It is true that the plant is identified for development in the MLP, but not for development on this scale or for this purpose. For reasons given more extensively elsewhere in these submissions, very little weight can be given to MLP Policy CC4. Rail access is theoretically available, but is not to be provided. There is a potential heat consumer adjacent, but only a small fraction of the plant’s heat output could be taken up by that consumer. The last of the four reasons – that the site is potentially available – is certainly true, but the CC submits that this cannot be treated as a consideration that overrides all others.

808. The County Council’s Report is therefore also (like the appellant Assessment of Alternative Sites) too limited in scope and its methodology is unsound. The fact that a 75m rather than a 120m high stack was assessed seriously undermines the validity of the County Council’s exercise, quite aside from its other flaws. When all are taken into consideration, it is plain that very little weight can be given to it by the Secretary of State in making his decision on the appeal.

809. Of course the considerations identified in the appellant’s Assessment and the County Council’s Report have been subjected to a very much greater level of detailed assessment than was possible, or indeed necessary, at the time they
were compiled. The Secretary of State certainly has sufficient information – in most respects at least – to be able to make his decision on the appeal. However, given their flaws, the Secretary of State should not place material reliance on the conclusions of the site selection documents, nor conclude therefore that there are no alternatives to the appeal site; even if he were to accept that a single large centralised EFW facility remains the best solution for Cornwall’s waste management needs.

810. So far as alternative technologies are concerned, these were addressed in ERM’s Cornwall Options Appraisal, submitted with the planning application (see CD/A2). But ERM was not involved at all in the process leading up to the signing of the contract in October 2006, and were not therefore involved in any discussions with SITA on possible alternative technologies before the decision was taken to proceed with the proposal. This was confirmed by Mr Aumônier in cross examination. Thus, work by ERM played no role of any kind in the choice of a single, centrally located mass burn incineration plant with a capacity of 240,000 tpa as the cornerstone of the contract.

811. There is no evidence therefore that alternative technologies were properly explored at any time before the decision was made to promote a single centralised facility on the appeal site. The ERM Options Appraisal was another document whose purpose was to justify the planning application, rather than having been undertaken in order to find the right waste management solution for Cornwall before the decision on what option to pursue was taken. Its findings are in any event not accepted, for the reasons given below.

812. The evidence suggests that, whilst SITA appear to be wedded to mass burn incineration plants, there are other waste management companies which consider that there are other viable options. All of SITA’s waste contract bids in the last 5 years have included mass burn incineration on a comparable scale to CERC and none of SITA’s existing contracts with UK WDAs includes other forms of treatment such as AD (including MBT) and gasification, as was accepted by Mr Scanlon. Yet SITA are on record as stating their belief “that there is an exciting future for gasification and other energy recovery technologies in the UK” (see page 1 of CC1/11).

813. It is also apparent that other major providers are prepared to include non-mass burn incineration EFW (such as RDF), and non-EFW technologies, in their contracts and tenders (see CC/1/10 and SITA/2/8). At the time when (as part of the tender process) outline business cases for particular waste management proposals are submitted to DEFRA for approval on the basis of the specified reference project, the proposals must be regarded as deliverable by the relevant WDA – and by DEFRA, if approval is given.

814. Mr Miles’s evidence included substantial information about alternative recovery options. He also identified some of the key advantages of such alternatives that would be likely to make them more acceptable, in planning and environmental impact terms in particular, than mass burn incineration (see respectively Mr Miles’s evidence at pages 48 to 52 table 6.1 and paras 6.22 and 6.23 of CC/1/2). Mr Aumônier confirmed that he was unable to take substantial issue with this material, which in the Council’s submission shows that there are likely to be alternatives to the single centralised mass burn incineration solution involving one or more different technologies. It is to be remembered in this context that, as previously submitted, the solution which is represented by the appeal
proposals dates back at least 7 years and even further back if the preparation of
the WLP is taken into account. In terms of available and viable technologies, as
Mr Scanlon agreed in cross examination, things have moved on a good deal since
then.

815. Mr Miles also included in his evidence a number of detailed criticisms of the
Options Appraisal, and of the Fichtner report of January 2010 (see respectively
paras 6.25 to 6.27 and paras 6.31 to 6.41 of CC/1/2). These criticisms are not
accepted by Mr Aumônier, but in the interests of time neither witness was cross-
examined by the two main parties on these matters. The Inspectors and the
Secretary of State are invited to conclude, in the light of the deficiencies
identified by Mr Miles, that neither document should attract significant weight in
the decision on the appeal.

816. So far as government policy is concerned, the statement in WS2007 that “the
Government does not generally think it appropriate to express a preference for
one technology over another” is expressly subject to an earlier paragraph, which
relates to AD (see paras 25 and 27 of CD/F1). This is taken further in the
coalition government’s Position Statement on the Environment published in May
2010; in which measures are promised “to promote a huge increase in energy
from waste through anaerobic digestion” (see POC56). It is apparent therefore
that AD is favoured over mass burn incineration, and this policy preference would
need to be taken into account if the appeal were dismissed and alternative
technologies given full consideration.

817. In this respect it is to be noted (as previously mentioned) that the WDA has
the (qualified) ability, under the contract, to seek the provision of a biowaste
facility (see clauses 70 and 70.1A of CD/G1). Although there is no commitment
to build such a facility, nor any evidence that the contract provision is likely to be
activated, if it were to be then this would add to concerns about CERC being
oversized because the amount of MSW available for incineration would reduce
still further; and the need to rely on C&I waste would increase accordingly.

818. So the Council submits that it is impossible to conclude that the appeal project
has to go ahead because there is no prospective alternative to it. The appellant’s
evidence has not demonstrated that this is so; nor is it likely to be so. Hence, if
the proposals would cause material planning harm, as the Council considers they
would, then planning permission should be refused.

Habitats Regulations and effect on European sites (Reason for refusal 1)

819. Reason for refusal 1 identifies that the CERC proposal is contrary to WLP Policy
L6. Criterion L6(g) is that a proposed EfW should not adversely affect European
Sites. In addition the effect of Reg. 61 of the Habitats Regs (see CD/K4A),
transposing the EU Habitats Directive (see CD/K1), is that permission may not be
granted unless it can be ascertained that the project will not adversely affect the
integrity of the European sites (subject to Regulation 62, see below).

820. As explained in the evidence (see CC/8/1), the question of potential impact on
European sites was under consideration at the time of the application going to
committee. If the Council had been minded to approve the scheme, it would
have been necessary to screen the application under the Habitats Regulations
(which at the time were the 1994 Habitat Regs (CD/K4) which have now been
replaced by the 2001 Regs but in materially the same terms). If, having regard
to the European site’s conservation objectives, a significant impact from the scheme could not be excluded at the screening stage (the so called ‘Waddenzee’ test), it would have been necessary to go on to undertake an ‘appropriate assessment’ and consider whether it could be ascertained that there would not be an adverse impact on the integrity of the European site. This is the test before the Inspectors and the Secretary of State.

821. In the event, planning permission was refused and the matter ceased to be of relevance. It became an issue again with the decision by the appellant to mount an appeal. At that stage the jurisdiction as competent authority to undertake both the screening and, if necessary, the appropriate assessment, passed to the Secretary of State. However, the Inspectors have asked that the issue should be addressed in evidence to the inquiry, and the Council decided to assist the inquiry with what would amount to a ‘shadow’ exercise.

822. This would be ‘shadow’ only in the sense that it is recognised that jurisdiction (and duty) to undertake an actual exercise under Reg 61 has passed to the Secretary of State. It would comprise precisely the exercise that the competent authority would (will) have to undertake: that is, a ‘shadow’ screening opinion followed by, if likely significant harm could not be excluded, a ‘shadow’ appropriate assessment.

823. This process was duly followed. The shadow screening opinion (see CD/K13b - it was signed off by the Council’s Head of Planning and supported by a technical report from Bureau Veritas, CD/K13c) concluded that likely significant effects from the scheme (both alone and in combination with other plans and projects) could not be excluded in respect of the Breney Common and Goss and Tregoss Moors SAC (“the Moors SAC”) in terms of air quality, dust, water resources and water quality and the St Austell Clay Pits SAC (“the Clay Pits SAC”) in respect of air quality and dust. It was necessary, therefore, to go on to undertake a shadow appropriate assessment (see CD/Ka – again signed off by the Council’s Head of Planning and also supported by a technical report by Bureau Veritas, CD/K14a).

824. The shadow appropriate assessment was able to conclude that it could be ascertained that there would be no adverse impact on the integrity of the two SACs from water resources and water quality, and from dust. By contrast, it concluded that it could not be ascertained that there would not be an adverse impact from the proposal (alone and in combination) in respect of air quality. For the designated habitats and species in the Moors SAC this arose from Nitrogen and from Acid deposition; for the designated species in the Clay Pits SAC this arose from Nitrogen deposition (see paras 8.2 and 8.3 of CD/K14a and CD/K14b).

825. If this conclusion is accepted by the Secretary of State, the effect of the Habitats Regs is that planning permission may not be granted unless the Secretary of State further concludes that the scheme is one without alternatives and should be permitted by reason of imperative reasons of overriding public interest (see Reg. 62 of CD/K4A).

826. The appellant does not seek to argue such a case. Given the plethora of alternatives both in terms of approach, technology and location, it is not an argument, on the evidence, which is open to the appellant to argue. It follows
that if the conclusion of the shadow appropriate assessment is accepted by the Secretary of State, permission must be refused.

827. The conclusion of the shadow appropriate assessment is one which, it is submitted, should, indeed, be accepted by the Secretary of State. This is in large part through the action (or inaction) of the appellant on this matter. The appellant has steadfastly refused to consider the matter by undertaking what would amount to an appropriate assessment, or provide first hand information that would enable someone else (be it the Council or, now, the Secretary of State) to undertake one. (The appellant’s so called ‘in combination report (CD/A16) is nothing of the kind: it does not seek to consider combined effects, but merely provides reasons to exclude consideration of them). There is no study by the appellant on the effect of current or future air quality on the Moors or Clay Pits SACs, their habitats and species or their integrity as Natura 2000 sites.

828. Instead, the appellant has relied on attempting to screen out the application and to do so on a desk-top modelling exercise ignoring both the existing pollutant levels and ‘other plans and projects’. The Natural Heritage Chapter of the ES (see chapter 10 of CD/A8) is silent on the effects of air quality on the SACs. The Air Quality Chapter of the ES (see chapter 7 of CD/A7) is a purely theoretical exercise of modelling emissions and rendering them as percentages of identified threshold levels, that is CLs. (For the concept of CLs see cc/4/8). It contains no information on the current condition, pollution levels or effect on the designated habitats and species of the two SACs.

829. This desk-top approach was replicated in the information supplied to the EA under the permit application (see CD/M1 and CD/M2), albeit with an apparently greater willingness to go into detail (for example, a look, albeit limited and flawed, at in-combination effects, which the appellant had refused to do when the Council had requested it; see the letter in CD/K13a). It is repeated in the Compendium document drawn up for the inquiry (CD/K28). It is repeated even in the evidence presented by the appellant to the inquiry (see the SITA/3 and SITA/5 series of proofs and documents), all of which, it was accepted could have been written without them ever putting their wellies on as Mr Picksley accepted in cross examination.

830. The excuse for this unwillingness to grapple substantively with the issue of impact all rests on reliance on EA/NE ‘Appendix 7’ Guidance on assessing air quality that uses 1% of the Critical Load as a ‘pre-screen’ avoiding the requirement of looking at the existing conditions and the in combination effects of other plans and projects (Appendix 7 Guidance is included at CD/K10).

831. The soundness of the excuse and the ‘Appendix 7’ Guidance will be returned to, but here it is observed that the unwillingness itself, in the Council’s submission, speaks volumes. As indicated earlier, it drove the decision to raise the stack from 75m to 120m, despite the obvious financial and landscape cost of doing so (see paras 4.1 and 4.2 of CC/8/4 and the concessions made by Mr Barrowcliffe and Mr Picksley in cross examination on this point). It drew the telling comment in October 2008 from the appellant’s consultants: ‘We tried to avoid the need for an appropriate assessment which is why we increased the stack height to 120m. We cannot run the risk of an appropriate assessment.’
832. (On this latter point see SITA/0/24 per Mr Bird of Terence O'Rourke at page 8 of 11. See also the extensive evidence given by Mr Picksley on pages 14 to 27 of SITA/5/2 where he sought to persuade the inquiry that the Council was somehow wrong to consider that it even had a role in considering the impact on the SACs. He wished to rely on the EA which had, for flawed reasons to be dealt with later, concluded that no appropriate assessment was required, rather than allow the Council to have a view. Such an approach is defeated by the EA and NE agreement that the Council was indeed the ‘competent authority’ for the planning application (see pages 14.1 and 15.1 of CC/4/8). It is also profoundly over defensive as to cast further light on the appellant’s anxiety over doing a substantive appropriate assessment).

833. That, in the Council’s submission, tells the Secretary of State all he requires to know about the ability, on the evidence, to conduct an appropriate assessment whose outcome would permit permission to be granted: it cannot be done. This is not finally to conclude that, were the evidence gathered, a favourable appropriate assessment would be impossible in theory; it is to recognise that on the evidence before the Secretary of State, a favourable appropriate assessment is not possible in respect of this scheme. He cannot, on the evidence before him, 'ascertain that it will not adversely affect the integrity' (see Reg 61(5) of CD/K4A) of the two SACs.

834. This places especial emphasis on the screening stage, and it is here that the scrutiny of the inquiry has focussed.

835. The Habitats Directive (see Article 6(3) of CD/K1) and the Habitats Regulations (see Reg 61(1) of CD/K4A) require that schemes judged likely to have a significant effect either alone or in combination with other plans or projects to be made subject to an appropriate assessment. An instructive ‘flow diagram’ of the process working properly is at Mr Barrowcliffe’s Appendix F (this is the appendix that was missing during Mr Barrowcliffe’s evidence to the inquiry but was provided in July. The flow diagram is very informative).

836. To judge this ‘likely significant effect’ the site’s conservation objectives must be taken into account and, it follows, the existing environmental circumstances. Although not explicit, the need to assess the effect given existing environmental circumstances is not controversial (as Mr Picksley confirmed in cross examination), but it means that screening cannot be undertaken without an understanding of the existing (that is, ‘background’) pollutant levels and the effects these are having on the designated habitats and species.

837. Similarly, it is not controversial that to judge the ‘likely significant effect’ it is necessary to take account of the potential contribution from other plans and projects. This is explicitly stated in the Regulations and Directive.

838. These two observations lie at the heart of the flaw within the EA ‘Appendix 7’ Guidance (see CD/K10), as it has been applied in this case.

839. Paragraph 2.6.1 states that ‘where the concentration within the emission footprint ... is less than 1% of the ... Critical Load... the emission is not likely to have a significant effect alone and in combination irrespective of background levels’ [emphasis in original]. Paragraph 2.6.3 states: ‘where the Process Contribution is greater than 1% of the [Critical Load], further consideration should be given to the Process Contribution in combination with background levels.’ This leads to the calculation of the ‘predicted environmental
concentration’, in paragraph 2.6.4, by adding the process contribution, background concentration and additional processes operating below permitted levels.

840. The effect of this, as agreed by Mr Picksley in cross examination, is that, under the ‘Appendix 7’ Guidance, background levels and other plans and projects are taken into account only where the process contribution is >1%. Conversely, where it is <1%, background levels and in-combination effects are ignored. The 1% threshold is used as a ‘pre-screen’ to the screening exercise.

841. Given, as we have seen, that the statutory screening process requires both background and in-combination effects to be taken into account in judging likely significant effects, to ignore them where the process contribution is <1% and to use a 1% of CL as a ‘pre-screen’ is a concept for which there is no statutory support (and, not surprisingly, a concept not found in the flow chart in Mr Barrowcliffe’s Appendix F).

842. This is precisely what has been done in this case. Although it was known (for example, see table 4.4 on page 13 of CD/K28 and table 4.5 on page 14 of the same document) that the background levels are between 117% and 352% of the CLs and it was known that there are other permitted sources of emissions currently not represented in the background (e.g. Penare Farm and the head room at Indian Queens Power Station), the conclusion of the ES work (see CD/A7) rests on the calculation (as then understood) that there would be no process contribution >1%. The EA work for the EP Application (the appendix 11 exercise – see CD/K16) follows the same approach (see questions 10 (a), (b) and (c)) as does Mr Picksley’s proof (see SITA/5/2). If the process contribution is <1%, so the argument goes, the effect can be screened out from the need to be considered in an appropriate assessment without regard to background and in-combination effects.

843. While the Council recognises that emissions that have no or de minimis effect cannot combine with background or other schemes, NE have firmly advised that the 1% is not considered to represent a de minimis figure (see the last page of CC/4/11). The 1% threshold is recognised by Mr Barrowcliffe to be an ‘arbitrary’ figure (see para 7.15 of SITA/3/2), but his suggested role for it as a threshold adopted for the purpose of managing workload (as he suggested in cross examination) was expressly rejected by NE (see second page of CC/4/11). The Council has sought to unearth a scientific basis for the adoption of 1%, but neither NE nor the EA has been able to provide any (see the extensive, and ultimately fruitless, attempts to elucidate matters through written exchanges with the EA and NE in CC/4/5, CC/4/11 and CC4/12).

844. In-combination assessments exist precisely to pick up small effects that individually might not be considered significant but, when added together, might amount to a significant impact. This approach is familiar from the approach followed by NE when considering the impact of housing on Thames Basin Heaths SPA where individual additional houses were made subject of a mitigation requirement before they could be permitted as Mr Picksley said in examination in chief and cross examination.

845. Thus, here, if 1% of CL were considered a threshold of significance we can consider two scenarios: (first) a scheme contributing 1.8%; (second) a scheme contributing 0.9% but where an existing unimplemented permit is able to
contribute another 0.9%. If in-combination effects are ignored (as required by the appellant’s approach), the first scenario would be examined but in the second scenario the scheme would be pre-screened out and ignored – despite the fact that the pollutant load suffered by the habitat or species would be exactly the same.

Further, the practical dangers of adopting 1% as a ‘pre-screen’ (that is, ignoring both in-combination and background) are easily recognised by the use, in the same ‘Appendix 7’ Guidance document, of a total PEC at 70% as the threshold for the ‘screen’ itself ((see paras 2.6.5 and 2.6.6 of CD/K10). A PC of <1% would lead to a scheme being ‘pre-screened out’ even though if the PEC were calculated the PEC would be >70%. A situation where a 1.8% PC was added to other sources to calculate a PEC over 70% would lead to a conclusion that significant effect cannot be excluded – and so an appropriate assessment would be required. By contrast, a scheme with 0.9% PC would be screened out, even if there was an in-combination contribution of another 0.9% and a PEC over 70% of CL.

This is amply demonstrated in this case.

On the ES figures (see CD/A7) it was thought that there was no pollutant greater than 0.92% of CL. As such, the PEC was not calculated nor compared to the screening threshold of 70% of CL. If the PEC had been calculated it would have been immediately apparent that the PEC would exceed 70% of CL and an appropriate assessment required. SCL relied on the ‘Appendix 7’ Guidance to avoid doing the calculation and the inevitable conclusion.

On the Compendium figures (CD/K28), the situation is even more marked. In Table 5.4 two scenarios are shown, one where the PC is below 1% and one where it is shown above 1%. These figures are placed against the in-combination contribution from (just) the Indian Queens Power Station. The scenario where the PC is >1% (and so the ‘Appendix 7’ Guidance would allow in-combination contributions to be taken into account) has a lower combined pollution level (7.1%) than the scenario where the PC is <1% (at 7.7%) – where the ‘Appendix 7’ Guidance would have screened it out.

Both scenarios in Table 5.4 of the Compendium have a PEC >70% and so both scenarios would, on 2.6.6 of the ‘Appendix 7’ Guidance, require an appropriate assessment. However, the effect of the appellant’s reliance on paragraphs 2.6.1 and 2.6.3 would be to prevent consideration of the <1% scenario – ironically, the one with the larger PEC.

This shows, as clearly as anything can, the absurdity of the 1% pre-screen espoused by section 2.6 of the ‘Appendix 7’ Guidance.

Nonetheless, the appellant has stuck hard to the approach in 2.6 of the ‘Appendix 7’ Guidance. The EA and NE, whose conduct in this case has not redounded to their credit, have similarly stuck to the pre-screen approach. This is despite the fact that at least as early as 2008 the EA and NE had received their own advice that the approach espoused was unsafe and that screening must not ignore in-combination effects (see paras 12.1 to 12.4 in CC/8/4).

Describe it as absurd, or describe it as unsafe, the conclusion on the application of the 1% threshold in this case is the same: to follow an approach that uses 1% of CL to exclude from account background and in-combination
contributions is not to follow the screening process in the Habitats Regulations and Directive. It is to introduce a pre-screen with no statutory basis and no scientific basis. It leads to absurd outcomes in this case where lesser contributions are potentially examined, but greater ones ignored. To follow this approach would be to place the Secretary of State at risk of legal challenge.

854. In short, section 2.6 of the ‘Appendix 7’ Guidance has been interpreted (reasonably enough on its wording) by the appellant and the EA/NE to allow a pre-screen to the screening process which means that a project with a process contribution above de minimis but below 1% of the CL does not get screened ‘in combination’ with other plans or projects or in the context of the existing pollutant loadings. That approach is contrary to the Habitats Directive and Regulations. The Council submits, therefore, that section 2.6 of the ‘Appendix 7’ Guidance, at least as applied here, is in error of law and no weight can be given to it. Indeed to place any weight upon it would, ex hypothesi, be to err in law. The EA and NE have been unable to justify its formulation and effect and, as we have seen, their own internal advice that it is flawed appears to have been ignored.

855. The double irony of this obsession with the ‘arbitrary’ 1% threshold is that, now, on the appellant’s own figures, there is exceedance of the 1% threshold. When, as required by the EA, the contribution to acid deposition of HCl is taken into account, the process contribution is 1.23% of the identified CL (see table 4.5 on page 14 of CD/K28). At this point Section 2.6 of the ‘Appendix 7’ Guidance (see CD/K10) would ‘allow’ the PEC calculation to be undertaken. Indeed, para 2.6.3 provides that the calculation is to be done if ‘any part of the European site is greater than 1%’.

856. The sum would be 1.23% (PC) (see table 4.5 on page 14 of CD/K28) + 343% (background) (again, the same table) + 5.9% (in-combination with the Indian Queen Power Station) (see table 5.4 on page 32 of CD/K28) = 350.13% (PEC). The PEC is plainly >70% of CL and paragraph 2.6.6 of Appendix 7 advises: ‘we cannot conclude that the emission is not likely to have a significant effect at this Stage’ – that is, an appropriate assessment is required.

857. The appellant points to the EA’s Appendix 11 exercise in respect of the EP (see CD/16). However, it is immediately apparent from that document that it is inconsistent with the modelling approach the EA required of the appellant:

(i) It takes acid contributions separately from N and S (see tables 3 and 4 of CD/K16), not, as the EA required of the appellant, as a combined H+ measure; this is despite NE accepting (as is plainly the case) that habitats and species react to H+ regardless of source (see point 3 of page 1 of NE e-mail of 24 March 2010 in CC/4/12. It is to be noted that the EA had deferred to NE on this point) and despite the fact that the EA had given the appellant a combined acid CL for the habitats/species (as confirmed, for example, page 21 of CC/8/4 and page 11 of CD/K28M2);

(ii) It failed to take into account the deposition of HCl as an acid contribution (it assessed it only as a gas, see table 6 of CD/K16), despite having required the appellant to do this (see paragraph 11.55 in CD/8/4 and also in CD/M2); in flat contradiction to the assurance by the EA that it had assessed HCl (see points 1 and 2 of page 2 EA e-mail of 16 March 2010 in CC/4/6).
858. The EA’s Appendix 11 exercise is not one, then, that can be relied upon. Further, in face of the Compendium finding of 1.23% PC total acid if HCl is included, the EA at the twelfth hour introduced a new CL (see EA’s e-mail to NE of 28 January 2010 in CC/4/5). In contrast to the 0.47 keq/ha/yr total acid CL for the Marsh Fritillary Butterfly advised since 2007 (for example, page 2.1 of CC/8/4), the EA moved to one of 0.69. Despite asking, no satisfactory explanation for that change has been forthcoming. Mr Barrowcliffe was careful never to endorse the change to 0.69 and continued to use 0.47.

859. The EA’s change of heart is not one that can be relied upon.

860. Undoubtedly the Secretary of State will have to undertake (at least) a screening exercise himself. If he were to follow the format of the EA’s Appendix 11 exercise, he could not, on the evidence, follow the answers given in CD/K16. By contrast, the air quality modelling and deposition figures produced by ERM in the Compendium CD/K28 are agreed between the appellant and the Council.

861. If, then, the EA’s Appendix 11 exercise were to be undertaken with the appellant’s agreed figures from the Compendium, the answers to Question 10 would be very different:

(i) Question 10(a) [alone] would have to record an exceedance of 1% of CL.

(ii) Question 10(b) and (c) [in-combination] would not be able to record ‘no potential ... as... <1%’ and would have to record (at least) 5.9% contribution from Indian Queen Power Station.

(iii) The conclusion below Qu.10(c) could not record ‘there are no emissions where the PEC is >70%’; it would have to record ‘the PEC (at 350%) is >70%’.

862. This would lead to the conclusion (following 2.6.6 of Appendix 7) that an appropriate assessment is required (at least as regards the MFB on the Moors SAC).

863. That is the conclusion that the Council urges upon the Secretary of State.

864. The matter, however, goes further. Once the 1% threshold is recognised as an unsafe pre-screen, the scheme contribution, in-combination contributions and background exposure should be considered for each of the pollutants (that is, total N and background exposure should be considered for each of the pollutants (that is, total N and total acid) and for each of the designated habitats and species. In each case it will be found that the combined pollutant levels will be some 100s above the relevant CLs and the scheme will be adding to those pollutant levels. On this basis, for each of the habitats/species examined, the conclusion – at screening stage – would have to be that likely significant effects cannot be excluded.

865. That is the conclusion of the Council’s screening opinion (see CD/K9) and that is, it is submitted, the only safe conclusion that can be reached on the agreed air quality modelling.

866. The consequence is that an appropriate assessment is required. As noted, the appellant has not undertaken such an exercise – studiously avoiding doing one throughout the process. In giving his evidence, however, for the first time Mr Picksley indicated (in cross examination) that there was before the inquiry sufficient information upon which to undertake an appropriate assessment.
When examined, the information turned out to be illusory or unhelpful to the appellant.

867. The ‘Plymouth Report’ (included in Vol 1 of SITA/5/3), much relied on in Mr Picksley’s proof, only concerns the Moors SAC and cannot be used for Clay Pits SAC, is not concerned with CERC, is 10 years old, with data 14 years old, contains no air quality data, no nitrogen or acid data, and no dispersion data to support the base assumption of increasing deposition with proximity to source (a proposition rebutted by the modelling in this case see, for example, the figures in CD/K28). There are no control transects and a recognition that there is a highly heterogeneous set of base conditions which leads to no uniformity of response.

868. It is unsurprising, therefore, that the Plymouth Report could identify no correlation of response with distance from Indian Queen Power Station. It proves nothing but that circumstances are more complicated than a linear relationship with distance. Of note is the NE comment (taking account of the Plymouth report) on the effect of air quality that ‘it [NE] does not know, one way or the other’ (see last page of CD/4/11). Especially given the very high pollution exposure levels against the relevant CL, the precautionary approach means that the effect of air quality cannot be dismissed by reference to the Plymouth Report.

869. There was an attempt to rely on the NE’s CSM data. However, the Joint Nature Conservation Council has stated that this is not safe as CSM is not equipped adequately to record air quality impacts, which may well go unreported or under reported as contributory factors (see CC4/13).

870. As regards the other documents identified by Mr Picksley, he agreed in cross examination as follows:
(i) Conservation objectives: not evidence of anything; they are the matters against which impact is to be judged;

(ii) Deposition modelling: show PECs massively in excess of 70% CL for all habitats/species for both N and acid;

(iii) NE/EA position: based expressly on the 1% threshold (and, in the case of NE, on CSM which it was agreed cannot be relied upon as regards air quality impacts);

(iv) The ‘Live Report’ (see CD/K8): a report which is not concerned with air quality at all.

871. It is true, however, that by that list Mr Picksley exhausted the potential documents placed before the Secretary of State. An appropriate assessment seeking to make use of them, and asking itself the question: ‘can I ascertain that the scheme will not adversely affect the integrity of the SACs?’ could only answer in the negative.

872. The Council respectfully submits, therefore that, on the evidence proffered by SCL, the Secretary of State cannot soundly conclude that Reg 61(5) of the Habitats Regs is satisfied and that permission must be refused on this basis alone.
Impact on economic regeneration (Reason for refusal 7)

873. This reason for refusal concerns the effect of the proposal on the efforts by the Council and others to achieve the regeneration of the CCA. Mr Vinson spoke to this matter for the Council (see the CC/3 series of documents). The appellant SCL had no equivalent economic regeneration witness but left the matter to its planning witness, Mr Greenwood.

874. There can be no doubt that Cornwall and the CCA in particular suffer economic and social disadvantages that set them apart from much of the rest of the country. The geography and scattered population, the traditional dependence on agriculture and mining and the limited ‘knowledge-based’ sector of the economy all translate into an economic and social profile which has been recognised locally, regionally and nationally to call for particular assistance (for example, see page 58 of CD/Q1, pages 6 and 58 of CD/Q2 and page 36 of CD/Q1). This is reflected, too, in the status of Cornwall within European regeneration initiatives (see sections 3, 4 and 5 of CC/3/2).

875. Cornwall has its advantages, too, however. It has a significant draw for tourists and holiday makers; its agriculture is flourishing and underpins a renaissance in food companies, trading to a greater or lesser extent on the Cornwall ‘brand’. This is a brand founded in large part on perceptions of quality of environment (see paras 32, 35 and 36 of CD/Q1).

876. Into these circumstances it is suggested that a 240,000 tpa waste incinerator, complete with 120m high twinned chimneys (and accompanying plume), be placed in a prominent location visible from the A30. The A30 is the spine down which the visitors to central and west Cornwall will pass on their way in and on their way out. It will be a prominent ‘landmark’ in a most profoundly negative sense, announcing its role and function in burning domestic waste from the entirety of the Cornish peninsular (and possibly C&I waste from outside Cornwall).

877. It should come as no surprise, therefore, that the Council should be profoundly concerned over the potential impact of the proposals on the ‘image’ of this part of Cornwall and its hopes for economic and social regeneration.

878. As well as those matters covered by Mr Vinson, these concerns have been ably supported by direct evidence provided from members of the public and the Rule 6 (6) parties.

879. The importance, in particular, of the agricultural and food-processing sectors has been stressed and the threat to them clearly articulated. Cornwall cannot risk placing these businesses in peril by damaging the quality of the ‘brand’ upon which they rely.

880. In addition, attention has been drawn to both the paucity of and the mobility of ‘knowledge-based’ industries. It is a general truism that in choosing locations, businesses will often have to balance quality of communications against quality of environment. While seeking good communications with customers and suppliers, the more mobile knowledge-based industries are perhaps parts of the economy which are particularly able to be attracted to locations offering a high quality working and living environment.
881. Cornwall’s geography means that, as a whole, it struggles to provide the first in comparison with much of the country, but it might not unreasonably claim to provide the second. The CCA, by contrast, suffers both from poor communications and from a degraded physical and aesthetic environmental quality.

882. CERC will add to this perception. The Council does not assert that the health effects are as perceived by certain third parties; it does however recognise that those perceptions exist and are genuinely held. The Council also asserts that the aesthetic, visual and landscape failings of the CERC proposal. All these have a deleterious effect on the image of the area – a deleterious effect amplified by the prominence of the proposal from the A30 spine road.

883. In addition to the existing economic situation, the threat has increased in scope since the permission was refused by the decision to pursue the Eco-town Prog in the CCA. Significant economic development is supposed to support the 5,000 new houses proposed. A major portion of that economic development is proposed at Nanpean/Drinnick, within approximately 1-2 kms of the CERC site. Whether seen from there, or seen on the routes to that development site, Mr Vinson’s evidence is that the CERC proposal will materially threaten the prospect of developing that location, both altogether and, especially, for the type of employment development that the Council particularly wishes to see.

884. Against this, the appellant cites the job creation that CERC will bring and the experience of EfWs elsewhere not limiting economic development.

885. As to the first, the new job creation is limited to 48 jobs, an effect rightly described in the ES as ‘negligible’ (see para 11.96 of CD/A8). This is to be contrasted with the 5,000 jobs anticipated to result from the Eco-town Prog.

886. As to the second, the evidence put forward is in respect of urban or edge of urban sites located near major economic hubs (Basingstoke and Portsmouth), neither of which characteristics can be said to apply to the CCA. It was agreed by Mr Greenwood in cross examination that the economic drivers operating at the locations identified greatly differ from those that obtain at St Dennis.

887. The conclusion must be that the very apparent risk to the economic regeneration of the area can by no means be out-weighed by the inconclusive evidence from other sites nor by economic ‘benefits’ of the scheme which the appellant acknowledges to be ‘negligible’ (see para 11.96 of CD/A8).

**Plant capacity and need (Reason for refusal 1)**

888. Criterion (h) in WLP Policy L6 requires the EfW plant for which planning permission may be sought in accordance with that policy to have “a gross maximum annual capacity of no more than 200,000 tonnes” (see page 41 of CD/D5). The appeal plant has a gross maximum annual capacity of 240,000 tonnes. The application is therefore in breach of policy L6(h). That much is common ground (see para 10.1.4 of CD/C2).

889. The question arising from this is: does the need for additional waste management capacity in Cornwall justify exceeding the maximum plant capacity stated in the WLP by as much as 20%?
890. There is however a further, broader question: is the need for additional waste management capacity in Cornwall such as to outweigh the harm that the development would cause, and therefore justify the grant of planning permission?

891. Dealing with the WLP issue first, Mr Scanlon told the Inspectors that the application was for an EfW plant with a capacity of 240,000 tpa because analysis showed at the time that that amount of residual MSW was likely to require treatment. There is however nothing in the Need Assessment submitted with the planning application (in CD/A2) on which reliance could be placed to justify a plant of that size. This was agreed by Mr Aumônier in cross examination.

892. In terms of the targets for recycling and composting included in WS2007, Mr Aumônier commented that these are national targets, and that some areas are better placed than others to meet them. That no doubt is true. However, there is no indication in WS2007 that some authorities should not strive to meet those targets; indeed, there can be no certainty that the targets will be met unless they are to be taken to apply to all local authority areas. Thus, as a matter of policy, Cornwall is obliged to meet those targets; and predictions of waste arisings that may be available to CERC must assume that, in Cornwall, the targets are met.

893. The contract does not ensure that only waste that is truly residual – that is, waste which cannot be recycled or composted – will go to CERC. In fairness, neither Mr Scanlon nor Mr Aumônier appeared to claim that it did.

894. In the first place, it has become clear that the appellant will wish to compete for C&I waste in order to ensure that the plant has sufficient feedstock at all times. The contract allows the appellant to do this – that is, to accept non-contracted waste – provided only that the appellant is able to meet its obligations to the WDA under the other provisions of the contract (see clause 41.1 on page 55 of the contract, CD/G1). The appellant has no control over whether, and if so to what extent, C&I waste is recycled before it arrives at CERC.

895. Secondly, separate kerbside collection of food waste does not take place in Cornwall; nor is it planned to introduce such collections (this was agreed by Mr Aumônier in cross examination. See also appendix B of CC/1/13). Therefore material which could be subject to composting will instead be burned in the incinerator. The contract in fact only requires that household waste that is both capable of being recycled and separated at kerbside or otherwise separately delivered to the HWRCs to be actually recycled (See page 11 of 37, clause 13.2 of part 2 of schedule 10 of CD/G1 and also definition of terms used in the contract as set out in schedule 1).

896. In essence, the contract places an obligation on SITA to deal appropriately with the waste materials delivered to it. It is also required to recycle and compost 50% of the total contract waste delivered to the HWRCs each year (see schedule 10, appendix 4 page 28 of 37, clause 1.3 of CD/G1). But there is no overall recycling/composting target for overall MSW arisings in the County.

897. Furthermore, in the case of those householders who fail to separate their waste in accordance with the collection arrangements in their area, the contract does not require and the appellant does not intend to provide facilities such as a “dirty” MRF or autoclave to separate out recyclables that have been put in with the household’s general waste. Although there is some post-collection recycling, in that metals will be recovered post-incineration and it is intended to re-use the bottom ash, as Mr Aumônier agreed in cross examination that a further stage of
sorting out recyclables pre-incineration would enable a higher level of recycling to be achieved.

898. In terms of overall quantities of future MSW arisings, Mr Aumônier’s “two extremes” are, for 2019/20, 314,311 and 390,806 tonnes (see paras 3.22 and 3.23 of SITA/2/2 and table 3 of annex 2 of SITA/2/3). From these, Mr Aumônier derives a “most likely ‘best case’” and a “most likely ‘worst case’” for that year for residual MSW of (respectively) 157,000 and 239,000 tonnes; and a central case of 181,380 tonnes, based on MSW arisings of 344,612 tonnes (see paras 3.29 and 3.30 of SITA/2/2 and table 6 of annex 2 of SITA/2/3).

899. On that basis alone, therefore, the plant is oversized, except in Mr Aumônier’s worst case. In his central case, there would be capacity for 60,000 tonnes of C&I waste, which represents 25% of the capacity of the plant; this in circumstances where WLP Policy L6 is concerned primarily with the treatment of MSW and sets a maximum annual plant capacity of 200,000 tonnes (see paras 5.29 and 5.32 of page 38 of CD/D5 and Policy L6(h)).

900. Mr Miles’s forecasts for total MSW arisings, and MSW requiring treatment/landfilling, in 2019/20 are 350,667 and 175,439 tonnes respectively (see appendix 2 of CD/1/3). These are based on an assumption of a 1% p.a. increase in MSW arisings and 50% recycling by 2020. These assumptions were accepted by Mr Aumônier in cross examination as being reasonable, giving “not a bad estimate”. It is to be noted that Mr Miles’s forecast and Mr Aumônier’s central case for MSW requiring treatment are actually very close.

901. There is an issue in relation to the effects of the current recession on MSW generation, although there is no definitive evidence to show how great those effects have in fact been or may continue to be. Whatever may prove to be the case, there has also been a “surge in recycling”, pointing to a “wider social shift”, which started before the full force of the recession was felt (see last four paras of page 2 of CC/1/4 and referred to in para 8 of SITA/2/6. These points were accepted by Mr Aumônier in cross examination). In any event, given the substantial measure of agreement on likely residual MSW arisings in 2019/20, it seems unnecessary to resolve this issue with any degree of mathematical precision.

902. The most likely position therefore is that about 75% of the CERC’s capacity will be used to accommodate residual MSW (albeit including some material that would be capable of being recycled or composted), and 25% to accommodate C&I waste. If the plant had been sized according to the requirements of criterion (h) in WLP Policy L6, then it would still have been able to accommodate the 20,000 tpa of C&I waste anticipated at the time the WLP was adopted (see para 5.32 of CD/D5). The question therefore is whether there is justification for sizing the plant, with the impacts that it will have, to accommodate an additional 40,000 tpa of C&I waste.

903. In general terms, there can be no such justification. The appellant’s argument seems to be that whatever capacity the CERC may have to take C&I waste is a bonus. No doubt it may be, for the appellant. But there is no sound policy basis for including an arbitrary percentage of capacity for C&I waste when sizing this facility – if there were, it might be argued that (if the figures justified it) the CERC should be even bigger. The breach of WLP Policy L6(h) cannot be justified by reference to large quantities of C&I waste needing a home.
904. The figures in fact suggest in any event that it may be difficult for the CERC to attract sufficient quantities of C&I waste in order to “fill the gap”. Mr Aumônier’s most likely best and worst cases for Cornwall’s C&I waste that will need to be managed by 2020 are (respectively) 249,000 and 427,000 tonnes (see paras 3.29 to 3.30 of SITA/2/2). In the former case, therefore, the CERC would need to attract around one-third of that total (that is, 83,000 tonnes derived from 240,000 tonnes minus 157,000 tonnes which is MR Aumônier’s best case figure that year). Mr Miles’s equivalent forecast is about 127,000 tonnes, of which the CERC would need to attract about half (see para 3.18 of CC/1/2. 65,000 tonnes is derived from 240,000 tonnes minus 175,000 tonnes, which is Mr Miles’s MSW forecast for that year).

905. In terms of overall C&I waste arisings in 2020, Mr Miles’s estimate is 553,000 tonnes (excluding trade waste dealt with at HWRCs); Mr Aumônier’s range is 440-617,000 tonnes (see para 3.15 of CC/1/2 and para 3.26 of SITA/2/2). The former therefore lies comfortably within the latter, albeit somewhat closer to the upper than to the lower end.

906. The findings of the Urban Mines study are helpful in order to establish what proportion of total C&I waste arisings are likely to be recoverable. 52% of C&I waste arisings in Cornwall are in the commercial sector – very comparable to the North West, to which the Urban Mines study relates (see bottom table in CC/1/7 and para 34 of SITA/2/6. Note that 63% of arisings in the South West are commercial wastes but only 52% in Cornwall). It is these wastes which the study says are more recoverable. This includes material that is potentially recyclable (see page 23 of appendix D of CC/1/3 and para 7.3 on page 30).

907. A consideration of the detailed composition of the waste stream also does not justify the conclusion that the proportion of recoverable C&I waste will be much higher in Cornwall than in the North West (see para 6 of SITA/2/4 and middle and bottom tables of CC/1/7).

908. The Council submits therefore that the Urban Mines study provides a sound basis for Mr Miles’s estimate as to the proportion of C&I waste in Cornwall that is likely to require treatment or disposal following recycling in 2020 (see paras 3.16 to 3.18 of CC/1/1).

909. Mr Aumônier’s range of estimates makes no allowance for the proportion of C&I waste that is likely not to be recoverable. He accepted in cross examination that an allowance ought to be made, but he did not consider that the evidence base was sufficiently robust to do this.

910. Mr Miles’s estimate for the amount of C&I waste in Cornwall that will need to be managed in 2020 is therefore reliable and to be preferred.

911. Thus, as previously mentioned, the appellant is likely to need to attract 65,000 tonnes of C&I waste, or around half the total for Cornwall, in order to keep the CERC working at full capacity.

912. In the non-segregated C&I waste stream, there is bound to remain some potentially recyclable material. Burning this in the CERC will incur a marginal cost, but will also achieve a financial return from the generation of electricity. The alternative would be to put the infrastructure in place to sort out the recyclable fraction following collection; again, a return would be obtained through the sale of this material. But the appellant have no proposals to separate out the
recyclable element following delivery to them; and the costs of separation are likely to be high in comparison with the financial return, as Mr Aumônier agreed in cross examination.

913. It is most likely therefore that the C&I waste burned in the CERC will include a significant element that was capable of being recycled.

914. Furthermore, the market for C&I wastes is competitive. There is no guarantee that the appellant will be able to compete successfully for half of the C&I waste stream in the County; indeed, no evidence has been brought to show that they will be able to attract any particular quantum of such waste to the plant. It is on this basis that the Council contends that it is quite possible that the appellant will need to look beyond Cornwall to attract sufficient C&I waste to feed the plant.

915. The Council would invite the following conclusions. Because CERC is substantially oversized to meet the current contractual requirements in terms of MSW, it is inevitable that significant quantities of C&I waste will need to be attracted to CERC; and, because there is a commercial market for C&I waste, it is uncertain whether sufficient quantities will be secured by SITA to feed the plant – hence the possibility of needing to secure supplies from outside the County, an outcome which would have no basis in policy. Mr Scanlon made it plain in cross examination that the appellant does not wish to exclude the possibility of importing waste from outside the County. The Council does not suggest that permission should not be granted until an appropriate condition or obligation has been entered into; rather, that importation of C&I waste from outside the County may take place, and that this is another indication that CERC is oversized.

916. It remains to address the question of landfill capacity.

917. The United Mines planning permission expires in October 2010, at which point it will have around 400,000 tonnes of remaining capacity, which is equivalent to about 1.5 years (see paras 4.5 and 4.6 of CC/1/13). The instruction was given to the appellant by the WDA not to apply for planning permission to extend the life of this site; principally it appears because of the level of public opposition. This frankly sits uneasily both with the decision to pursue the appeal, despite the massive public opposition to it, and with the appellant’s reliance on the closure, and thus the limited landfill capacity available, as part of the justification for CERC. Be that as it may, the contract does not in any event prevent application from being made to extend the life of the site, but the WDA’s agreement would be required before that could be done. If the CERC appeal were dismissed, consideration would surely have to be given to whether to make such an application (these were all agreed with Mr Scanlon in cross examination).

918. Connon Bridge landfill site, which is to be reopened when United Mines closes, has a current remaining consented capacity of 1.27 million tonnes, with a potential 936,000 tonnes in the proposed extension for which the appellant intends to apply for planning permission shortly (see paras 4.1 and 4.2 of CC/1/13 and paras 5.7 and 5.8 in SITA1/2).

919. The amount of municipal waste that currently has to be landfilled is around 195,000 tpa (see para 10.2.3 of CD/C2 and para 3.2 of CC/1/2).

920. Thus, if it is assumed – and the Council accepts that there is considerable uncertainty about this – that the extension at Connon Bridge (which is currently proposed) and an extension at United Mines (which is not) are both applied for
and permitted, there would be a total capacity at those two sites of around 2.6 million tonnes. This, at 195,000 tpa, gives 13.4 years’ supply of landfill capacity.

921. Lean Quarry had a capacity of 2.75 million tonnes in 2008 (see para 4.3 of CC/1/13). The site lies in the eastern part of Cornwall, albeit that it is contracted to take Plymouth’s residual MSW until 2014. By then, at an input rate of about 200,000 tpa (see para 5.12 of SITA/1/2 – the annual tonnage received at the Lean Quarry site includes some waste from eastern Cornwall), it would have about 7 years’ capacity left (and a current capacity of around 2.3 million tonnes, or 11 years). It could therefore accommodate the whole of Cornwall’s residual waste going to landfill from 2014 if that were required, and the appropriate contractual arrangements could be made.

922. By 2014, the South West Devon Waste Partnership PFI should have delivered an EfW facility with an annual capacity of 225,000 tonnes (see page 2 of CC/1/12), which will replace the need to rely on Lean Quarry landfill. Although SITA, having got to the last three in the bidding process, it withdrew on the basis of planning concerns about the dockside site, MVV Environment Ltd remain interested and Viridor have their own site which they are promoting. This was confirmed by Mr Scanlon in evidence in chief and also in cross examination.

923. Therefore, whilst again there are plainly uncertainties, it is reasonably in prospect that Lean Quarry could be available to take some of Cornwall’s residual waste from 2014 if that were to be required.

924. The position in relation to landfill is therefore as follows. The WDA and the appellant have it in their own hands, subject to the grant of planning permission, to secure sufficient landfill capacity to ensure that Cornwall’s residual waste can be disposed of in County whilst the implications of the CERC appeal being dismissed are considered and alternative facilities are applied for and put in place. If planning permission for extensions at Connon Bridge and United Mines was obtained, and if Lean Quarry became available from 2014, then there would be around 4.9 million tonnes of landfill capacity – sufficient to 2020/1 at least. Excluding United Mines, there would be sufficient capacity to 2019.

925. Whilst the achievement of such capacity is of course by no means certain, the Council submits that it is likely that there would be sufficient landfill capacity in the County to enable the exportation of waste out of County to be avoided whilst alternative facilities to the CERC are planned and put in place. Such alternatives could include composting food waste and/or AD: these facilities would reduce the amount of waste that is landfilled, and could be put in place relatively quickly.

926. The Council naturally accepts that it is undesirable, and contrary to policy, to continue to rely on landfill. But this cannot justify the grant of planning permission in circumstances where the chosen solution – the CERC – is itself contrary to policy and would cause significant planning harm. If the WDA and the appellant have chosen the wrong solution then the responsibility lies with them.

927. Reference has been made to the costs to the Council if the appeal is dismissed – including fines for breach of Landfill Directive targets and the costs involved in the termination of the contract. Those costs are to be regretted, but again could not justify (bluntly) the wrong choice of site and facility. Mr Greenwood accepted in cross examination that these were matters which attracted little weight in the
planning balance, and were not therefore a significant material planning consideration.

928. There is therefore plainly a need to provide non-landfill facilities for the treatment or disposal of Cornwall’s residual MSW. However, the need for a plant on the scale proposed has not been established, and this cannot be justified by reference to C&I waste arisings. The argument that what in the Council’s view is the serious planning harm that the CERC would cause should be accepted because of the shortage of landfill capacity to “plug the gap” whilst alternative facilities are put in place is not credible and must be rejected.

Conditions and section 106 obligations

929. In the event that the Secretary of State decides that he can and should grant permission, a number of conditions would need to be attached. Following suggested draft conditions from the parties, the Inspectors issued a three-part schedule of conditions. The appellant and the Council have together prepared a Position Statement in response to that document, as requested by the Inspectors, in writing (see CD/C10).

930. It only remains to be observed that, as explained in the subsequent note from the Council (see para C.2 of Annex C of CD/C10. It is observed that the prospective condition as drafted does not in fact include any specific restoration requirement; and would therefore ask the Secretary of State, if he is minded to impose this condition, to include restoration proposals in the scheme that would be submitted to the WPA for its approval). For the reasons set out in the note, the Council considers that this is a development which should be subject to a restoration condition, in line with policy. It is a development accepted by all parties to be of considerable size and deleterious impact. That size and that impact are only stated by the appellant to be justified by the nature of the activity undertaken and the claimed need for the facility. Once that activity ceases, and the need is no longer apparent or fulfilled, it would follow that the redundant built form – and its continuing impact – should be removed.

931. The appellant has submitted a section 106 planning agreement (see CD/C8). The Council has submitted written comments on the proposed community fund, and on the obligations in it at various stages of its gestation (see CC/0/3 and CC/0/9). The only matter not otherwise covered in these submissions is the weight to be given by the Secretary of State in respect of the so-called ‘community fund’.

932. The Council has consistently queried the justification for this obligation. It does not object to the community fund in itself but considers that little weight can be given to it in the determination of the application. Amongst other matters, it has asked the appellant to explain what planning harm the community fund is said to be necessary to overcome, how the fund is said to overcome that harm and in particular on what the fund is to be spent to overcome the harm and how the spending has been costed so to arrive at the sums in the community fund (see CD/10 and CD/10A).

933. Without cogent answers to these matters it is impossible to gauge the extent to which (if at all) the community fund is compliant with the tests in Circular 05/2005, or a permission could lawfully be granted relying on the fund, given the terms of Regulation 122 of the Community Infrastructure Levy Regulations.
To date, the appellant has not been able to give any such answers. This should not come as a surprise as it is clear, not least from the calculation mechanism (a cash figure derived per unit of power output), that the community fund is derived not from a judgment as to the cost of overcoming an identified planning harm, but from a sense of perceived ability to pay. That is, in short, the very reverse of the proper process for identifying a ‘necessary’ contribution, in the terms of the Circular or the Regulations. (Mr Greenwood accepted in cross examination that the community fund was not a necessary prerequisite to the grant of planning permission).

In relation to the Ridgewind appeal decision (see CD/I11), the local planning authority does not appear to have challenged the community fund by specific reference to Circular 05/2005; and the decision pre-dates the Community Infrastructure Levy Regulations. The appellant in that case submitted that the fund was not needed in order to justify the proposal, but perhaps surprisingly the Inspector found otherwise, albeit without any substantive reasoning to support his conclusion (see pages 98 and 107 of the Inspector’s report at CD/I11). In any case, the decision turned on its own facts and provides little guidance of any relevance to the present case.

As such, the Council submits that the community fund fails the tests both in policy – such that no weight should be given to it – and in Regulation 122 – such that it may not lawfully be a reason for the grant of permission. The Council respectfully recommends that the offer of the community fund is expressly left out of account in the Secretary of State’s determination.

**Conclusions**

The appeal scheme is materially non-compliant with policies in the WLP. This embodies a strategy for a single, large, centralised EfW plant which is in any event out-of-date. It is also in conflict with policies in the RBLP and SP, as set out in the reasons for refusal and explained in the Council’s evidence.

The scale and location of the development are such that substantial harm would be caused to the landscape and people’s enjoyment of it, to the historic environment, and to residential amenity. It would also damage important regeneration objectives for the area.

The Secretary of State cannot ascertain that the development, through the emissions from its stack, would not harm the integrity of the nearby European sites. In the circumstances of this case, this obliges him to refuse planning permission.

There is a need for additional waste management capacity in Cornwall but this does not outweigh the severe harm that the development would cause.

Alternative ways of meeting the need have not been properly examined. Although refusal of planning permission would lead to delay in the provision of new facilities, that could not justify the grant of permission for what is a highly damaging and inappropriate development.

The appeal should therefore be dismissed.
The Case for St Dennis Parish Council & St Dennis Anti Incinerator Group

Introduction

943. Evidence on behalf of PC-STIG seeks to collectively present the views of local people.

944. For those involved with this particular Rule 6 Party, it has been a privilege to make representations on behalf of the people of Mid Cornwall, SDPC and STIG. It has certainly been a new experience for PC-STIG representatives, who thank the Inspector and his team for their assistance and forbearance throughout the inquiry process.

945. PC-STIG may primarily represent the people of this area, but this matter is not simply a local issue. SITA’s application for an incinerator has been vigorously opposed by people from all over Cornwall and further afield. Over one thousand individuals and groups objected to the proposal during the period of the planning application. It was opposed by county councillors, district and parish councillors, MPs, parliamentary candidates from across the political spectrum, local residents, business people, and campaign groups such as Friends of the Earth and Greenpeace.

946. The general public and their representatives have been able to speak at a number of meetings that followed the submission of the original application. These included two full Council meetings at Restormel Borough Council, the marquee gathering at St Dennis attended by almost a thousand people, the meeting of Cornwall County Council’s Planning Committee, as well as the public inquiry day also held in St Dennis. It is telling that, at these events, the only people to speak in favour of the incinerator proposal were the appellant’s own employees or their paid consultants. And it is telling that the members of Cornwall County Council’s Planning Committee voted by twenty votes to one to refuse the application.

947. This Rule 6 Party still holds the view that waste management, focussed around a single centralised incinerator with an annual capacity of 240,000 tonnes, does not represent a sustainable solution for Cornwall’s domestic waste in the 21st century. It is PC-STIG’s view that no evidence has been presented to this inquiry which contradicts this view.

948. The basis of PC-STIG’s case against the proposal is clearly set out in its Proof of Evidence and the key issues are highlighted below. PC-STIG’s Proof of Evidence is wide-ranging and contains concerns and / or evidence about a vast array of distinct issues. In certain areas, for example the likely adverse effect on the integrity of SACs and noise impacts, PC-STIG broadly defers to the expertise of the Council’s witnesses. Likewise, with regard to detailed consideration of alternatives to incineration and the impacts on climate change, PC-STIG defers to the knowledge of the other Rule 6 Parties, namely POC, TCN and CSWN.

Local and regional policies relating to waste

949. It is necessary to start with an appraisal of local and regional planning policy documents and draft documents referred to at this inquiry, which are specifically relevant to the topic of waste. These include the WLP (CD/D5), the failed and unadopted WDF (CD/D6), the MLP (CD/D7) and regional planning documents.
It is accepted that the saved policies in the WLP are part of the development plan and therefore a material consideration. But the document is significantly out-of-date, and it has also been superseded by various new policy documents including PPS10 (CD/E6) and the WS2007 (CD/F1). Accordingly, PC-STIG considers it should be accorded very little weight indeed.

Put simply, the WLP was devised between 1996 and 2001 and it was adopted in 2002. The strategy for the treatment of waste contained within the WLP is in reality over 10 years old and it does not reflect what is appropriate for Cornwall today. This is borne out by the fact that the document includes an out-dated version of the waste hierarchy, which classed energy recovery on the same level of the hierarchy as recycling and composting. It has out-of-date targets for the recovery of value from municipal waste and the recycling/composting of waste, which have been superseded by national targets. The document also fails to provide projections for waste arisings past the year 2011 (CD/D5 page 27) or disposal requirements past 2012 (CD/D5 page A31).

The WLP is also the document which identifies a CCAS for the siting of a single EfW plant on which the Appellant has focussed throughout this inquiry. The document refers to the area of search having a "concentration of locational factors that are not found to the same intensity or level anywhere else in Cornwall" (CD/D5 para 5.30). But the reality is that this statement is hyperbole. PC-STIG’s Proof of Evidence has demonstrated that no alternative areas to the CCAS were identified for consideration in the 1990s; no alternatives were put forward during any public consultation, and there was no discussion of any of the benefits and/or disbenefits of other possible locations. It would have been more honest of the authors of the WLP if they had simply stated that they intended to "dump" the incinerator on the communities of the CAA.

What is more, evidence has shown the very concept and location of the CCAS to be fundamentally flawed. Information presented to this inquiry by the appellant entitled “Assessment of Alternative Sites” and published in July 2006 (CD/G3) showed a range of potential sites for the incinerator within the CCAS and an arbitrary 1km extension around this area. An updated version (CD/A20) dated January 2010 named 43 sites. The CCAS straddles the A30, but the searches show that the vast majority of potential sites shown by the Appellant were in the southern part of the area, and in the original “site search” all the sites were within the china clay parishes of Roche, St Dennis, St Enoder, St Stephen and Treverbyn. Only two sites were included which were positioned above the present line of the A30.

What credibility can an area of search have when it is not possible to identify sites in half of the area, especially when the assessment was essentially theoretical and undertaken after the appeal site had already been selected for the development? This lack of credibility is compounded by the refusal of Imerys, the main landowner in the southern part of the CCAS, to make land available, showing that options for development were extremely limited. It is also telling that of the 15 sites on the shortlist in the revised study, eleven were wholly on greenfield land and two others were partially on greenfield.

Its credibility is further undermined by the make-up and constraints of the area, which include nitrate-sensitive SACs. Indeed, Cornwall County Council in
preparing the WLP, and then both Cornwall County Council and appellant in working up the proposal for the appeal site, clearly failed to understand the implications of being located so close to such SACs until late 2007 or early 2008. An early notional drawing from SITA in December 2004 showed a 50m chimney (SITA/6/4 Figure GC071) while a drawing from September 2005 showed a 70m chimney (SITA/6/4 Figure GC072). By the time of the application, the height of the proposed chimney had been increased to an alarming 120m in order to reduce the impact of emissions. This is something PC-STIG understands would apply to any incinerator of the scale proposed within the area of search, but not necessarily if it was positioned elsewhere in Cornwall.

956. It is PC-STIG’s contention that if a local authority attempted to bring forward a planning policy document, containing such a fundamental concept as the CCAS, in a similar manner today - it would be found unsound in an instant. PC-STIG maintains that because of this and all the other issues raised above, very little weight, if any weight at all, should be given to the WLP.

957. However, if it is the view of the Inspector that the WLP does merit weight, it needs to be pointed out that the proposal does not comply with the WLP in a number of areas. The WLP policies that are directly relevant to the incinerator proposal are L6, L6A and L6B.

958. Policy L6 states that an incinerator could be approved within the CCAS, if it is broadly in accord with the majority of a series of criteria.

Criterion a: The proposal does not “demonstrate reasonable proximity and accessibility to the Primary Route Network”. The fact that the appellant needs to construct a new access road, which will adversely impact on a number of properties and lead to the loss of open countryside, shows this to be false.

Criterion b: The plant would not “be served by rail”.

Criterion d: While the plant would produce heat for off-site consumption, it has been established during the inquiry that only 6%-8% of the steam energy generated could be provided as heat to the local clay industry – an unacceptably low figure.

Criterion f: No meaningful evidence has been presented by the Appellant to show that any potential or future “adjacent ancillary development” would be appropriate or in line with existing planning policies. This is relevant due to the failure of the appellant to have definitive plans for heat to be used by local industry.

Criterion g: It states that the plant should not “adversely affect the integrity of a Special Area of Conservation”. A “Shadow Appropriate Assessment Scientific Report” has been produced by Bureau Veritas (CD/K13) for the Council which concludes that it cannot be guaranteed that the incinerator would not have an adverse effect on Brenney Common and Goss and Tregoss Moors.

Criterion h: The document states that the plant should have a “gross maximum capacity of no more than 200,000 tonnes”. The plan to construct a 240,000 tonne incinerator is therefore also contrary to this policy.

959. This Rule 6 Party acknowledges that Policy L6 also states that: “Where the proposal for an EfW plant does not meet all of the above criteria, careful consideration will be given to the exclusion of individual requirements of this
policy and components of the design of the scheme”. But, as shown above, it is evident that the proposal overwhelming fails to satisfy a wide range of the criteria in Policy L6.

960. It is necessary to look in more detail at Criterion d, relating to the production of heat for off-site consumption. In particular, PC-STIG wishes to challenge assertions from the appellant that the heat could potentially be used by parts of the eco-town proposed for the hinterland of St Austell.

961. In the evidence of Mr Scanlon (SITA/1/2) and Mr Greenwood (SITA/10/2) it is claimed that there is potential for the incinerator to supply heat to both the Nanpean / Drinnick and Blackpool parts of the proposed eco-town. It has been noted that the appellant is in discussions with Imerys about this, though the evidence is largely restricted to a single letter dated 2009 (SITA/1/5).

962. It is necessary to remind the inquiry that the original application submitted in March 2008 did not contain reference to the eco-town. Indeed, the appellant’s repeated attempts to ‘big-up’ the potential of the eco-town as a heat user are an admission that the original application was fundamentally flawed in terms of its inability to identify adequate and appropriate users for the heat.

963. In terms of the eco-town, witnesses speaking on behalf of the appellant have declined to provide any information about their discussions with Imerys, though they have confirmed there is not any binding agreement with the clay company that they would use the heat. It is also the case that no evidence has been presented to confirm evidence of negotiations with Orascom, the development firm that has a 74% stake in the Eco-Bos venture company alongside Imerys, which will take the development forward. Indeed, no evidence has been presented to confirm evidence of negotiations with Eco-Bos itself.

964. No evidence has been presented about the likely timescale for the potential development of the Nanpean / Drinnick and Blackpool sites. It has however been acknowledged that the initial phases of the eco-town will be at West Carclaze / Baal and Par Docks, and that the development of the sites at Nanpean / Drinnick and Blackpool might not even be commenced for another 10 or 15 years, if at all.

965. There is no cast-iron guarantee that the eco-town development would be able to take the heat if the incinerator was built. Or whether that would even be appropriate. PC-STIG understands that eco-towns are expected to showcase sustainable development standards. It is anticipated that eco-town developments as a whole should achieve zero carbon and be an exemplar in at least one area of environmental technology, while the relevant PPS (CD/Q7) defines zero carbon in relation to eco-towns as where “over a year the net carbon dioxide emissions from all energy use within the buildings on the eco-town development as a whole are zero or below”. PC-STIG submits that any eco-town worthy of the name would be self sufficient in its energy provision and would not need to rely on heat piped from a distant incinerator that would be generating thousands and thousands of tonnes of CO₂ emissions.

966. It is PC-STIG’s view that the whole debate around the eco-town is a massive red herring and something that should be completely discounted by the Inspector in his deliberations.

967. Furthermore, as there are no definite plans for the use of heat that would be produced by the incinerator, this could lead to future developments around the
appeal site. PC-STIG would consider this to be inappropriate due to the likely loss of yet more greenfield land. There are more sustainable locations for more benign waste management facilities, which would allow bespoke employment facilities to be constructed alongside a plant, thereby allowing the excess heat and other by-products to be used more effectively.

968. It is the view of this Rule 6 Party that the incinerator proposal is also contrary to policies L6A and L6B of the WLP. Policy L6A states that the plant “should not adversely impact on the special character of Cornwall’s landscape, or cause significant adverse impact on the visual amenity of local residents or recreational users”, adding that consent would not be granted where it causes harm to landscape features such as woodland and hedgerows, the loss of important local landscapes, be incompatible with local landscape character, or cause light pollution. Policy L6B states that the “design, siting and external appearance of a proposal should complement its landscape setting ... high quality design will be required and innovative design will be sought in appropriate locations”.

969. This Rule 6 Party acknowledges that the WLP, in supporting text, states that a proposal of this type “would represent a substantial development which could have a significant visual and landscape effect”. Such a statement cannot however be enough to overcome the enormous adverse impact of the proposed incinerator in any way. PC-STIG are of the opinion that any reasonable individual would come to the conclusion that the scale, massing of the plant, the height of the chimney and associated plume are disproportionate to the locality of St Dennis, Treviscoe and the rural landscape which surrounds the appeal site.

970. Issues relating to impact on landscape and design are addressed below in the section regarding to the Council’s second reason for refusal.

WDF

971. The unadopted WDF (CD/D6) has been regularly referred to by the Appellant. But PC-STIG considers that the document should be accorded no weight at all in this case.

972. The WDF has not been adopted. A submission stage document was produced, but this did not proceed to examination and PC-STIG considers it to be a fundamentally unsound document. In particular, it is maintained that the consultations which led to the resultant submission stage were extremely biased and flawed.

973. The issues and options consultation in May/June 2005 (CD/D12) largely carried forward the approach to waste management outlined in the 2002 WLP without presenting meaningful alternatives. Questions posed in the consultation included whether a “Central Cornwall Energy from Waste Facility” was appropriate, detail about the “planning criteria for an Energy from Waste facility in the Central Cornwall Area of Search” and the “transport of waste by rail to an Energy from Waste facility in Central Cornwall”. No alternatives to the CCAS were included in the consultation and, given the nature of the Issues and Options consultation, it is little wonder that the Preferred Options proposed a policy for the “development of an EfW facility within Central Cornwall”.

974. The failure to explore meaningful alternatives to the option of a single central “energy from waste” facility in this process was unacceptable and further evidence of an inappropriate approach to the policy development process.
975. It is also the case that the projections of waste arisings in the document, underpinning the scale and capacity of the plant, were also extremely wide of the mark. This will be addressed later in this closing statement.

976. It also needs to be pointed out that the appellant’s attempts to place great weight on this document are totally inappropriate, especially given the previous attempts of their legal team to argue that weight should not be accorded to the draft RSS, which was at that time an emerging policy and not then, as in the case of the WDF, a defunct document that had no hope of ever becoming adopted policy.

MLP

977. The appellant has noted Policy CC4 in the MLP (CD/G7) which shows that part of the appeal site would be acceptable for the development “ancillary to the extraction of china clay”. The proposal in front of us is not, in any way, “ancillary to the extraction of china clay” and would lead not just to the loss of the green fields, immediately to the north of the Parkandillick complex, but also to the west where the approach road would carve through further agricultural land.

978. There is no proposal for any part of the appeal site to be developed by the china clay companies and, given the nature of the industry, little likelihood of this happening in the future. PC-STIG would suggest that the status of the land as presently identified in the MLP would almost certainly be altered in the forthcoming reviews of planning policy in Cornwall.

979. PC-STIG considers that no weight should be afforded to this policy in the consideration of this appeal.

RPG 10 and the RSS

980. In terms of the situation with regional planning documents, this Rule 6 Party recognises that the new Coalition Government has revoked the RPG for the South West (CD/D1) and that the draft RSS (CD/D2) will now not be adopted.

981. It is, however, worth noting that the policies within the various drafts of the RSS included the prioritisation of industrial sites, previously developed land and urban locations for waste management facilities, broadly in line with European and national approaches. In particular, the locational policies in the draft RSS were counter to the policies set out in the out-dated WLP and clearly against the development of an incinerator at the appeal site.

982. PC-STIG believes it is extremely instructive to remember that the former Cornwall County Council and the appellant deliberately refused to rethink their waste plans in-line with what were then emerging regional policies. They refused to investigate alternatives to a single incinerator, refused to identify possible alternative sites outside of the CCAS and closer to SSCTs as set out in the RSS, and they blindly pushed ahead with a planning application for an incinerator on greenfield land at St Dennis, while attempting to challenge policies in the draft.

983. (Inspector’s note: PC-STIG’s comments received as a result of the High Court’s decision in the Cala Homes (South) Limited case are summarised as follows. PC-STIG is grateful for the opportunity to comment following the judgement in the High Court case regarding Cala Homes (South) Limited’s challenge to the Secretary of State’s decision to revoke RSSs. PC-STIG confirms the comments
that it made as part of the case it presented at the inquiry and which are reported above). (Inspector’s note: see document PC-STIG/0/19).

The County Council / SITA’s approach to local waste policy & this application

984. At this point PC-STIG considers it is necessary to consider the myopic approach of parts of the former Cornwall County Council to local waste policy, site selection and the resultant planning application. PC-STIG maintains that throughout this process there has been a blinkered pre-determination to drive forward the principle of a centralised incinerator within the CCA and then latterly at the actual appeal site.

985. The WLP was developed by a cabal of Council officers and consultants, with extremely limited input from democratically-elected councillors. Indeed, as shown in PC-STIG’s proof of evidence, only a handful of councillors attended the small number of meetings of the Joint Waste Panel between 1996 and 2002 (PC-STIG/0/1 paras 3.59-3.67). The unadopted WDF was merely an attempt to reiterate to restate the policies in the WLP. And, as shown previously, when emerging regional documents were made public, the Council lobbied against those parts that were counter to their preconceived agenda.

986. Pre-application consultation with local people has also been less than satisfactory. This inquiry has heard from many local people about the extremely low esteem in which the Site Liaison Group was held and I will not labour that point now. The exhibition events held in January 2008 were largely cosmetic and merely presented the planning application to local residents as it had been prepared. It has been confirmed that not one issue raised by a local person or a councillor merited a single revision to the proposal.

987. And then in terms of the planning application, it has been demonstrated that an emerging recommendation for refusal was reversed into a recommendation for approval in the space of a handful of days in advance of the planning meeting held on 26 March 2009 (CD/B1, CD/B2 and PC-STIG/0/2).

988. As representatives of local people, PC-STIG requests that a full investigation is made of the contrived manner in which Cornwall County Council approached waste policies and how both the former County Council and the appellant approached the selection of the St Dennis site, which PC-STIG considers to be an absolute scandal.

989. SITA has presented documentation, dating from 2006 onwards, claiming that the appeal site is the most appropriate location for the incinerator, but the reality is that the site was selected before this documentation was even produced. Frankly, the consultants employed by the appellant have not sought to investigate the best alternatives or the best possible sites for such a development, but to conjure evidence in support of a pre-conceived position and a pre-agreed location.

990. In his evidence, Mr Scanlon refers to meetings between Cornwall County Council and representatives of SITA between 2000 and 2003, and that the “Council was looking to make a suitable site available” and had identified a “good site” (SITA/1/2 paras 3.0-3.3).
991. The evidence confirms that the County Council was working up the proposal on the appeal site throughout 2005. An email (PC-STIG/0/15) from Cornwall County Council, dated September 2005, shows that much work had been carried out by the County Council in terms of the St Dennis site and that the Best and Final Offer, which was made on 31 October 2005, was worked up on the basis of the appeal site.

992. Evidence presented by SITA also includes a drawing showing an early design of the plant (SITA/6/4 Figure GC072) on the St Dennis site, which is also dated September 2005.

993. But most tellingly of all, the Cornwall County Council e-mail of September 2005 noted previously states: “We have started the monitoring and this is not cheap – in excess of £100,000. Ultimately, if this site isn’t deliverable, it will cause enormous problems to the scheme”. And then the appellant has the temerity to argue that the appeal site should take priority because the Council has a legal interest in it and it could be made available.

994. Is it any wonder that local people are so angry and cynical about the whole process, especially when the extent of pre-determination is so evident? PC-STIG believes the communities of St Dennis and Treviscoe have been extremely poorly treated and would request that the Inspector takes this into account when producing his recommendation for the Secretary of State.

The wider policy context

995. PC-STIG’s proof of evidence demonstrates how the incinerator proposal is contrary to a range of European and national policies and guidelines. PC-STIG does not consider it necessary to repeat that here in depth, but wishes to reaffirm some key points.

996. It is PC-STIG’s view that SITA’s proposal for an incinerator does not comply with EU Directive 2008/98/EC (CD/H7) or the WS2007 (CD/F1), with specific regard to the Waste Hierarchy. It clearly does not seek to prioritise the "more favourable" options of waste prevention, minimisation, re-use and recycling ahead of "energy recovery" or "disposal". Similarly, the scale of the proposal is against national targets for re-use, recycling and composting.

997. It fails to comply with PPS10 (CD/E6) which focuses on ensuring that waste planning authorities “drive waste management up the hierarchy” in the best possible environmental manner, again represented by the highest levels of the hierarchy e.g. waste reduction, re-use and recycling. The proposal also does not accord with this PPS in relation to the proposed location of the plant and associated approach road on greenfield land.

998. Furthermore, the negative impact of the proposal on the communities of St Dennis and Treviscoe, the impact on the historic and natural environment, and landscape character, means it does not comply with the content of PPS1. This sets out that sustainable development is the core principle underpinning planning and that “planning should seek to maintain and improve the local environment and help to mitigate the effects of declining environmental quality” (CD/E2).

999. A centralised incinerator would not deliver more sustainable patterns of development and it would increase traffic. It is therefore contrary to PPS4 (CD/E2O). It also fails to meet the criterion in PPS7 (CD/E4), which seeks
developments in rural areas to be in keeping and scale with its location, and sensitive to the character of the countryside, with priority given to the re-use of previously-developed sites.

1000. PC-STIG also considers that the proposal does not comply with more general local policies set out in the SP (CD/D3) and the LP (CD/D4). This will be covered in more detail below.

The capacity of the plant

1001. One of the key issues at the very heart of this inquiry is the scale and proposed capacity of the plant. It remains PC-STIG’s view that the treatment of waste should relate to the waste hierarchy, and that the incineration of up to 240,000 tonnes of waste each year cannot sensibly form part of a waste management strategy that seeks to achieve recycling / composting in excess of 50% by 2020, as set out in WS2007.

1002. The proposed capacity is considerably greater than the 187,343 tonnes of residual MSW recorded in 2009-2010. This was a period when only 37% of household waste was recycled / composted, when there were no bio-waste collections, and no pre-sorting of the black bag waste collected from the kerbside in order to remove further recyclable and bio-degradable material.

1003. The appellant acknowledges that the materials contained within black bag waste, which would be incinerated if this proposal went ahead, include a large amount of material that could and should be re-used or recycled or composted – such as “plastic, paper and cardboard, textiles, food waste, wood, glass, inert substances and metals”. The Cornwall County Council Waste Composition Study (PC-STIG/0/2) from 2007 further demonstrates that around 60% of the material in black bag waste was still either conventional dry recyclable or organic material.

1004. That thousands and thousands of tonnes of such waste should be incinerated is a waste of valuable resources. Burning such materials cannot be justified by the appellant’s spurious notion that incineration is somehow better than landfill – it does not “drive waste management up the hierarchy” in favour of the more sustainable treatment methods.

1005. Furthermore, the arguments for a capacity of 240,000 tonnes stem from projections within the unadopted and defunct WDF, which has already been mentioned by PC-STIG. This is confirmed by the appellant in its evidence (SITA/1/2 paras 10.0-10.3). In the submission stage of the document, produced in 2006, three projections or scenarios were included for waste arisings. The projections included the extent of residual waste. Taking last year (2009/2010) as an example, it projected that Cornwall would generate between 232,333 and 245,443 tonnes of residual waste which, they claimed, would need to be dealt with by incineration or landfill (CD/D6; tables A1.2a, A1.2b, A1.2c).

1006. How wrong could they be? And how can people continue to argue for such a large incinerator when the “justification” for it, produced just four years ago, managed to over-estimate the amount of waste that would need to be dealt with by between 45,000 and 57,000 tonnes (or, put another way a positive variance of between 24% and 31%). Where is the credibility of their arguments?

1007. The appellant’s case for an incinerator with the capacity proposed is further undermined by their own witness, Mr Aumônier, who produced “best case” and
“worst case” scenarios for the arisings of residual MSW by 2020 (SITA/2/2 paras 3.29 and 3.30). Under his “best case” scenario, in which he assumes Cornwall will achieve the national target of 50% recycling/composting by 2020, he anticipates that there will only be 157,000 tonnes of municipal waste to be dealt with, leaving a void of 83,000 tonnes. As has already been highlighted, over 50% recycling is already being achieved elsewhere. Mr Aumônier’s best case is no longer a best case. Even his “worst case” scenario, which PC-STIG considers unacceptably assumes only negligible improvements in recycling, delivers a figure which is still lower than the capacity of the plant.

1008. Meanwhile the Council’s witness, Mr Miles, estimates that by 2020 the extent of residual waste would be 175,439 tonnes (CC/1/1 para 3.8), which is 64,500 tonnes less than the proposed capacity of the proposed plant.

1009. It is clear that the 240,000 tonne incinerator, as proposed, is vastly over-sized. Taken together, the extent of likely waste arisings and the need to firstly meet and then exceed national targets for recycling, etc, show that the proposed capacity cannot be merited. PC-STIG considers that it is also the case that the scale of the proposed plant cannot be justified because the resultant void in capacity could be filled with large amounts of commercial or industrial waste, and it is telling that SITA has, at this inquiry, refused to rule out the import of waste from outside of Cornwall. This would have even more far-reaching consequences for the transport of waste and the environmental impact of the plant.

**Cornwall County Council’s eight reasons for refusal**

1010. PC-STIG’s proof of evidence indicates support for Cornwall County Council’s eight reasons for refusal. Below are a few key areas of concern / disagreement.

*Reason 1 for refusal; Non-compliance with WLP*

1011. The first reason for refusal was non-compliance with policies L6, L6A and L6B of the WLP. PC-STIG has already outlined its view regarding the limited weight that should be accorded to the WLP and that, should the Inspector give weight to the document, how the proposal is contrary to the named policies.

*Reason 2 for refusal; unacceptable impact on landscape character and visual impact*

1012. The second reason for refusal was wide-ranging and related to the unacceptable impact of the plant on landscape character and its visual impact, as well as the significant encroachment into undeveloped countryside and the loss of established Cornish hedge. As the Rule 6 Party representing the local area, PC-STIG fully concur with this assessment.

1013. Looking first at visual impact, the main building would be up to 45m in height, while the chimney stack would be an unbelievable 120m tall (394ft). Surrounded by agricultural land on three sides, the plant would be much greater in scale and massing than the adjacent works at Parkandillick.

1014. Indeed, the proposed chimney would be approximately twice the height of the existing stacks at Parkandillick and the site would tower over what is essentially open countryside. The height of the stack is much, much greater than the spire of Truro Cathedral (245ft), a structure which dominates the setting of the city of Truro; it is also greater than the Statue of Liberty and its associated pedestal (305ft), and Big Ben (316ft).
1015. The adverse visual impact of the plume that would emanate from the chimney would also be significant. According to appellant’s EP application (CD/M1 – part four, page D56, Table D8.1), the average plume length would be 45m though there would be occasions when it would extend to a length of 221m – almost twice that of the chimney. The document postulates that plumes will be visible at a height of between 100m and 199m for about 145 hours each year.

1016. On behalf of the appellant, Mr Coulson (SITA/6/2) has somewhat mechanistically tried to downplay the enormity of the impact of the incinerator and its associated plume which, on occasions, could collectively be visible to a height in excess of 300m. It simply cannot be denied that the construction of the incinerator would cause a great deal of planning harm and have a significant adverse visual impact on the locality.

1017. In terms of the impact on the character of the area, this relates not just to the 6.5ha of good quality farmland of Grade 3a and Grade 3b classification that would be lost to the construction of the incinerator. The access road would be constructed through fields of medieval origin and the haul road would meanwhile also impact on areas of vegetation and historic interest.

1018. A total of 331m of historic Cornish hedge, containing one thousand years worth of valuable information reflecting both its history and its natural make-up, would be lost if the scheme went ahead. PC-STIG do not accept the appellant’s argument that the historic boundaries are being “translocated,” as the new boundaries would be entirely new, they would lose all integrity with their historic landscapes and be over-powered by the industrial plant that would sit next to them.

1019. The appellant’s landscape witness Mr Coulson has also made numerous claims about the landscape of this area and its ability to house the incinerator plant, with which PC-STIG strongly disagrees. PC-STIG finds his attempt to claim that the farmland of the appeal site is not “undeveloped countryside” to be particularly crass (SITA/6/2; para 6.23). It is evident to us that he, like his colleague Mr Trehy, does not have a feel for the landscape context of St Dennis Parish. As will be demonstrated, both witnesses failed to properly identify the historic character of the appeal site and the surrounding area as AEL (SITA/6/2 para 5.45-5.52). Such failings, it is suggested, should call into question the very reliability of the remainder of the evidence presented by Mr Coulson.

1020. PC-STIG considers that the plant would have an intolerable impact on the character of the area and visual amenity. The views of local people are consistent with the decision of Cornwall County Council to refuse the application for an incinerator in this location. It is PC-STIG’s view that the proposal fails to satisfy a wide range of planning policies in this regard. These include SP Policy 2 and LP Policies 6, 11 and 18.

1021. SP Policy 2 seeks to protect and enhance the quality, character, diversity and local distinctiveness of Cornwall’s environment and seeks to ensure that development positively relates to landscape character through siting, design, use of local materials and landscaping, while creating safe, aesthetically pleasing and understandable places. This proposal fails to comply with this policy on so many levels and is summed up best by English Heritage (EH):

“It is our belief that the proposals are disappointing in that they fail to recognise, let alone address, the impact that the proposals will have on the...
wider landscape of the St Dennis Area... the scale, mass and orientation of the proposed plant is such that it will introduce an alien feature, unconnected with traditional or previous land-use, into a landscape that has been shaped by it’s natural resources, agricultural land and china clay. In addition the design, scale and massing of the building do not appear to have considered their place in the landscape” (PC-STIG/0/1 para 6.06).

1022. Meanwhile, LP Policy 6 expects new developments to harmonise with their surroundings and sets out a range of scenarios that would not be acceptable. These include protruding above prominent ridges or skylines, intruding into prominent views or into the setting of landscapes and settlements. The second part of this policy focuses on the respect for local surroundings and the provision of adequate landscaping.

1023. LP Policy 11 seeks to conserve and enhance the landscapes, features and habitats of heritage importance within the Borough, while LP Policy 18 seeks to protect the wider countryside of the Mid Cornwall area.

1024. In terms of the incinerator proposal, it does not harmonise with the area, it is unacceptably prominent and intrudes into greenfield land, and it would be impossible to landscape or screen the development in a meaningful way.

1025. A hugely contentious part of this application and the resultant appeal has been around photomontages. It is PC-STIG’s view that in their original photomontages, the appellant attempted to play down the visual impact of the incinerator complex by carefully selecting viewpoints and positioning items in the foreground to offset the mass of the proposed buildings and the height of the stack. There was also widespread concern about the accuracy of images produced by the appellant’s team. One of the early photomontages submitted by the appellant representing the proposal as viewed from St Denys Parish Church car park was grossly inaccurate, both in terms of the location of the proposal and the scaling of the building. As a consequence, STIG produced a series of photomontages to counter these.

1026. A recent Freedom of Information request shows that Cornwall County Council planners even asked if they could use an alternative image supplied by STIG for the meeting of the Planning Committee because “the photomontage contained within the planning application is not quite correct in the way the CERC is located. Would you be agreeable for us to show the STIG compiled photomontage from the Church?” (PC-STIG/0/1 para 7.30).

1027. Whilst giving evidence at the inquiry, Mr Coulson was asked if the photomontages created by STIG were created in accordance with the information set out in the “Landscape Institute” and the “Institute of Environmental Management and Assessment” document entitled “Guidelines for Landscape and Visual Impact Assessment – Second Edition” (GLVIA). In his answer, he suggested that the STIG photomontages were not created following these guidelines and implied that, by not adhering to the guidelines, the STIG photomontages could not be considered to accurately represent how the proposal would appear from the various viewpoints used by STIG.

1028. In the preface to the guidelines, it states that: “The guidelines represent the consensus views of Working Party members, working on behalf of the Landscape Institute and the Institute of Environmental Management and Assessment, but
not necessarily the views of their employers”. Mr Coulson is a member of that Working Party.

1029. It should be noted that in the “Aims of the Guidelines” section of the document, it states the following:

“The intent of the GLVIA is to present a general overview of a non-specific methodology for undertaking assessments of developments.” (Page 4; 1.11)

“However, the guidelines are not intended as a prescriptive set of rules nor as an exhaustive manual of techniques.” (Page 5; 1.13)

1030. Quite clearly the guidelines do not say that a photomontage is inaccurate, if it is created using a different technique to that set out in the guidelines. STIG’s photomontage creation methodology was clearly set out in a seventeen page document that was presented to the inquiry. STIG has not, at any stage of the inquiry, been a party to any corresponding methodology report from Terence O’Rourke describing how their photomontages were created.

1031. Although the appellant has since accepted that some of their photomontages were inaccurate, the images were placed in the public domain and therefore the proposal was misrepresented to the public. It is considered that STIG’s photomontages are a stark reminder that the complex will have a large adverse impact on the local area and that the chimney and associated plume will be visible for many miles.

1032. Many extremely complex and highly technical arguments have been presented at this inquiry. We have heard about “receptors” instead of local residents, and taking the debate about the photomontages as an example, the focal length of cameras were even discussed. But for this Rule 6 Party, this inquiry is actually about the people and families of St Dennis, Treviscoe, and the wider Mid Cornwall area, and PC-STIG’s fight to protect their local environment, community and amenity.

1033. It is PC-STIG’s view that the incinerator would dominate the communities of St Dennis, Treviscoe and the surrounding landscape – but not in an abstract sense. It would tower over peoples’ homes and the gardens in which they relax with their loved ones. It would tower over a range of facilities, such as the football pitch and the playground, used by young and old alike. And it would mean that a visitor’s lasting impression of St Dennis would not be the historic church built on the site of an ancient hill fort, or the farms of Carsella and Domellick which were both mentioned in the Doomsday Book. Nor would it be the community spirit so evident throughout the area or even the sky tips fondly known as “Pointy” and “Flatty” which are a reminder of the local mining heritage. Instead, their lasting impression would be of a massive and overbearing incinerator casting its dark shadow over this part of Mid Cornwall.

1034. PC-STIG welcomes the fact that the Inspector has taken the time to visit St Dennis, and the surrounding area and local parishes, and view the appeal site from numerous viewpoints. It is obvious to PC-STIG that the impact is unacceptable and it is hoped that the Inspector will agree that the development would unacceptably dominate the area and truly blight the lives of thousands of people.
1035. As noted before, it is PC-STIG’s view that the impact of the proposal is contrary to a range of policies including SP Policies 1, 2 and 6. Policies L6A and L6B of the WLP, and LP Policies 6, 11 and 18, which together seek to protect the countryside from inappropriate development.

Reason 3 for refusal; unacceptable impact on historic landscape

1036. PC-STIG’s Proof of Evidence clearly sets out this Rule 6 Party’s position in terms of the importance of the historic landscape around the appeal site, including the farmsteads of Bodella and Rostowrack which are both of potential Early Medieval origin, and their associated medieval fields.

1037. PC-STIG are very disappointed at the extent of the errors contained within the evidence relating to the historic environment, as presented by Mr Trehy (SITA/7/2) and also covered in part by Mr Coulson (SITA/6/2).

1038. It is worrying that Mr Trehy failed to correctly record the appeal site and surrounding area as AEL, a pretty basic task for a professional in the historic environment sector. Mr Trehy’s grudging acknowledgement of his error in a rebuttal proof (SITA/7/4) was undermined by Mr Coulson’s own rebuttal proof (SITA/6/5), which continued to incorrectly claim that the farmland in question was not AEL.

1039. These failings are also compounded by Mr Trehy’s statement that the AGHV contained only one “standing structure,” namely Trerice Bridge. On a factual level, it is difficult to understand how the witness failed to record the existence of the site of a stamping mill / farm on the eastern side of the bridge, the remains of the crossing gate house and the square red brick chimney of the old Wheal Remfry Brickworks.

1040. And then there was the unfortunate discussion about the slight differences between the position of a boundary stone on historic maps, which led the appellant’s expert to suggest that the stone had been regularly moved, rather than accept this was due to slight cartographic disparities.

1041. It is PC-STIG’s view that the attempts of SITA’s witnesses to downplay the significance of the historic features and landscapes should be disregarded. What weight can be given to witnesses who make such basic mistakes in their evidence?

1042. As a community, PC-STIG maintains that because so much farmland has been lost to the china clay industry over the last 200 years, the medieval fieldscape of this area is especially important. A startling figure of 20.5% of the land area of St Dennis Parish has already been lost to industry. PC-STIG maintains that the site and associated fields form an important part of the historic fabric of the Parish, and that it is also an important green lung for the local community. For these reasons PC-STIG believes that the historic fieldscape, the ancient hedges and associated tracks and footpaths should be protected and not lost.

1043. PC-STIG agrees with the Council that the impact on the historic environment is contrary to SP Policies 2 and 6; as well as LP Policies 11, 18, 24, 25, 26 and 33 which respectively relate to the protection of the Borough’s heritage, the protection of the wider countryside, AGHVs, Scheduled Ancient Monuments, local archaeological sites and Listed Buildings.
Reason 4 for refusal; unacceptable impact on public rights of way

1044. To the community of St Dennis, the network of footpaths is invaluable. Established long ago from historic tracks, which linked isolated communities around the village of St Dennis to the church and historic workplaces, they are a wonderful and well-used asset for local families and visitors.

1045. PC-STIG considers that the diversion of sections of public footpaths in the vicinity of the proposed plant would cause significant harm to local footpath users. Footpath 2 would become a pavement running alongside the access road, while a 260m section of footpath 5 would be diverted around the perimeter of the proposed incinerator plant.

1046. If allowed, these diversions would totally change the visual and physical experience of the people using the walks. Instead of the wonderful enjoyment of being able to walk through a rural landscape with a real sense of wellbeing; in future, walkers would undertake an urban stroll alongside roads full of the lorries serving the proposed facility or around an industrial incinerator, constrained by over-sized new boundary hedges and fences.

1047. These footpaths and Cornish hedges, which have been in existence for many hundreds of years, should not be decimated, and the rights of local people, who currently have the use of these paths and whose properties look out directly onto views of open countryside, should be protected.

1048. It is this Rule 6 Party’s view that the proposal would have an unacceptable impact on the network and users of public rights of way. It is therefore contrary to SP Policies 2, 6 and 13 (Tourism and Recreation), as well as WLP Policy C1 (Operational Practice), which seeks to refuse applications which would be damaging to environment, amenity and landscape.

Reason 5 for refusal; unacceptable impact on residential amenity

1049. Throughout this inquiry, PC-STIG has focused on the appellant’s shocking disregard for the amenity of local people and the proof of evidence sets out a series of examples where local people would be adversely affected and where the proposed noise and other mitigation measures have been shown to be sub-standard. These include the two historic farmsteads, the properties of La Mount corner near the proposed access road, properties in the north-west part of Treviscoe and along the proposed haul road, as well as the wider St Dennis area.

1050. Taking La Mount Corner as an example, where local residents would be badly affected by HGV noise. One suggestion to mitigate noise concerns was to erect a 2.5m high fence around the properties, which was then followed by a suggestion for secondary double glazing and mechanical ventilation. But it was only on 18th March 2010, at this very inquiry, that residents learned of the appellant’s latest proposals. No direct contact was made with local families and it is a prime example of how the appellant has not attempted to engage meaningfully with local residents.

1051. It is not reasonable to expect local families at La Mount Corner to spend their lives barricaded in their own homes, with their windows permanently closed and forced to rely on mechanical ventilation, as hundreds of waste lorries and other service vehicles thunder past.
1052. In more general terms, the area around St Dennis would experience an increase in noise levels and general disturbance from both the construction and operation of the new plant. Much of this will be from the increase in HGV traffic and will affect local residents, visitors to the area and walkers. This impact will be on top of the existing disturbance from the local china clay industry.

1053. PC-STIG considers such impacts to be totally unacceptable. The planning system cannot be allowed to sanction such an extreme reduction in the quality of life for residents in a number of properties, as well as a tangible reduction in the amenity of so many people.

1054. In terms of the technical data relating to the impact of noise, this Rule 6 Party defers to the expertise of the Council’s witness, but PC-STIG considers that the impact of the proposal would have an unacceptable impact on residential amenity due to noise both during the construction and operational stage of the plant.

1055. Once again, PC-STIG concurs with the Council that the impact on the amenity of a range of properties is unacceptable and contrary to a range of policies which include SP Policies 3 and 6, WLP Policy C1, and LP Policy 37.

Reason 6 for refusal; Failure to consider alternatives

1056. The sixth reason for refusal states that the applicant has inadequately considered the availability of alternatives, the development of which could give rise to lesser environmental impacts.

1057. It has been outlined above the unacceptable way in which the former Cornwall County Council devised the WLP on which this application was, as a consequence, predicated.

1058. There was an unacceptable approach to site selection by both the former County Council and the appellant. There was also a pre-determined decision to site a mass burn incinerator at Rostowrack Farm, near St Dennis, and a deliberate refusal to explore alternatives to a single centrally-located incinerator or to revisit the dated strategy set out within the WLP and to consider other approaches, technologies or a mix of technologies.

1059. It is clear to this Rule 6 Party that there are a host of alternative approaches to waste management which would have lesser environmental impacts. These include separate bio-waste collections, the removal of recyclable materials from black bag waste, MBT, the use of autoclave technology or AD. By contrast, the construction of an incinerator would not “drive” waste management up the waste hierarchy and PC-STIG believes it would actually undermine initiatives to deliver increased re-use, recycling and composting.

1060. Alternative technologies will be covered in more length by POC and it is PC-STIG’s intention to largely defer to them in this area.

1061. All the Rule 6 Parties are extremely concerned about the environmental impact of the present proposal. This covers many aspects including the adverse impact on the environment of the appeal site and surrounding area, the impact of a single centrally-located plant dependent on road transport, and the potential adverse impact on SACs. There is also concern at the likely increase in greenhouse gas emissions and the resultant adverse effect on efforts to tackle climate change, with the development generating net CO₂ emissions estimated at
173,261 tpa according to the EA decision document relating to the decision-making process for the draft permit (X/9).

1062. Most of these issues have already been addressed earlier and will not be revisited here. The negative impact on climate change will be more fully addressed by TCN and PC-STIG defers to their knowledge in regard to this.

Reason 7 for refusal; Adverse impact upon the environment and setting of the CCA, and its regeneration ambitions

1063. PC-STIG shares the view of the Council that the regeneration ambitions of the area could be undermined by the construction of an incinerator and the associated perception that it is deliberately being positioned on a deprived community. This is set out fully in the PC-STIG Proof of Evidence.

1064. This Rule 6 Party is extremely angry that the proponents of the incinerator proposal were so keen to locate the incinerator within the CCA, an area they, from an external perspective, perceived to be less worthy of protection from inappropriate development than elsewhere. And it is considered extremely instructive that a consultant with AEA Technology, which assisted Cornwall County Council on its PFI process, wrote an article on “The Politics of Incineration” (PC-STIG/0/1 para 3.75). In it she stated:

“One of the biggest influences on whether a facility is built may be the vocal indignation of affluent middle class residents keen for their waste to be whisked invisibly away, and who organise themselves into articulate, effective protest groups. Proposals for plants in more deprived areas do not have such a politically influential group of residents to sway the argument.”

1065. PC-STIG have also noted the Friends of the Earth report which showed that “50% of operating municipal waste incinerators in England are located in the most deprived 10 per cent of wards” (PC-STIG/0/1; Appendix 4). This same basic, but unspoken, approach appears to have been at the forefront of the decision to identify the CCA as the Area of Search.

1066. Potential investors could be discouraged by the negative way in which the area is both treated and perceived – something that is reinforced by St Dennis becoming the depository for Cornwall’s rubbish. And it is a great worry that the priority efforts to regenerate the area as set out in PC-STIG’s Proof of Evidence could be undermined by the imposition of an incincerator, which clearly suggests that the future prospects of the people of St Dennis are less valued than elsewhere.

1067. As noted previously, much of the CCA has been lost to extraction industries over the last two centuries, but considerable effort is now going into the greening of the CCA through heathland regeneration, tree planting and other initiatives. It is now time to support these landscape improvements as well as sustainable regeneration - not the inappropriate industrialisation of the remaining green fields.

Reason 8 for refusal; the dependence on the transportation of waste by road, and increasing distances between the origin of waste and its disposal

1068. It remains PC-STIG’s view that the transportation of Cornwall’s residual domestic waste to a single site for incineration is not sustainable and that it is unacceptable that there is no commitment to servicing the site by rail.
1069. Mr Millington (CC/7/2) speaking on behalf of the Council has demonstrated that a single incinerator causes more traffic miles than other scenarios based on a more decentralised approach to waste management. A more decentralised approach to waste would reduce road miles, specifically those of the large diesel lorries that are presently planned to transport the waste.

1070. Local people have raised numerous concerns about the traffic impact of transporting 240,000 tonnes of waste to an over-sized incinerator at St Dennis. Concerns about the transport of waste have been a key component of objections to the scheme by the Parish Councils of St Dennis, St Enoder and St Stephen. These range from the design of the road infrastructure and the unsafe proposed junctions near Treviscoe and at Trerice Bridge, increased congestion on the Highgate Hill roundabout, the adverse environmental impact of road transport, as well as the unnecessary strain on the strategic and local road networks.

1071. A centralised approach to waste management is inappropriate, and it is unwise to be dependent on road traffic and road traffic only. The need to combat climate change and the ongoing problems with the supply of oil and rising costs (peak oil) demonstrate that we need to develop a more localised and more sustainable approach to waste management.

1072. Further concerns are held regarding the transportation of C&I to the site, possibly from outside of Cornwall, to fill the likely void caused by the lack of municipal waste. This could have adverse environmental impacts because of the increased transport movements.

1073. The present proposal is not in line with PPS4 which seeks to deliver “more sustainable patterns of development, reduce the need for travel, especially by car and respond to climate change”. Similarly, it is contrary to SP Policy 6 which seeks the management of waste as close as practicable to its place of origin. It is also contrary to SP Policy 1 and LP Policy 1, which states that development should be of a size and type appropriate to the needs of the locality, its environmental constraints and its potential for reducing the number and length of road journeys.

Health

1074. PC-STIG has raised a wide range of concerns about potential impacts on human health at this inquiry. Local residents have expressed great disquiet about the toxic fly ash that would be produced, the particulates, heavy metals and dioxins emitted from the stack, pollution from traffic, the emission of greenhouse gases, the impact of dioxins on local agriculture/dairy herds and the damage to the reputation of Cornwall’s vital food sector.

1075. Such concerns can have wide-ranging psychological effects and they are causing widespread anxiety in the local community. There is a clear perception of harm to both health and the environment. This fact was identified by the professional planning officers at the former Restormel Borough Council, who stated that:

“There is a perception and fear of harm to health and the environment particularly through emissions (e.g. emissions from the stack/vehicle). These perceptions and fears seriously adversely affect residential amenity which is an important material consideration.” (PC-STIG/0/1 para 10.09)
1076. The extent of this anxiety was further reinforced by the editorial in the West Briton newspaper (28 January 2010) which stated the following: (PC-STIG/0/1 para 10.08)

“It’s massive; it’s ugly; it will blight the whole area around where it is sited; and worst of all people fear the effects it might have on their health. Let’s face it, everybody believed Thalidomide was safe for pregnant women to take. Nobody believed Aberfan was in any danger until after the slag heap fell onto the village at the cost of 114 lives. So we don’t actually feel much reassurance when those who want the incinerator to go-ahead tell us it is perfectly safe”.

1077. There will be significant pollution, and local people are not confident that incineration is a technology that cannot go wrong. They fear that the unintended and uncontrolled release of toxic substances into the environment from waste incineration could occur because of malfunctioning equipment, large changes in the waste feedstock, poor management of the incineration process or inadequate maintenance.

1078. As also stated in the proof of evidence, PC-STIG do not claim to be scientists or indeed health professionals, but as laypersons this Rule 6 Party has been able to identify a significant array of academic and medical papers which give legitimacy to public fears about this proposal. It is disappointing that the appellant has not adequately sought to address these concerns and those of PC-STIG’s witnesses, Amanda Routledge and, most worryingly, Professor Vyvyan Howard, to whom PC-STIG is grateful for addressing this inquiry via video link from Ulster.

1079. Professor Vyvyan Howard is a medically qualified toxico-pathologist specialising in the problems associated with the action of toxic substances on the foetus and the infant (PC-STIG/0/1; PC/STIG/0/2). He is Professor of Bio-imaging at the University of Ulster and has written a number of papers and book chapters and spoken in a variety of forums to draw attention to the threat posed by environmental pollutants to the developing foetus. He is a Fellow of the Royal College of Pathologists, Past President of the Royal Microscopical Society, Member of the British Society of Toxico-Pathologists, and Immediate Past President of the International Society of Doctors for the Environment. He has just completed 6 years as a toxicologist on the UK Government DEFRA Advisory Committee on Pesticides.

1080. PC-STIG has shown how Professor Howard has addressed the potential impact of fine, ultra fine particles and nanoparticles. He has argued that the evidence of risk of harm to human health and the environment is sufficiently high that a precautionary approach should be taken towards the permitting of new incineration capacity. That the appellant’s legal team declined to cross-examine Professor Howard demonstrates that they have a disregard for residents’ concerns, which PC-STIG believes remain both relevant and justifiable, especially when SITA’s own witness Professor Bridges said he could not guarantee that emissions would not cause harm to human health.

1081. Other concerns that PC-STIG feels have not been adequately addressed by the appellant include how emissions from the stack could mix with the clay dust that is prevalent throughout the environment of the St Dennis area and the impact of POPs.
1082. In an area already over-burdened by existing pollution sources (eg. china clay works, the calcination plant and the power station which works on diesel fuel, transportation), the local population is deeply concerned that little or no consideration has been given to the possible health implications of these pollutants from the plant and associated transport acting in concert with these other sources. They also continue to disregard the particular micro-climate of St Dennis and how this might play a significant role in emission dispersion.

1083. It is not in the public interest to allow this development and PC-STIG maintains that the Inspector should also adopt a precautionary approach in relation to the potential harmful effects that may occur to human health.

**The Contract**

1084. The Inspector has requested comment on the weight that should be accorded to the Contract between the Council as WDA and the appellant. In PC-STIG’s proof of evidence and closing statement, it has been shown how the production of the WLP was flawed, and how the selection of the appeal site at St Dennis was extremely contrived. The Contract, signed in October 2006, merely codifies the broad direction set out in the WLP, which has been shown to be over a decade out-of-date and inappropriate for 21st century Cornwall.

1085. The existence of the Contract demonstrates that much of the documentation prepared by the appellant was cosmetic. It was not produced to find the best way forward, either in planning or environmental terms, but to justify the pre-ordained position of the Council as set out in the WLP and in order to support the site that had been identified before the Contract was signed.

1086. As far as this Rule 6 Party is concerned, the Contract has no flexibility to enable Cornwall’s waste management needs to be dealt with in ways which allow new technologies and opportunities to be taken on board, other than the introduction of AD which is specified in the Contract (CD/G1). The contract specifically names the Rostowrack Farm site thereby precluding the development of another site or sites, and it states that the annual throughput should be the exaggerated figure of 240,000 tonnes of waste, constraining more sustainable waste management approaches.

1087. PC-STIG believes that AD is an approach which should be promoted more widely. However, in the case of this proposal, if there was diversion of organic material to an AD plant, this would simply create a further void within the capacity of the proposed plant which would be filled with C&I. It is contented that the introduction of AD with a range of other more sustainable technologies would represent the best way forward for Cornwall.

1088. It is counter-productive for local Councils to be locked into long-term contracts, particularly with over-sized incinerator facilities. The Council’s contract does represent a barrier to innovation and advances in waste management, because of the need to provide a large amount of feedstock to the incinerator over the next 25 years. The termination of the present contract between the Council and SITA would allow for shorter and more flexible arrangements or contracts which would allow the local authority more freedom to be responsive to future developments.

1089. In October 2009, it was acknowledged by both the appellant and the Council that it would not be possible to meet the Works Start Date or the Long Stop Date
of 30th March 2010 set out in the contract. The price guarantee for the construction of the plant is therefore no longer valid and accordingly, under the terms of the contract, the Council had the option of either terminating the IWM Contract or asking the appellant to propose a RPP. At its meeting on 10th February 2010, the Cabinet voted to seek a RPP in the full knowledge that they retained the right to terminate the contract up until the point that the RPP was agreed.

1090. It is understood that representatives of the WDA made it clear to members of both the WDAP and the Cabinet that a RPP would, due to the contract and associated procurement rules, still focus on an incinerator in the CCA.

1091. PC-STIG is nonetheless disappointed to see the letter submitted by John Scanlon (SITA/1/7) on the 33rd day of the inquiry, which is considered to be misleading. Most importantly, the fourth point in the letter stated that through the RPP the capacity of the plant would “remain the same” and the fifth point noted that it would be “on the appeal site”.

1092. This is contradictory to the position as understood by the members of the Council. The minutes of the Cabinet meeting of the 10th February noted that “the result would still need to be an incinerator, all be it possibly smaller, in the CCA”. Minutes from the meeting of the WDAP of 27th April 2010, noted that: “A Councillor then raised a query as to whether a reduction to a 200,000 tonne per annum plant would fall within the RPP. He was advised that this would be included within the Options Matrix”. (CC/0/10)

1093. It is also the case that the Contract includes provision for the introduction of AD which, if included within the RPP, would not necessarily need to be on the appeal site as suggested by Mr Scanlon in the fifth point of his letter.

1094. Notwithstanding these inconsistent messages coming out of the WDA and the appellant, it is the view of this Rule 6 Party that no evidence has been presented to suggest that there are any other possible options being brought forward by SITA than a 240,000 tonne incinerator.

1095. It is the view of this Rule 6 Party that this public inquiry should consider the merits of the proposal for an incinerator at Rostowrack Farm on the planning merits of the case, and on the planning merits alone. Both the content of the contract and the progress towards a RPP should be accorded little weight at this inquiry.

1096. The appellant has also made claims about the length of time that it would take to bring forward an alternative proposal should the contract be terminated, as well as the financial implications of the termination and new proposals. PC-STIG does not accept the extent of these arguments presented by the Appellant, which have been addressed by Mr Miles (CC/1/1), and suggest they should be accorded little weight at this inquiry.

Balancing disadvantage and “need”

1097. In the conclusion to his proof of evidence, Mr Greenwood (SITA/10/2 paras 9.1-9.70) attempted to contrast the disadvantage caused by the proposal against perceived need. Unsurprisingly, in weighing the pros and cons, he comes down firmly on the side of his client. He does however acknowledge that there are
numerous adverse impacts that would be caused by the development, though he fails to explore the extent of the harm in any meaningful manner.

1098. The appellant, through Mr Greenwood and others, has deliberately used the opportunity of this public inquiry to downplay the negative aspects of the proposal. This Rule 6 Party takes the opposite view to Mr Greenwood. The extent of the adverse effects and the planning harm that would be caused to the appeal site, the surrounding area and local people, is overwhelming, and unacceptable.

1099. PC-STIG has already shown that the capacity of the plant is exaggerated, and based on flawed projections. Increased recycling at the kerbside, improved performances at the new and growing number of HWRCs and new initiatives, such as bio-waste collections, means that the likely void in capacity would grow into the future. The asserted justification from the appellant that this void could deal with a large amount of C&I, possibly from outside of Cornwall, is unreasonable and self-defeating in waste management terms.

1100. The planning harm massively outweighs any perceived need and this proposal should therefore not be allowed to proceed.

**The involvement of Environment Agency and Natural England**

1101. The significance of this application and its likely environmental impact is considerable. This Rule 6 Party has supported the Council in its ongoing attempts to ensure that, should the Secretary of State decide to allow a permission to be granted, there should be an Appropriate Assessment under the Habitats Regs.

1102. The Appellant claims there will be no adverse impact on the Goss Moor SAC, but PC-STIG welcomes the fact that the Council’s planners have had a “Shadow Appropriate Assessment Scientific Report” produced by Bureau Veritas, which notes that the “critical load” for both acid deposition and nitrate deposition has already been reached for “designated features” at Breney Common and Goss and Tregoss Moors. The report concludes that “it cannot be ascertained that the CERC would not have an adverse effect upon the integrity” of the above designated features “alone or in combination with other projects”.

1103. Local people have consistently questioned the cumulative impact of the emissions from this facility alongside those from existing sources of pollution such as the Indian Queens Power Station (which directly abuts the SAC), and road and air traffic, as well as potential new sources of emissions such as the consented bio-gas plant at Fraddon.

1104. Given these concerns of local people and the findings of Bureau Veritas, PC-STIG considers it of paramount importance that no proposal should be allowed to proceed without an Appropriate Assessment.

1105. Members of this Rule 6 Party have also been in regular contact with the EA with regards to the Environmental Permitting Regulations 2010. This included attendance at the recent meeting with the Agency on 9th September at Kingsley Village in Fraddon, to discuss the draft EP for the proposal.

1106. The EA is presently consulting on this draft permit, with a new closing date of 29th October. In their letter accompanying the draft permit (see document X/9), the Agency states that:
"... at this point it remains in draft and has no official status. We are sending you the draft in order to assist the Inspector and the parties to the inquiry, but it is not to be taken to reflect any decision on our part, whether to issue this draft, without further amendment, to public consultation; or ultimately to issue the permit to SITA UK Limited...”.

1107. That the EA may or may not be minded to issue an EP should not be allowed to outweigh the key issues at this inquiry which include the extent of the planning harm that would be caused by the development and that there are better environmental alternatives.

1108. This is borne out within the draft permit itself, which lists the vast array of material which would be burnt (document X/9, schedule 3). As noted previously, it includes materials that would otherwise be reusable, recyclable or compostable, which, as argued previously, goes against the Waste Hierarchy.

1109. PC-STIG also remain extremely disappointed that the EA is only considering potential emissions from the incinerator through the permit, and not related emissions from the HGV traffic servicing the site. In terms of planning, the haul road and access road fall within the red line for the purposes of this application and the related pollution should also be addressed through appropriate channels. There needs to be a more stringent and joined up approach to the measurement of the emissions that would be generated by this development as a whole, and the failure to do this gives further credence to the call for the precautionary principle to be applied.

1110. It is also understood that the incinerator would need to meet a stringent energy efficiency formula to be called an “energy recovery” plant. Research by TCN indicates that the proposed incinerator is not efficient enough to meet the tests and may therefore be classed as disposal – the least favoured option for the sustainable management of waste (PC-STIG/0/1 para 3.30).

1111. PC-STIG defers to the expertise of TCN on this issue, but note that it is especially important given comments at the recent meeting with the Environmental Agency where the permitting officer Simon Holbrook stated categorically that SITA’s draft permit application is for a mass burn incinerator as a waste disposal facility, and not as a recovery plant as referred to by SITA.

**Conclusion**

1112. In conclusion, PC-STIG would point out that the proposal for an incinerator at St Dennis is based on an out-dated and fundamentally-flawed WLP, which should be accorded little weight. The incinerator would have a capacity founded on grossly inaccurate projections for waste arisings in the failed and unadopted WDF, which should be accorded no weight at all. The development is not in line with the waste hierarchy. It is against a whole host of European, national and local policies relating both to waste management and more general planning matters.

1113. It has been demonstrated that throughout this process the former Cornwall County Council and SITA had an unacceptable, blinkered and ill-considered pre-determination to locate the proposed incinerator at the actual appeal site. Alternative approaches, technologies or sites were therefore not properly investigated.
1114. It has been demonstrated that the proposal would cause vast planning harm. This massive and over-bearing plant would have an unacceptable impact on the local area and its people. It would have a significant adverse impact on residential amenity, the local environment, landscape and its historic character, footpaths and the regeneration ambitions of the CCA. The Appellant has also failed to adequately address concerns about health and the impact of emissions on local SACs.

1115. It is clear to PC-STIG that the extent of harm that would be caused by the development is enormous and significantly outweighs the arguments put forward by the appellant.

1116. PC-STIG respectfully requests that the Inspector recommends to the Secretary of State that the proposal is not allowed to proceed.

Legal submissions on behalf of PC-STIG

The Development Plan

1117. It is trite law to say that the Development Plan, including the WLP, has enormous importance in determining this application, including appeals (sections 54A and 70 of the Town and Country Planning Act 1990). However, the currency of a development plan is crucial (see PPS1). These sections were introduced by the Planning and Compulsory Purchase Act 2004, which also clarified the hierarchy of guidance and plans with national and regional plans trumping local plans. The WLP is seriously out-of-date. In this event, it should be accorded very little weight indeed and this appeal should be determined by national policy.

PPS10

1118. The proposals fail almost every criterion in PPS10 except that of using it as a power resource, but even here there are question marks over the take-up of energy and has been shown by the submissions above to be very tenuous.

1119. The WLP is defective in the following ways. In identifying the site, it seeks to put all the facilities in one place and fails to have regard to PPS10 – paragraph 21 to:

1. Consider opportunities for on-site management of waste;
2. Look for opportunities to collocate facilities;
3. The physical and environmental constraints;
4. The cumulative effects on the well-being of the local community;
5. The capacity of existing and potential transport infrastructure;
6. Re-use of previously developed land;
7. It is woefully out of date (adopted in 2002 – as highlighted in PC-STIG’s submissions above) and thus does not support current national waste strategy (contrary to PPS10.22);
8. Does not reflect the concerns and interests of communities;
9. It does not protect human health or the environment; and

10. It does not have sufficient regard to the waste hierarchy (Annex C).

**Case Law**

1120. Adriano v Surrey County Council (reported at [2003] 2 P.&C.R. 14) was a challenge to the grant of planning permission by the County Council for an EfW incinerator. One of the grounds of challenge was the misapplication of the proximity principle. It is a single plant for the whole of the county but located at the extremity of the county. Sullivan J. held that: "...It was essential that the defendant [County Council] properly applied the proximity principle to the application...While the Court of Appeal [in Thornby] does not describe the objective in those terms, it is plain that it should not be relegated as the [planning officer’s] report sought to do, to the status of "AN Other" material consideration. Moreover to concentrate upon compliance with the proximity principle at regional level and then to claim that there was no requirement to consider the principle below county level (within the county boundaries) was to effectively discount [plan policy] which does give effect to the proximity principle within the county below regional level...”

1121. The importance of the proximity principle was confirmed by the Court of Appeal in Thornby Farms Ltd v Daventry District Council, Murray v Derbyshire County Council (reported at [2002] JPL 937). Pill, L.J. at page 954 said that objective in the EU waste Framework Directive is "...something different from a material consideration...A material consideration is a factor to be taken into account when making a decision and the objective to be attained will be such a consideration, but it is more than that. An objective which is obligatory must always be kept in mind when making a decision even while the decision maker has regard to other material considerations. Some decisions involve more progress towards achieving the objective than others.”

1122. It is recognised and conceded that issues of emissions, pollution and acceptable limits are matters within the competence of the Inspectorate of Pollution. (Reported at (1996) 71 P.& C.R. 350)

1123. The recent case of R (on the application of Lewes District Friends of the Earth) v East Sussex County Council (reported at [2009] Env L.R. 11) claimed on points that either do not apply to this case or have been overtaken by events (RSS). Only the rail point applies, and on that Sullivan J. was satisfied where the potential for rail remained.

1124. Regarding the weight of Articles 4 and 5 of the WFD - in Capel Parish Council v Surrey County Council counsel sought to argue that under para 3 of Sch.20 of the 2007 Regulations, the local planning authority must determine the planning applications “for the purposes of implementing” Articles 4 and 5 of the WFD, which goes further and is more onerous for the local planning authority than the obligation in the 1994 Regulations as Schedule 20 does not merely oblige the County Council to keep Articles 4 and 5 always in mind and accord them substantial weight when performing the balancing exercise under section 38(6) of the 2004 Act, it obliges the County Council always to determine a planning application in accordance with Articles 4 and 5, including when to do so would not accord with the development plan. This is consistent with the judgement in the Thornby Farms case.
1125. Collins J. did not consider these heads of challenges because he found the policy in the waste development plan on which the planning permissions were based was unlawful. The planning permissions were therefore quashed without the court considering the other relevant arguments.

Recovery or disposal?

1126. Article 5 of the Waste Framework Directive and the proximity principle apply to disposal installations, not recovery installations. In the Capel claim (above), the claimants sought to argue that the proposed incineration amounted to disposal rather than recovery. In doing so they relied on Art.1(e) and (f) and Annexes IIA and IIB of the Directive, as interpreted by the jurisprudence of the ECJ. Collins J. in his judgment in Capel noted in passing that “Incineration is capable of amounting to recovery but only if the generation of energy is the primary purpose of the incineration”. This is a powerful point. The primary purpose here is disposal, not recovery of energy. It is PC-STIG’s submission that this proposal is primarily about disposal – with recovery tacked a long way behind.

The Legislative Framework

1127. Articles 4 and 5 of the Waste Framework Directive states that:

“(1) Member States shall take the necessary measures to ensure that waste is recovered or disposed of without endangering human health and without using processes or methods which could harm the environment, and in particular;
without risk to water, air or soil, or to plants or animals
without causing a nuisance through noise or odours
without adversely affecting the countryside or places of special interest
(2) Member States shall take the necessary measures to prohibit the abandonment, dumping or uncontrolled disposal of waste” (article 4)

“(1) Member States shall take appropriate measures, in cooperation with other Member States where this is necessary or advisable to establish an integrated and adequate network of disposal installations taking account of the best available technology not involving excessive costs. The network must enable the Community as a whole to become self sufficient in waste disposal and the Member States to move towards that aim individually taking into account geographical circumstances or the need for specialised installations for certain types of waste.
(2) The network referred to in paragraph 1 must enable waste to be disposed of in one of the nearest appropriate installations by means of the most appropriate methods and technologies in order to ensure a high level of protection for the environment and public health” (article 5).

Waste Framework Directive (articles 4 and 5)

1128. This Directive, which places the duty on the Member States is implemented in the UK by the Environmental Permitting (England and Wales) Regulations 2007 paragraph 3 of Schedule 20:

“Every [local planning authority] must exercise its specified functions in relation to waste operations-
(a) for the purpose of implementing Article 4 of the Waste Framework Directive.

(b) "

1129. Paragraph 4 of Schedule 20:

"1) Every [local planning authority] must exercise its specified functions in relation to disposal of waste –

a) for the purposes of implementing Article 5 of the Waste Framework Directive ...."

Previously, Schedule 4 to the Waste Management Licencing Regulations 1994 stated:

"2(1) Subject to the following provisions of this paragraph, the competent authorities shall discharge their specified functions, insofar as they relate to the recovery or disposal of waste, with the relevant objectives.

4(1) For the purposes of this Schedule, the following objectives are relevant objectives in relation to the disposal or recovery of waste--

(a) ensuring that waste is recovered or disposed of without endangering human health and without using processes or methods which could harm the environment and in particular without--

(i) risk to water, air, soil, plants or animals; or

(ii) causing nuisance through noise or odours; or

(iii) adversely affecting the countryside or places of special interest;

(b) implementing, so far as material, any plan made under the plan-making provisions.

1130. The following additional objectives are relevant objectives in relation to the disposal of waste –

(a) establishing an integrated and adequate network of waste disposal installations, taking account of the best available technology not involving excessive costs; and

(b) ensuring that the network referred to at paragraph (a) above enables -

(i) the European Community as a whole to become self-sufficient in waste disposal, and the Member States individually to move towards that aim, taking into account geographical circumstances or the need for specialized installations for certain types of waste; and

(ii) waste to be disposed of in one of the nearest appropriate installations, by means of the most appropriate methods and technologies in order to ensure a high level of protection for the environment and public health.

PC-STIG says the proposal most offends this, that is, "nearest appropriate installations".

\textbf{Conclusion}

1131. The benefits of this proposal do not outweigh the harm (see Thompson v Gateshead Borough Council reported at [2008] P.A.D. 82).

1132. The case for the appellant is based on seriously out-of-date policies.
1133. This appeal should be decided on the current national and European policies in regard to waste management and incineration.

1134. The apprehension of local people as to the effects of this proposal on them is a material consideration.

1135. The Council in its contract was not prudent in saying subject to planning permission.

The Case for CSWN

Introduction

1136. CSWN is a large network that was started in 1996 when the WLP was being drafted and has members from all over Cornwall. The network is not area specific and members come from a wide variety of backgrounds.

1137. Contamination should be the focus.

1138. The Appellant and all their witnesses have consistently stated that one huge incinerator in the centre of this long thin Royal Duchy is the only option that there is to deal with Cornwall’s waste. They have also insisted that the words, ‘EfW’ only means burning valuable resources in one huge out dated incinerator, when in fact EFW is a collective noun for many different types of energy collection and production from waste products. One huge incinerator is not the way forward for a forward thinking council, county, or country.

1139. CSWN completely concur and agree with all the witnesses that the legally elected Cornwall Unitary Council have had to represent the views of the public of this Royal Duchy.

1140. At no time has the appellant been other than unhelpful and obstructive to the public and local councils. Both Mr Scanlon (SITA/1/2) and Mr Greenwood (SITA/9/2 para 6.73) speak very highly of the liaison group for this incinerator plan, but this is a general smoke screen, as the liaison group was loaded with the appellant’s own staff and run by consultants that they were paying. No person was permitted to be part of the group if they were likely to disagree, or had any of the qualifications to put any other points of view, with whatever the appellant’s staff stated. Any person wishing to be present either as part of the group or as a member of the public, had to be vetted first by the appellant’s staff. Most people asking to be present where not permitted to do so, and general excuses were made so as the public could not attend in any position, either as part of the group or as a member of the public. The only people attending the group kept quiet at all times and seldom asked questions, but just agreed with all that the appellant’s staff stated to them. All the paperwork ascertaining to this group is in CSWN proof of evidence papers (see CSWN/1/3).

1141. CSWN believes that the important word is ‘sustainable’, and burning of valuable resources is not sustainable in any way.

A Better Approach to the Determination of the Appeal

1142. CSWN states that this appeal has to be decided upon the facts as they are today and not on the presumptions of people working in the incinerator industry in the 1990s. Human health is far more important than the race to make as much money as is possible in the shortest time possible. That is what building
this incinerator really means. This appeal has to take regard to the importance of feeding the whole of the population of the UK. And, not just look at the planning laws in this instant.

1143. CSWN has given evidence (in CSWN/1/2) that this one huge incinerator was decided upon twelve to fifteen years ago, when the facts of life as it is today were not perceived. It was decided then by Mr Patel when he was with AEA Technology Ltd, that the Cornish would not be capable of recycling huge amounts of waste products. He actually stated this to me, as did senior members of the then Cornwall County Council, they all believed Mr Patel's words as a professional in the waste industry. That was a wrong prediction. Accordingly no strategy document on the waste in this Duchy has ever been written. The appellant is still working on an out of date WLP (CD/D5) and until recently no alternatives have been investigated by the WDA. Different councillors in 2009 realised this and sensibly turned the incinerator planning application down. It is hoped that the Inspector can see what the newer councillors could see and also turns this appeal down.

1144. Cornwall is above 38% recycling and this is going up all the time. We now only have 180,000 tons of MSW in the Duchy and this figure will go down dramatically when the food wet waste is taken out. We only pay landfill tax on putrescibles.

1145. Mr Scanlon indicates that in 2003 the Cornwall County Council and WDA stated that this Duchy was running out of landfill (SITA/1/2 para 3.3). At the public inquiry of 2002 David Owen, the County Council’s Head of Waste Management, stated that there was plenty of landfill left in this Duchy. They were at this point offered Lean Quarry, but both Mr Patel and Mr Owen insisted that no more landfill was needed. Was this because a site had already been decided where an incinerator should be built, so that was why they would no longer need landfill. Times have moved on and contamination of our land is beginning to be taken very seriously.

1146. It was Mr Patel who decided where this incinerator should be built, in the years between 1998 and 2002. Mr Scanlon admits this in his evidence. Mr Greenwood also states this point in paragraph 2.4 of SITA/10/2, as he states it took six years to write the contract between SITA and Cornwall County Council. Was it that Mr Patel and Mrs Thurrgood looked around for an area that they felt was to be made up of poor people who could and would not be able to fight them, and the pin landed in between Treviscoe, St Dennis and Indian Queens? But the mineral rights owner would not permit them to build in Indian Queens. This was all decided upon before the WLP inquiry in 2002, at which the Inspector, Mr Howard Rose, did not demand that an out of date incinerator should be built in Cornwall, he actually asked that other technologies should be looked at first. Mr Rose’s letter can be found in CSWN/1/3.

1147. No consultation was carried out with the public in the area at any point. No heed was taken of the fact that this huge incinerator if built would be on milk producing farmland, a SSSI and a very internationally important SAC, and, at the end of a large airport runway. Why was this man permitted to write the waste contract, which is what seems to have happened? The same Mr Patel has been given a job at DEFRA overseeing the self same contract. The letter written by Mr Patel to the County Council, on 24 April 2009 (see Mr Greenwood’s appendices to his rebuttal proof at SITA/10/5) states that the Council must deliver an
incinerator, and must employ Mrs Lingard or he will rescind the waste PFI money. This is called blackmail. How can the person who decided on this incinerator, the size of it and where it should be sited in the first place, now be deciding on this Duchy’s future waste industry? CSWN asks can this be legal? CSWN says it cannot. These matters have to be taken into consideration by the person who decides this appeal.

1148. The appellant admits that there will not be enough MSW in the Duchy to keep their incinerator burning (See document SITA/10/2 para 6.8). So they will have to encourage commercial and industrial companies to pay them to burn their waste. There are very many waste companies in this Duchy who are also looking to use this waste, mostly to recycle it. This practice makes these companies a great deal of money, so they will not wish to pay the appellant a large amount of money to burn valuable recyclable raw material. Where will the appellant get more waste from? And, if it is brought in from other parts of the UK, CSWN wish to know why the tax payer of this Duchy should pay for a large multi-national company to burn C&I in an incinerator that the Duchy tax payer has had to pay for.

1149. CSWN feels that a new ES and an Appropriate Assessment should be carried out, as CSWN do not believe that the study that has been done has gone to the level of detail which is commensurate with the desired knowledge that is required in this case. This needs to be done before this application goes any further forward.

1150. Many of the appellant’s witnesses seem to firmly believe that the appellant will be able to sell all the contaminated bottom ash as aggregate into local works. CSWN wish to know where they intend to landfill this waste. Companies, such as Veolia, have found that around 40% of all the bottom ash is contaminated, and it has got to be landfilled. There is no way that the contaminated ash which will come from this incinerator will be recycled, it will all have to be landfilled (see CSWN/1/2).

1151. Imerys, the other large international company that we have here in this part of the Duchy, can only rid themselves of around one million tons of clean uncontaminated aggregate per year. The other nine million tons they have to landfill. Imerys have both the money and facilities in road, rail and shipping to distribute their clean uncontaminated aggregate to any part of the UK, Europe, or any other country on the planet. They cannot in the year 2010 give away this clean aggregate waste. CSWN points out that they are trying to lessen their landfill problems by sending it out of this Duchy when appropriate.

1152. SITA has been asked to provide a RPP by the Council. The idea being that new and modern diverse technologies could be put forward for dealing with the MSW, and could be distributed around this Duchy so as to lessen the waste of fuel in lorry miles, and bring the proximity principle into being. All the company has done is re-submit the original waste plan which contains a huge 240,000 ton incinerator in the centre of this Duchy. In letters (SITA/1/7 dated 29 July 2010 and SITA/1/8 dated 29 September 2010) to the Council and Inspector, from Mr Scanlon about the RPP, he states that the legally elected Council of this Duchy has no rights to decide on how our waste has to be dealt with. He states that we will have one huge 240,000 tonne incinerator in the place that the appellant states whether we like it or not. Mr Scanlon also insists that there is no
alternative to building this huge contaminating incinerator in the centre of the Duchy, because the contract states as such.

1153. This is wrong in two ways. Firstly, there are several companies that are queuing up to build modern recycling facilities to deal with waste in this Duchy, both C&I and MSW. Secondly it states categorically in the contract that if the contracted company does not do as the elected councillors wish, then the contract can and will be terminated. This is a disgraceful letter and statement, to come from a member of SITA staff, as it is up to elected councillors to decide the future of this Duchy, not an employee of an incinerator company.

1154. SITA has not done as they have been asked to do by a legally elected Council, consequently this contract should be terminated at once. (See document CD/G1) Either a new contractor is found or the contract must be put back in the hands of the Council’s own Cornwall Environmental Services company which they still own. If either option is adopted, new smaller modern waste facilities can be up and running in this Duchy within the next two years. CSWN stresses that this appeal must be dismissed for this reason alone.

National Planning Policy

1155. This planning application is against every national planning policy on rural farmland. It is also against all national and international policies for the protection of SSSIs and SACs. Now that the RSS no longer exists, the emphasis is on the PPSs from nos.1, 7, 10, and 23 and the waste papers from 2007 which states both that there should be no inappropriate development in the countryside, and they also state EfW covers many types of extracting EfW not just incineration. In fact, AD is the preferred option in most cases.

Inappropriate development on farmland

1156. In cross examination of the appellant’s witnesses by the Council and Rule 6 Parties, the appellant seemed to be unaware of the damage such a huge high chimney would cause to the food industry in the whole of this Duchy. Cornwall has a world wide reputation for good quality clean produced local food. Once dioxin is found to be in this food supply Cornwall will lose around two billion pounds a year, and thousands of well paid jobs. CSWN witness Ian Doble, explained the importance of the food industry to this Duchy and how locally grown food is so important to the food processing industry in this Duchy, and the thousands of staff that are employed in that industry. (See document CSWN/3/1)

1157. None of the appellant’s witnesses could give details of what they mean by “local area”. When asked how far away from a huge incinerator chimney they classed as “local”, they could not answer the question. Mr Bridges in paragraph 4.7 of SITA/4/2 thought that it would be between 1.5km and 4km. CSWN states that a chimney which is 280 to 300m above sea level would mean that the whole of the Duchy would be local to what emanates from the stack.

1158. From PPS1 to PPS7 and PPS10, they all state that development in rural areas must be sustainable. The burning of oil and chlorine based products, which will produce dioxins and other substances to contaminate hundreds of acres of pristine farmland with its 120m chimney is not sustainable in any way whatsoever.
1159. Human health has to be a high priority, especially in any rural area. The benefits must outweigh the harm done to the locality and this has not been proved in this planning application. There has to be a compelling reason why such an inappropriate development should be given permission to be built on quality three farmland. The appellant has not, in the view of CSWN, given us that good reason. Cornwall County Council was correct in refusing planning permission. All the appellant’s witnesses, who touched on the contamination of the public, stated that only the farmer living and working under the incinerator and his family would, or could be harmed by what will emanate from the said chimney.

1160. Farmers today are not peasants who grow food for themselves and sell the surplus. Modern farms are very large agri-businesses which turn over many millions of pounds each year. These farmers do not eat what they produce – the buying public eat it when they have bought it from the supermarket. So for men who do not seem to understand where their food emanates from, to state that the farmland in this Duchy would be quite safe with a 120m chimney emitting chemicals such as dioxins, sitting in the middle of this Duchy’s farmland, is foolhardy to state the obvious.

1161. Mr Greenwood admits in para 6.172 of his SITA/10/2 that the precautionary principle has to be used on any environmental development where serious and irreversible damage is likely to take place and a lack of full scientific certainty shall not be used to justify it. None of the appellant’s witnesses have these appropriate qualifications. CSWN’s witnesses have both medical and scientific qualifications and so can prove how dangerous dioxin is once it has entered into the food chain.

1162. No heed whatsoever has been taken of the fact that Cornwall is the largest producer of milk in the UK and it is illegal to mix milk and dioxins. When the appellant’s witnesses, and EA staff, were asked the question “how often is dioxin tested for?” they admitted that dioxin is only tested for on a six monthly basis at any incinerator site and then only the chimney is tested for a few short hours. This is very dangerous. When the same witnesses were asked if farmland was tested for dioxins, they firstly did not understand the question and then answered that farmland was not tested for dioxins. Why would it be? Because neither the Government nor the incinerator companies understand or have interest in how dioxin gets into human beings, no farmland is tested at the moment for dioxin contamination. When dioxin is found to be in the milk supply, as has happened with the contamination of farmland with dioxins which have emanated from the Suez Lyonnaise chimney, the Court cases will be as huge as the chimney.

1163. Dioxins are only tested for once every six months in any incinerator anywhere in the EU. The companies operating the incinerators are informed as to when dioxins are going to be tested for. This leads to no dioxins being found. Mr Barrowcliffe admits (in his SITA/3/2) that dioxins are dangerous when found in the food chain. With the wind directions in this Duchy generally coming from the north and south west they would land in the same areas continuously, so most of Cornwall’s farmland would become contaminated with dioxins quite quickly. No farmland is tested for dioxins. It is only tested for when a problem is found in milk, meat or other food products. By the time dioxin is found in our food supply, it is too late for the farms that it has been grown on, the farm animals will have to be destroyed, and the farmland will not be able to grow food until it
no longer contains dioxins. This has meant that quite a few incinerators and farms have had to be closed down all over Europe.

1164. Both Milk Link and Dairy Crest have informed CSWN that if this incinerator were to be built, they will have to constantly test for dioxins in all the milk that is collected in this Duchy, because they have signed contracts to state that there is no dioxin in the products that they are producing. Someone is going to have to pay for these constant tests to be carried out, at costs of around £500 a test. The farmers cannot afford it, so the public will have to pay so as to keep the products they are feeding their children safe and clean and uncontaminated by dioxins.

1165. CSWN respectfully submits that the clear unequivocal harm that would arise from this huge incinerator outweighs any alleged benefits and that there are no very special circumstances which apply to this proposed development. Therefore, the Council was correct in refusing the application.

The effects on tourism in Cornwall

1166. Cornwall and especially Newquay earns a large amount of money from year round tourism. Two things stand out. One is the fact that this 120m chimney would be seen and felt in all areas of this Duchy, especially Newquay. CSWN is quite sure that the tourists staying in the expensive hotels in Newquay will quickly ask, ”what is that monstrosity that we can see from our bedroom window when we open our curtains, and what are all those huge lights we can see in the same place after dark?” When it is explained to them that it is the Duchy incinerator, the tourists will not stay there again.

1167. Cornwall is seen by tourists as a good clean place to stay with fresh sea air to breath. It will not take long to lose that label. All traffic travelling through the Duchy would be faced with this huge monstrosity as the people travel through the Goss Moor SAC. CSWN feel that the proposed foot print and chimney height of this huge incinerator would significantly change the perception and the character of the area of central Cornwall, and it would detract from the natural beauty of the whole area. This chimney and buildings would be visible from very many viewpoints throughout the Duchy. This would result in a visual intrusion into an otherwise attractive rural area. Mr Barrowcliffe seemed completely unable to comprehend what he was being told, and was unable to answer the questions put to him on the topic of the visibility of this huge building and chimney, and how it would affect the tourist industry in this Duchy.

1168. Newquay will also suffer road and traffic wise, because none of the documentation mentions the A392, the main road to this very busy holiday location which starts and ends at the Highgate roundabout. The traffic figures for this roundabout are at least four to five years out of date, in which time the A30 across the Goss moor has been dualled, and a large busy industrial estate has been erected. From April onwards there is a very large build up of traffic in and around this whole area. Hundreds of lorries a day traversing this roundabout will discourage traffic from both entering and leaving Newquay, at all times of the year. The appellant states that it intend to use the Blue Anchor junction at Kingsley Village for some of their heavy lorries, this junction, has at this moment been put in doubt by the Highways Agency as they feel the junction to be unsafe, and wish to turn the traffic back through the town from the Highgate roundabout.
If this were to happen no one is likely to be going anywhere especially to and from Newquay. (See document CSWN/0/3)

**The health effects from an incinerator**

1169. The appellant’s witnesses went to great lengths to convince the Inspector that there are no health risks from any incinerator. But Mr Bridges had stated the same on tobacco for many years, but now he could see the error of his ways and realizes just how dangerous tobacco is, so we can not pay much heed to his words of wisdom on incineration. It is certain that he will see the error of his ways over incineration in the same way, but as with tobacco it will be too late for the lost lives of millions of people around the planet. Incinerators were built because he and his friends stated categorically that they are safe and no harm will come to human beings who eat the food that the incinerators have contaminated with dioxins and heavy metals.

1170. Mr Greenwood states this in paragraph 8.59 of SITA/10/2. What cannot be correct is that the EA, FSA, HPA and the incinerator industry all trot out exactly the same statements, as if they are facts written on tablets of stone. That is, that the incinerator is of no danger to human health and each gives evidence for each other. None of these people have any medical qualifications of any kind, or the correct experience to understand what damage these incinerators are already doing to the human race. Both the FSA and the HPA have been very sensibly scrapped by the recently elected Government. So we have been led to understand. As they, like SITA staff, can neither see nor understand how dioxin enters the human body, although they tell me it is via the food chain, as do Messrs Bridges and Barrowcliffe. Whilst in his paragraph 7.13 of SITA/1/2, Mr Scanlon stated that the incinerator in Teeside has not been able to achieve the new limits of contamination compliance. If this happens in this Duchy the consequences would be catastrophic for Cornwall’s huge food industry. Very different to Teesside as that area is so badly contaminated by the chemical industry to start with, no one would notice.

1171. When Mr Bridges was asked why, if incineration is so safe, is it that the five million people in Denmark, including second generation immigrants have difficulty producing the male of the species? Was it because all their farmland has been contaminated by the thirty one incinerators which have been built on a country only double the size of the Duchy? Many excuses are trying to be found, for this catastrophe but it will be seen in the end that it is their love of contaminating incinerators which is annihilating their population. Neither Mr Bridges nor any other of the appellant’s witnesses could answer the question. But, in his appendix 8 (see SITA/4/3), Mr Bridges states that odour makes for public mass hysteria. CSWN would remind the person looking at the appeal that dioxin and other toxins have no odour, they just contaminate the food supply through contaminated farmland, which then goes on to kill and maim the foetus.

1172. None of the appellant’s witnesses had or have any medical qualification of any kind, so, they cannot possibly have any evidence as to the effects of contaminants from a 120m chimney, especially from dioxin, when the public consume the food. When asked about how dioxin and other toxins got into the human being, the witnesses stated that it was found in the food supply. But when asked how the dioxin got into the food supply they were unable to answer the question. However, Mr Bridges stated that chromium, cadmium, dioxin and
nickel are produced by burning oil based products and fuel, and also when
electrical goods are burned the metals that they are made of will give off dioxins.

1173. It is illegal to burn waste electrical and electronic equipment in any incinerator,
unless a special EA permit is given. The appellant has not applied for any such
permit and the EA do not intend to allow such a permit. CSWN state that, that is
precisely what the appellant is intending to do - to burn oil based products which
have been treated with chlorine, within a huge 240,000 tonne incinerator with a
120m chimney situated on land of 160 to around 200m above sea level, in the
middle of a huge milk producing area.

1174. Mr Bridges in paragraph 2.107 of SITA/4/2 states that the WHO is more
worried about how much contaminated food is in the food chain and digested by
the human being. They do this by giving standards to the food industry. CSWN
states that instead of stopping the farmland from being farmed once
contaminated, this should not happen in the first place by stopping the building
of yet more contaminating incinerators.

1175. If the Inspector wishes to see the effects of dioxin contamination of the foetus
from the human, Dr Downing, Chairman of BSEM, has produced the evidence in
appendices 2 and 3 of CSWN/2/2. This CSWN witness was able to give proof of
the danger of dioxin on the human body, having taken scientific evidence from
his own patients. CSWN is in contact with other eminent scientists, and doctors,
who also state the dangers from incineration on both the human and animal
body. Contaminants that emanate from these oil and chlorine burning incinerator
chimneys, build up over time in the farmland fauna and flora for many miles
around the installation. It is then eaten by both the human and the animal
where it accumulates in both. In the female of the species the dioxin is passed
through the placenta to the foetus, which it then kills or maims. Proof of this is
happening in Denmark (see document CSWN/1/5). It is one way to cull the
population, but not a very good way to do it.

1176. Mr Scanlon in paragraph 8.53 of his SITA/1/2 states that the fabric filters
catch everything that is likely to try to get through and up the chimney. This is a
wrong statement on two counts. Firstly, science has also proved categorically
that nano particles travel straight through any and all filtration systems. Also, it
has been proved that dioxin particles reconstitute themselves as they travel up a
very high chimney and this one would be the highest in the UK.

1177. Mr Bridges in paragraph 2.3.5 of SITA/4/2 admits that there is an ongoing
debate on the size and nature of the particle that should be monitored for public
health protection purposes. But they only concentrate on PM_{10} to monitor. This
tells CSWN that this company along with the EA, FSA, and HPA, are incapable of
understanding how this technology endangers human health, even when it
affects their own families. He also states in SITA/4/2 para 2.61 that the air
quality in the area of the intended incinerator is at present as bad as any UK
urban area site. It should not be, as it is open farmland and if this is so, why is it
so?

1178. When Mr Bridges was asked how the fluoride which emanates from the
Parkandillick calciner would react with the chemicals emanating from this
incinerator, he could not answer the question. Mr Bridges states that fluorine
only has short term effects (see document SITA/4/2 section 2.3.1). CSWN asks
whether Mr. Bridges has got the correct chemistry qualifications to give this
information to the industry, when in fact we know that fluorine causes long term consequences for the exposed public. It seems that this has not been taken into consideration by either the appellant, the EA or HPA. CSWN would like to know why this is.

1179. Health can be and is a material consideration in the determination of any planning application. The decision maker has to decide what weight can be attached to these health fears. The Council did not use health grounds on refusing this planning application, but CSWN feels that under the circumstances which the Duchy finds itself, that its most important industry is farming, food production and processing, which means the feeding of the basic essentials of life that is, milk products, to the general population of the UK. In these circumstances, the health effects of the whole population of the UK have got to be taken into consideration in this case. Neither Mr Bridges nor Mr Barrowcliffe can see or understand what human health has to do with them or their continuous selling of these contaminating incinerators. The food industry brings in over two billion pounds per year into the economy of this Duchy, so any contamination of this industry has to be taken very seriously by any decision maker. In which case, why has a proper assessment not been carried out?

**Wrong plume figures from chimney**

1180. CSWN has produced figures which state that the plume figures for a 75m chimney and a 120m chimney could not possibly give the same answer. In paragraph 6.83 of SITA/10/1, Mr Greenwood states that the stack height will increase dispersion of contaminants. It is quite obvious that the clay tips were not taken into consideration when the plume figures were calculated. Mr Barrowcliffe seems to believe that the two figures are identical, perhaps he could not see the clay tips above his head, or, did he never actually visit the area?

1181. If the heights of the clay tips had been taken into consideration then the plume distances and the areas covered by the plume would have come out very differently. A 75m chimney would have been around 10m below the clay pits, which would mean that the plume would hit the clay tips and slide down onto Goss Moor. That is why SITA was made to make the chimney 120m. On the other hand a 120m chimney would be around 20m above the clay tips. This would mean that the plume is unhindered and would travel the length and breath of the Duchy contaminating the whole area. The tips stand on land starting at 160m above sea level. So would the incinerator. This means that the top of the chimney will be 280 to 300m above sea level. Not that much lower than Cornwall’s highest point at Rough Tor.

1182. When Mr Barrowcliffe was asked about this, he seemed not to understand what he was being asked. (See para 4.5 of SITA/3/2). He states that the terrain is not significant in ground level concentrations. CSWN says it has to be of consequence. It seems that all the figures were done on a desk top somewhere in the middle of England, and the person who did them had never seen the area. And, as the clay tips are not on any maps their height would not be known about outside this Duchy. Computers are not clairvoyant.

1183. The figures also state that the wind in the Duchy only blows from the south-west. This is untrue. CSWN has proved via the appellant’s own document (the CCA Dust Monitoring Forum March 2007). When asked about this document, which he had included in his appendices (see document SITA/3/3), Mr
Barrowcliffe was unable to understand the question and did not know about the document. The fact that the wind direction is quite incorrect, as the wind varies between north and south-west, seems to have passed him by. This means that the whole of Cornwall would be contaminated with whatever emanates from the said chimney. Mr Barrowcliffe did not use the correct figures from St Mawgan no doubt because they did not state what was wished for by SITA. If the wind only blows from the south-west how come the whole of Europe was covered in ash from the Icelandic volcano? This proves just how far contamination can and will travel.

1184. Mr Barrowcliffe in paragraph 5.9 of SITA/3/2 states that soil has been sampled at five sites for dioxin, but he did not seem to know where these sites were, or how far away they were. All the milk producing soil in this Duchy would have to be tested on a continuous basis, and the appellant must have to pay for this. None of Cornwall’s farmland would be safe from dioxin contamination, and as Cornwall is basically a milk and meat producing Duchy, this would put its largest industry in danger of having to be closed down. Once Cornwall’s farmland is contaminated all the Court cases on the planet would not save the Duchy’s most important industry. Also importantly, soon it will be seen to be the most important industry on the planet. Human beings and animals can not live on sand and rock. They have to have clean uncontaminated protein to survive. Denmark is learning this to its populations cost, as they are no longer being able to reproduce the male of the species because of the dioxin contamination of their country. That is what happens when you cover your land with incinerators.

Examples of incinerators given by the Appellant

1185. Mr Scanlon along with other of the appellant’s witnesses, state that 48 jobs will be created if this incinerator were to be built. CSWN states that these jobs would go to staff already employed by SITA. On the other hand this incinerator would put at risk the jobs of between 50,000 and 90,000 people who work in the farming and food processing industry in this Royal Duchy. The higher the chimney the further the toxic contamination will travel, and this would be the highest chimney in the UK.

1186. Mr Greenwood in paragraph 6.113 of SITA/10/2 states that CERC emissions will not endanger human health, but there is no technology existing which can stop dioxin emanating from an incinerator chimney. On behalf of the appellant it is stated that the incinerators that they own and run are quite safe, as everything that emanates from the chimney is tested as it leaves the chimney. This is not a correct statement, as they only test for HCl, SO2, NOX, NO2, CO and acids. (See para 8.40 of SITA/1/2).

1187. Several of the appellant’s witnesses have cited the incinerator on the Isle of Man as an excellent example of SITA’s operations. CSWN and the Isle of Man representative (see document X/3/15) have given evidence to the inquiry that the Isle of Man incinerator has never worked correctly. It has never as yet produced any electricity and on the contrary is consuming around 1 MW from the main grid, electricity which is needed by the residents of the island. Also, farmers near the incinerator have had to give up growing food for human consumption, because of the dioxin contamination of their farmland.

1188. The other example of the allegedly perfect incinerator is in Chineham. Although it is small, the operator is finding it very difficult to find enough waste
to keep it going. It seems that the local population of an area know more about how these incinerators are not working, but the appellant does not wish to see or hear this. Both these incinerators have had a lot of trouble and have had a great many shut downs because they do not work correctly. This is when incinerators are very dangerous indeed, as it is at shut down and re-start that large amounts of contaminants, such as dioxin, emanate from any incinerator chimney. This is because they are burning at the wrong temperatures.

1189. In this Duchy it would be catastrophic for our food industry. This appeal has been heard in public and all Rule 6 Parties have produced highly qualified witnesses, unlike the appellant. CSWN has proved by its evidence and respectfully submits that this planning appeal should be dismissed and invite the Inspector to recommend refusal of planning permission.

The Case For Transition Cornwall Network

1190. TCN is a grass roots movement, formed in response to the growing global crises in climate change and resource depletion. The movement is growing rapidly since it started only three years ago in response to the need to localise activities as the only resilient response to these global problems. It is a broad based movement encompassing many ways of working towards greater resilience. TCN is a co-ordinating group with the task of helping Cornish Transition groups and thinking on a more strategic Cornwall-wide basis.

1 Lack of WMS

1A Arguments from TCN’s evidence

Objection

1191. We were presented during the course of the inquiry with a series of assertions that the case for or against an incinerator could be assessed without Cornwall having a WMS. The argument put forward was that since we have a WLP, we should not require a WMS.

1192. TCN’s evidence shows that Cornwall County Council had, over a nine year period, repeatedly promised to prepare a WMS, yet never has. If the WLP was acceptable as a WMS there was no need for the County Council to promise one, nor was there any need for the Inspector at the WLP public inquiry to call for one.

1193. This is an important issue and the fact that the appellant has sought to downplay it does not diminish its significance. It is not only that the development of a WMS provides an opportunity to encompass wider and more long term issues – so important for a project of this size and duration – but also that it gives other interested parties an opportunity to share their expertise, and the people of Cornwall the opportunity to respond with their own views and suggestions. Without these elements any future plans lack the robustness of public scrutiny and expert support, and engender more hostility from those who might otherwise have been brought on side.

1194. The absence of a WMS means that there is no democratically agreed framework within which a decision of this magnitude can be assessed, its implications measured and its long term consequences fully understood.
1195. In addition the fact that this appeal for a mass burn incinerator is being heard is partly a consequence of the lack of effective public consultation either for the required WMS, or for the WDA choice on a PFI contract.

**Why this matters**

1196. A properly consulted upon WMS is an integral part of delivering a high quality waste management system for any area. The lack of such a strategy over a number of years has led to the following consequences:

- There is no local strategic background for the WPA in the development of the WDF;
- The validity of the WLP is undermined;
- Elected Members’ ability to make strategic decisions on waste matters is hampered; and
- The absence of a consultative process with communities and interested local groups has led to understandably increased hostility and suspicion in proposed host communities and in others.

1197. The Waste PFI contract process also failed to include the required public consultation stage prior to it being adopted. The proposed incinerator is the largest single financial decision ever made by any public authority in Cornwall and will have repercussions for a generation. In terms of Cornwall’s waste management it is the most significant decision ever likely to be taken. It is hard to conceive that so far-reaching a decision could be taken in the absence of a Strategy, and without either an effective and meaningful consultation process or even a democratic mandate.

**TCN’s evidence**

1198. The Government provides guidance to local authorities to develop WMSs in PPS10 for example (see CD/E6), and a recent checking email to DEFRA yielded the reply that whilst the Council, as a unitary authority does not have to produce a strategy “it is the Government’s view that all local authorities should either produce or contribute to a Municipal Waste Management Strategy” (see TCN 01/1). There is therefore strong Government support and encouragement to local authorities to produce WMSs which:

- Include an effective consultation process;
- Use Sustainability Assessment; and
- Are integrated with local waste planning policies.

1199. Equally, the AEA Technology report on WMS development (see TCN 01/2) showed serious pitfalls for local authorities, which either did not develop WMSs or did not follow Government guidelines in doing so.

1200. As already mentioned, Cornwall County Council promised over a nine year period prepare a WMS and still have not done so. (See section 1 of TCN/1/2). It is unclear whether, in spite of their pledge to do so in 2010, this will happen.
And even if they do, there are no apparent plans for the required sustainability appraisal or community consultation.

1201. TCN considers it to be the case that no properly constituted WMS exists for Cornwall. This has the effect that there is:

- No strategic background for making major waste planning decisions;
- Low level of understanding amongst elected Members on this issue;
- Major democratic deficit in waste planning and in community consultation; and,
- Little validity in the waste PFI contract as no WMS was developed nor consulted upon and no Sustainability Assessment was carried out before the contract was signed.

1B Rebuttal and cross examination

1202. TCN witnesses showed that councillors on the County Council were not well informed and did not feel they had the power to demand that a WMS be developed by the Council (see TCN/2/1 and TCN/3/1).

1203. It was suggested in cross examination that the WLP constitutes a WMS. Mr Greenwood agreed that there were only a few sentences in the WLP on WMS topics. He was reluctant to agree that this did not constitute a WMS. However, if the County Council/WDA agreed this was the case they would not have spent nine years claiming they were about to develop such a strategy. The appellant did not engage TCN or its witnesses in significant cross examination on this topic and indeed did not attempt to suggest that there really is a WMS for Cornwall.

1C Where TCN’s arguments differ from the appellant

1204. The low level of interest shown by the appellant in the lack of a WMS for the County suggests that the appellant, admittedly unable to do anything about this, seeks to downplay the significance of a situation in which their case may be fatally flawed.

1205. A WLP is a WLP. A WMS is a WMS. It is tendentious to claim that one is the other. They have different parameters, involve different processes, and have different purposes.

1D Conclusions

1206. The appellant supports the view that the WLP is a strategy, knowing that its case will be seriously undermined if so major a decision is not within a strategic framework. The Council knew a strategy was required and this is evidenced by its frequent and disregarded pledges to produce one. It is outside TCN’S remit to seek the answer as to why one was not produced. Nevertheless, its absence is a serious and, TCN believes, fatal flaw in the appellant’s ability to muster a persuasive argument for its case.
2 Case for need not made

2A Arguments from TCN’s evidence

Objection

1207. TCN’s case against the need for an incinerator has been based on an analysis of recent changes in policy and practice in waste management. The appellant’s case is rooted in work carried out a number of years ago where they sought to portray waste production as an ever growing problem about which little could be done. This approach has been overtaken by events and demonstrated to be so by the evidence. TCN contends that the very significant changes in Government policy and the strong policy trends, as well as developments in practice, are having and will continue to have a significant and lasting impact on waste arisings and treatment.

Why this matters

1208. The proposed incinerator is not only an expensive item of capital expenditure it is also contracted to cost the Cornwall ratepayer significant sums of money to operate. If built, it would:

- Undermine the Council’s efforts to meet present and forthcoming waste recycling and composting targets and prevent it meeting National Indicators contrary to WS2007 (CD/F1), PPS1 (CD/E2 and CD/E3) and PPS10 (CD/E6 and CD/E7);
- Undermine incentives to reduce residual waste below the minimum feedstock required by the PFI contractor until at least 2035;
- Reduce opportunities locally for recycling and composting/AD;
- Decrease local business opportunities in waste management;
- Increase greenhouse gas emissions in Cornwall by some 2.7 million tonnes over the period of operation (TCN/1/2 Section 3.2); and
- Prevent Cornwall from meeting emissions reductions targets (TCN/1/2 Section 3.2) and severely disrupt the lives of the people of St Dennis (covered in the PC-STIG evidence).

2B Evidence and rebuttals

1209. The evidence presented by TCN shows how that provided by the appellant was incomplete in many ways.

2 B1 Changing policy background

Recycling policies

1210. The table following, reproduced from TCN/1/2, shows how waste recycling and composting targets have changed rapidly over the last few years as environmental and resource depletion issues have increased in significance.
Changes over time in UK & regional government targets for recycling

<table>
<thead>
<tr>
<th>Source of target</th>
<th>Year target set</th>
<th>Target yr</th>
<th>% recycling/composting required</th>
</tr>
</thead>
<tbody>
<tr>
<td>This Common Inheritance: white paper on the environment  Cm1200</td>
<td>1990</td>
<td>2000</td>
<td>25%</td>
</tr>
<tr>
<td>DoE Making waste work, 1995 Cm3040 TCN 02/3</td>
<td>1995</td>
<td>2000</td>
<td>25%</td>
</tr>
<tr>
<td></td>
<td></td>
<td>2010</td>
<td>30%</td>
</tr>
<tr>
<td></td>
<td></td>
<td>2015</td>
<td>33%</td>
</tr>
<tr>
<td>SW Regional Assembly Waste Strategy TCN02/4</td>
<td>2004</td>
<td>2020</td>
<td>&gt;45%</td>
</tr>
<tr>
<td>Defra Waste Strategy 2007 CD/F1</td>
<td>2007</td>
<td>2010</td>
<td>&gt;40%</td>
</tr>
<tr>
<td></td>
<td></td>
<td>2015</td>
<td>&gt;45%</td>
</tr>
<tr>
<td></td>
<td></td>
<td>2020</td>
<td>&gt;50%</td>
</tr>
<tr>
<td>EU Directive 2008/98 CD/H5</td>
<td>2008</td>
<td>2020</td>
<td>50%</td>
</tr>
<tr>
<td>Commons Select Committee EFRA report on Waste Strategy 2007 proposal TCN02/5</td>
<td>2010</td>
<td>2015</td>
<td>50%</td>
</tr>
<tr>
<td></td>
<td></td>
<td>2020</td>
<td>60%</td>
</tr>
<tr>
<td>Scottish Executive Zero Waste Plan</td>
<td>2010</td>
<td>2025</td>
<td>70%</td>
</tr>
<tr>
<td>Welsh Assembly Government Waste Measure proposed  Feb 2010</td>
<td>2010</td>
<td>2016</td>
<td>58%</td>
</tr>
<tr>
<td></td>
<td></td>
<td>2020</td>
<td>64%</td>
</tr>
<tr>
<td></td>
<td></td>
<td>2025</td>
<td>70%</td>
</tr>
</tbody>
</table>

1211. It is TCN’s clear view that this trend is likely to continue with ever more stretching targets and that the new Government’s intention in the Coalition Agreement to “work towards a zero waste economy” (see appendix 56 of POC/0/3) is evidence of this. Attention was also drawn to other related regulations including the requirement to enact the provisions of the revised Waste Framework Directive 2008/98 (see CD/H7) into UK legislation by December 2010.

1212. TCN was assisted by the DEFRA guidance on this (see TCN 03/2a) which indicates the importance of the new compulsory adherence to the waste hierarchy to ensure that waste is managed in the most environmentally appropriate way. Any exceptions for specific materials are defined in the guidance document for the hierarchy’s application. Food waste is highlighted both for separate collection and as suitable for a departure from the hierarchy, as AD is cited as better as an EfW technology than direct recycling or other energy recovery.

1213. Both the Scottish Executive and the Welsh Assembly Government are already working towards Zero Waste, with objectives that include 70% recycling and the mandatory separate collection of food waste with a view to its composting or digestion and the use of end-products on land.
Reduction/prevention policies

1214. TCN considers that its evidence also shows beyond any doubt that the policy background for waste reduction measures and targets is now strengthening. It pointed out that WS2007 set a national target of reduction of residual waste by 45% by 2020, as did major reports in 2009, particularly from WRAP. WRAP is also now linking waste to climate change through resource efficiency (see TCN 02/6) and they conclude that “all parts of UK society, from households to local authorities, businesses and the third sector will be required to take part in the reduction of greenhouse gas emissions by 80% by 2050”. The elements of most relevance to Cornwall in this report are the major gains in reducing food waste, an emphasis on keeping products in use longer and public sector green procurement policies.

1215. The appellant’s evidence contained a major omission in not showing any awareness of this changing policy background, as any case for need for the proposed incinerator can only be assessed against both arisings and policy trends which will impact on those arisings.

2 B2 Cornish waste arisings are reducing

1216. This Rule 6 Party’s evidence show in detail that MSW arisings in Cornwall and nationally are reducing, with a fall of over 6% since 2006/7. The chart below, from TCN’s Summary Proof, shows that this trend started well before the recession. The downward trend in rates of waste growth started seven years ago, falling to the present negative percent annual change.

1217. This refutes Mr Aumônier’s claim in his rebuttal evidence and in cross examination that somehow the trend was part of the recession and would be reversed as soon as the economy started to grow again. There is no evidence of this. Moreover, it contradicts his claim during cross examination that to draw conclusions from trends they should be observed over a period of a number of years.

Further reductions from new local action

1218. TCN’s argument is that with one third of local authorities now operating successful separate food waste collections – which in Cornwall’s case is 45% of residual household waste and with a 10% reduction in the waste stream from paper and card, there would be significant waste arisings reduction.

**Percentage change each year in Cornish MSW arisings**

![Graph showing percentage change in Cornish MSW arisings from 2001/02 to 2009/10.](http://www.planning-inspectorate.gov.uk)
Paper and card

1219. Paper and card, the second largest fraction in Cornwall’s residual waste, requires different strategies for success than food waste and Cornwall could benefit from national experience, and expect waste reductions of 10% of this waste stream, or some 3-4,000 tpa.

Food waste

1220. This Rule 6 Party considers that a strong policy response from the Council would yield around 28,000 tpa reduced residual waste, just from reducing the throwing away of perfectly edible food. This comes about through the separate collection of food waste which induces behaviour change as TCN evidence shows. An increased composting campaign would save around 11,000 tpa if another 25% of households compost their food waste and soft garden waste (see TCN 02/12). The Council’s Waste Reduction Strategy is expected on national experience to reduce putrescible residuals by 39,000 tpa or some 20%.

1221. There would be a reduction in the waste stream of 42,500 tpa together with a decline in total system costs (see TCN 02/10, 02/12, 02/14, 02/17, 02/23, 02/24, and TCN 02/25).

1222. This is backed by the new Cornwall Draft Waste Reduction Strategy (WDA January 2010) which proposes a target of 10% reduction in household waste arisings in one year (see TCN 01/14). It is noted that with more funding it could reduce waste arisings by as much as 30%.

2 B3 Increased recycling

Food waste collection

1223. Around one third of local authorities now have separate food waste collections, which not only save money for householders, through behaviour change as household production of food waste reduces when it is separately collected, they also save money for local authorities as the total system costs are lower. People notice how much they throw away (see TCN 02/12, 02/14, 02/23, 02/24, and TCN 02/25). DEFRA has found that 78% of people support having a separate food waste collection and two thirds of households said they used their separate food waste collection, with 92% saying it was easy to use (TCN 02/17).

1224. Mr Aumônier asserted that separate food waste collections would increase costs despite the TCN evidence to the contrary, with reports from several authorities (see TCN/1/3 page 2, TCN 02/23, 02/24, 02/25).

1225. Mr Aumônier, in cross examination, cast aspersions on the WRAP work stating that some of their reports are flawed and ‘reflect the bias of employees and consultants’. He did not seem to find their work useful in the context of separate food waste collections, even though it is an obvious gain to increase recycling rates and is being successfully applied now in one third of local authorities. TCN considers that WRAP work is highly respected and evidence this by the fact that WRAP has recently been given oversight of the Government’s waste recycling and reduction programme, with an increased remit to include resource efficiency.

1226. Nor can this Rule 6 Party see the rationale for Mr Aumônier’s view as expressed in his comments on the bio-waste EC Directive 2008/98, that the
separate collection of food waste is “increasingly unlikely” (see paras 13 to 14 of SITA/2/6).

1227. He did not explain how this could be so against the background of rising landfill tax, decreasing biodegradable municipal waste allowances and increasing evidence of the lowest cost options being high recycling, as per WRAP reports. In fact his view seemed to be that “…the desirability of separation has to take into account employment costs, special gear, new vehicles etc, which may take gate fees above the incineration cost…”. This was despite the fact that WRAP and other authorities report that total system costs are lower and there is a major reduction in food waste arisings with subsequent cost savings to both householders and councils.

1228. Equally the fact that the ERM modelling assumes some separate food waste collection did not change his view that it is unlikely to happen in Cornwall.

1229. Given the WRAP reports and evidence from the likes of waste contractors such as May Gurney, which show that separate food waste collections save local authorities money, and LATS worries, as well as saving their households’ money, it was not at all clear why Mr Aumônier would insist that this will not take place in Cornwall.

**Potential recycling rates for Cornwall**

1230. TCN research (see TCN 02/15) has indicated that a 60% recycling rate for Cornwall is realistic and achievable, and a target already met by the most successful local authorities in England. TCN’s calculations have taken into account waste reductions along with increased recycling and population growth in Cornwall. This could lead to residual waste arisings in the range of 77-83,000 tpa, or under half of the projected MSW residuals to the proposed incinerator. From this, an outcome of 110,500 per annum total reduction, leaving a residue of 86,380 tpa for the modelled year of 2020 is calculated.

**Summary of reduction in residual MSW, present day**

<table>
<thead>
<tr>
<th>Waste activity</th>
<th>tpa</th>
</tr>
</thead>
<tbody>
<tr>
<td>Waste reductions</td>
<td>42,500</td>
</tr>
<tr>
<td>Increased recycling</td>
<td>40,000</td>
</tr>
<tr>
<td>Separate food waste collection</td>
<td>28,000</td>
</tr>
<tr>
<td>Total reduction</td>
<td>110,500</td>
</tr>
<tr>
<td>Present residual waste</td>
<td>196,880</td>
</tr>
<tr>
<td>Leaves residual</td>
<td>86,380</td>
</tr>
<tr>
<td>Appellant proposed residual MSW</td>
<td>180,000</td>
</tr>
</tbody>
</table>

1231. TCN evidence shows that more and more local authorities are achieving higher levels of recycling. There is every reason why, with the correct incentives, Cornwall can achieve the same high recycling levels. The recent highest level of
recurring achieved in England is over 60% (see TCN 02/15) with Devon on 53%, East Lindsey – with a higher level of deprivation than Cornwall – on 58% without food collection and Cotswold on 61%. These all relate to 2008/9 data.

1232. As already noted, WRAP reports indicate this approach is cheaper than lower levels of recycling with larger residual treatment facilities (see TCN 02/23, TCN 02/24 and TCN 02/25). Encouragement for separate food waste collections is now in European legislation and when it occurs in Cornwall has the potential to remove up to 45% of the residual waste from the proposed incinerator feedstock, through reduced arisings and separate collection and treatment of that fraction.

1233. An achievable target for Cornwall would be to increase dry recycling to an overall 50%, by targeting Acorn groups 4 and 5 specifically for paper/card and glass and metals (TCN 02/10).

1234. Mr Aumônier, in cross examination, was reluctant to put a figure on what he meant by high recycling rates and did not express any view on the TCN evidence of the best performing local authorities. He was also reluctant to agree that it is possible in Cornwall to achieve high recycling rates for MSW by 2020, rates which are regularly being exceeded already in high performing local authorities.

1235. Whilst expressing an interest in recycling, Mr Aumônier was at pains to highlight difficulties that he perceived in increasing recycling rates and to minimise or criticise the benefits to be gained. For example, he stated that there are any number of factors militating against recycling – the cost of the residual treatment, separation, bio-waste treatment, collection issues, and vehicle fleet issues. He did not draw attention to the European, national, regional and local drivers to greater recycling or to successes achieved in overcoming these challenges, nor to those authorities already achieving high recycling rates, nor to the fact that Government policy has been very successful in driving performance over the last 10 years.

1236. Mr Aumônier however did suggest that it is feasible to overcome difficulties to increasing recycling rates by putting more money into the service, putting in additional collection, and making greater efforts to engage people.

1237. It was not feasible to hold a discussion on the main table in Mr Aumônier’s evidence, (see table 2.3 in Annex D of SITA/2/3) which shows that at least 130,000 tpa or 54% of the proposed feedstock could be recycled on present day good practice performance. Mr Aumônier refused to be drawn on the question of why Cornwall, in his view, would not be able to increase recycling and composting of MSW from the present 38% to beyond the proposed 50% in ten years, against the background of severe policy drivers to do so. Further discussion on the fact that the proposed incinerator feedstock indicates a dry recycling rate of 19% in 2020, compared to the present rate of 25% was not feasible at that time. Nor would he or Mr Scanlon be drawn on how this high level of potentially recyclable material being burnt relates to SITA’s aim of only incinerating materials it is not possible to recycle.

1238. Mr Scanlon was not willing to admit that the proposed incinerator would not enable Cornwall to meet the WS2007 target for recycling, preferring to concentrate on the meeting of WS2007 target for recovery of waste instead.
Expected residuals availability

1239. TCN has shown that the implementation of strong waste reduction and recycling systems in Cornwall reduces the feedstock left to the proposed incinerator to under 50% of the appellant’s view of the MSW feedstock for the proposed plant in 2020. The table below shows how that is arrived at.

Summary of targeted reduction in residual wastes: present day figures

<table>
<thead>
<tr>
<th>Waste activity</th>
<th>tpa</th>
</tr>
</thead>
<tbody>
<tr>
<td>waste reductions</td>
<td>42,500</td>
</tr>
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<td>food waste collection</td>
<td>28,000</td>
</tr>
<tr>
<td><strong>Total reduction</strong></td>
<td><strong>110,500</strong></td>
</tr>
<tr>
<td>Present residual waste</td>
<td>196,880</td>
</tr>
<tr>
<td><strong>Leaves residual</strong></td>
<td><strong>86,380</strong></td>
</tr>
</tbody>
</table>

1240. It is recognised that the population of Cornwall is currently growing at around 5,000 people a year, but even so the residual waste has been dropping. In particular the metric Best Practical Value Indicator 84a shows a significant drop in waste collected per head of population, from 583 to 511 kg per person pa over the five years since 2004/05 (see TCN 02/1, WDAP figures). The combination of reducing household residuals and population growth serves to reduce any expected increases in household waste residual arisings.

1241. By 2020, with the strong reduction and recycling policies noted above, TCN’s evidence estimates residual waste arisings of around 77-83,000 tpa.

1242. This is well under that required for the proposed incinerator, at 240,000 tpa, and well below the 180,000 tpa MSW modelled by the Appellant. The expected residuals are not much more than the expected wastes produced by the proposed incinerator from its own operations at nearly 61,000 tpa (EP application vol 2 table 7.2 in TCN 03/3) of which at least 11,000 tpa is hazardous waste.

1243. TCN contends that it is futile to incinerate current levels of feedstock when waste reduction and recycling can achieve an outcome that is:

- Further up the waste hierarchy;
- Does not have planning problems or impacts;
- Has lower environmental impact;
- Creates local jobs;
- Leaves the Council many millions of pounds in both capital and operating costs; and
2 B4 Competition between incineration and recycling

Incineration and recycling percentages for all local authorities found to incinerate over 8% of their household waste

1244. TCN’s evidence looked at the relationship between incineration and recycling rates. These observations are that as authorities exhibited higher rates of incineration, so they also exhibited lower rates of recycling. This is indicated by means of a graph (above) of all authorities incinerating over 8% of their household waste. Mr Aumônier disputed the relationship even while it was quite clearly demonstrated by this graph and his counter-graph in SITA/2/7, where he shows two more authorities than TCN found with >8% incineration.

1245. The effect of incineration rates on recycling is more marked for authorities with over 30% incineration, which, with only one exception, have recycling rates below 30%. This is not very good these days.

1246. Logically very low levels of incineration cannot have any impact on recycling levels. Mr Aumônier points to the low statistical correlation between the incineration and recycling rates, but ignores the practical logic of the situation. Whilst the correlation does not have high confidence levels, it does show that high incineration does not exist together with high recycling (over 45%) in any authority. In practical terms once the target for recycling is 60% or more, then incineration has to drop to below 40% or less in proportion, as there is only 100% of the waste to treat.

1247. Mr Aumônier did not respond directly to questions about the Scottish Executive developing a zero waste policy with its maximum allowable 25% incineration rate, or to the new target recycling rates of 60-70%, as noted in the table of policy changes in TCN’s evidence (see table in section 2 B1 above). If these target rates are to be achieved by the wide variety of regions and local authorities working in that direction then very low incineration rates would be implemented.
As long ago as WS2000, the Government stated: "care must be taken to ensure that contracts are sensitively designed to avoid 'crowding out' recycling". TCN evidence indicates that in practice the Government has been alive to this relationship that concerns about recycling rates have contributed to a number of applications being refused planning permission (TCN 02/8). The examples are:

- The Department of Trade and Industry turned down SITA's application to expand the incinerator at Edmonton, North London. Minister for Trade Brian Wilson justified the decision on the grounds that a larger incinerator would give North London Waste Authority little incentive to do more recycling over and above the statutory minimum; and meeting or bettering recycling targets would lead to a shortfall in the waste stream for the plant and therefore lead to waste being imported from other areas, in contradiction of the proximity principle.

- The Kidderminster incinerator was rejected on similar grounds. Following a public inquiry, the Inspector stressed that the incinerator "...would achieve little... towards meeting the recycling targets and it fares poorly on the proximity principle...."

- In the case of the Ridham Dock incinerator, which also went to public inquiry, the Inspector concluded that if planning permission were granted, the "...provision of greater incineration capacity than necessary would tend to undermine efforts to increase waste recycling and recovery locally, and encourage the transportation of waste from a more widespread catchment area...". (TCN 02/8)

TCN maintains its assertion that there is strong evidence of incineration impacting on levels of recycling. Since waste reduction and recycling have a higher priority than incineration, the latter must not be allowed to undermine the former.

2 B5 C&I arisings

Mr Aumônier suggested in his rebuttal that if MSW recycling rates were to rise significantly, the shortfall in arisings would be compensated for by an increase in C&I as feedstock to the proposed incinerator. However, TCN’s contention is that that local information along with WRAP national data indicates that the rapidly increasing costs of disposal are persuading commercial and industrial undertakings already to move towards higher recycling rates and waste reduction measures.

Combining the information presented by Mr Aumônier in his rebuttal with TCN evidence shows that in 2002/3, there was a total of around 516,000 tonnes of C&I arisings in Cornwall, of which 43% was sent to landfill, including 12% going to land recovery. Later data is derived from the recent EMRA report (see TCN 02/19), backed by SWRDA employment data (TCN 02/20). Whilst this is not as accurate as data directly from the EA returns, it uses a well-developed methodology by ADAS and contains more recent data.

The indications from this are that the waste arisings from commerce and industry have declined in the last few years by ~22% or 114,000 tonnes (see TCN 02/21). This analysis provides a useful cross check to verify the data from the EA returns in 2002/3 against the recently published EMRA paper. This is a
significant change and is in accord with the changing employment patterns seen in Cornwall in the past few years, with increasing office based employment and manufacturing reduced by 16% in eight years.

1253. Mr Aumônier in rebuttal does not accept this approach and feels that the recession cannot have had such a large impact in Cornwall. He rejects the notion that Cornwall C&I arisings could have reduced by the estimated 20% in eight years shown in TCN’s evidence. He does not however suggest why this is not credible, with no indication of awareness of the rapidly changing nature of Cornwall’s commercial and industrial sectors. Section 5 of TCN’s evidence shows that work in recycling and reducing local C&I arisings is already underway.

C&I for Cornwall 2002/03 ’000s tonnes

<table>
<thead>
<tr>
<th></th>
<th>Industrial</th>
<th>Commercial</th>
<th>Total including reallocations</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Land disposal</td>
<td>50</td>
<td>125</td>
<td>221</td>
<td>42.8%</td>
</tr>
<tr>
<td>Land recovery</td>
<td>54</td>
<td>10</td>
<td></td>
<td>0%</td>
</tr>
<tr>
<td>Re-used/recycled</td>
<td>89</td>
<td>114</td>
<td>249</td>
<td>48.3%</td>
</tr>
<tr>
<td>Recovery</td>
<td>-</td>
<td>-</td>
<td>46</td>
<td>8.9%</td>
</tr>
<tr>
<td>Treatment/transfer</td>
<td>26</td>
<td>14</td>
<td></td>
<td>0%</td>
</tr>
<tr>
<td>Not recorded</td>
<td>31</td>
<td>3</td>
<td></td>
<td>0%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>250</strong></td>
<td><strong>266</strong></td>
<td><strong>516</strong></td>
<td><strong>100%</strong></td>
</tr>
</tbody>
</table>

Sources: CD/G4 and CD/G5, corrections from S Aumônier

1254. The Government purpose for the high and increasing landfill tax is to encourage business and local authorities to ensure they landfill lower volumes of waste. There is every indication that C&I waste will either remain static or continue to decrease, as landfill tax is now £48/tonne and is set to rise by £8/tonne per year until 2013/14 when it will reach £72/tonne. At present the cost of commercial tipping plus tax in Cornwall is £130.50/tonne. Commercial pressures appear to be having a significant and increasing impact on residual waste production in Cornwall and elsewhere.

1255. In addition there are existing strong financial drivers for increased recycling. Mr Scanlon indicated that the proposed incinerator gate fees would be in the region of £80-90/tonne. This compares poorly with the WRAP gate fee survey in which recycling options are significantly lower in cost per tonne, even after allowing for separation expenses within the originating companies. In addition, in Section 5 of TCN’s evidence it is shown how the local pyrolysis plant in planning at present would also have much lower gate fees than the incinerator, and combines that with high separation levels for recycling.
1256. Mr Aumônier’s rebuttal points out that a high proportion of commercial waste would be suitable for the proposed incinerator, as much of it is either putrescible or paper and card. However, with the right infrastructure systems it would preferentially go for recycling/composting options, as these options are so much cheaper for the user, as noted in the evidence and above.

Re-use and recycling rates

1257. C&I producers have generally sent their waste for treatment rather than landfill in higher proportions than local authorities. In 2002/03 only 39% was sent to landfill (see CD/G4) (before statistical re-allocation).

1258. The appellant proposes taking some 60,000 tpa of C&I as feedstock for the proposed incinerator, from an expected C&I arisings of 609,000 tpa in 2020. Of this they suggest that only 43.7% would be recycled or composted, compared to the present day recycling rate of 47%. Why C&I recycling would go down when commercial pressures and trends all point the other way is not clear. A more likely figure against present trends and commercial pressures is for residuals to total around 90,000 tpa.

1259. The structure of local industry and commerce, with a high level of food processing businesses and large number of tourist businesses suggests that a high proportion of their waste is food wastes and paper and card.

1260. Local businesses are already developing more modern responses to reducing food waste disposal to landfill in a variety of ways, such as, increasing numbers of on-site treatment options which are noted in more detail in Section 5 of TCN’s evidence. The WRAP survey of gate fees for different waste treatment options indicates that this approach is financially advantageous to local industry and commerce (see TCN 02/22).

1261. If recycling is increased by a cautious 33% and recovery by 25% over present levels, then the residuals for landfill are only 20% of the total. The approximate breakdown of local C&I waste is paper and card 45%, putrescibles 30% and industrial waste 25%.

1262. With this breakdown of wastes and the proposed increase in recycling and recovery, this would leave mainly the non-combustibles as residuals. This fraction is unlikely to provide a realistic feedstock for the proposed incinerator.

1263. Mr Aumônier agreed that commercial waste is an increasing proportion of C&I waste arisings in Cornwall and that there is an increase in commercial recycling. He felt it would not go up more because of the distance from markets. However this ignores the rapidly increasing costs of the non-recycling option with landfill tax and local tipping fees increasing steadily.

1264. A discussion was held on the rates of recycling and recovery of C&I waste arisings in Cornwall in which Mr Aumônier was reluctant to agree that the proposed future recycling rate that the appellant has assumed for C&I waste in Cornwall is lower than the present rate.

1265. As shown above in TCN proof of evidence (see table 2.3.8 on page 23 of TCN/1/2) and as corrected by Mr Aumônier (see above under C&I Arisings) the present rate is 48.3% recycling when statistically re-allocated. This is set against the appellant’s assumption of 43.7% in 2020. TCN considers that the witness did
not give any persuasive answer as to why commercial recycling was assumed to decline against the policy and financial drivers that TCN described.

2 B6 Timing of new facilities and void space

1266. The WDA have indicated that the refusal of the proposed incinerator at appeal would lead to a nine year delay and cost the Council an extra £166 million (see appendix 3 of SITA/10/5).

1267. However, this advice to the WDAP ignores the landfill potential at Connon Bridge and the recent report from the WPA on landfill capacity (see CD/G5). Use of the present void space and an extension in time to 2018/19 to 2024/25 depending on assumptions would reduce the extra costs by £70m.

1268. In addition, the appellant has already submitted a request for a scoping study preparatory to submission of a planning application to extend Connon Bridge (see TCN 02/24), suggesting a less than open approach from the WDA.

1269. The significance of these two salient facts is that the WDAP when making a decision about the future of the contract had only partial information and were given the impression that the cost of the potential and “necessary” delays was at least £166m, whereas extending Connon Bridge saves £72m even if the nine year delay occurred (which TCN thinks is highly unlikely), a saving of some 42% of proposed costs.

1270. If the Council should choose to develop stronger waste reduction and recycling policies as required by Government, the proposed cost of delay would reduce rapidly, and equally should the present proposal fail at appeal this would give a boost to the reduction and recycling options for the County.

1271. This short outline suffices to point out that fears of excessive costs from delay are unnecessary. Attention to Government policies on moving up the waste hierarchy will provide ready solutions to minimising this cost, as is shown in TCN’s evidence.

2D Conclusions

1272. In this section TCN reviews the evidence for reducing and recycling MSW and C&I waste arisings. Attention is first drawn to the powerful policy drivers that over the last ten years have increased both pressure and incentives for greater waste reductions and recycling. It is considered that these pressures will continue and probably intensify over time, with increasing awareness of resource depletion and climate change imperatives.

1273. The policy background is matched by a continuing decrease in municipal waste arisings, taking place over the last several years and becoming more pronounced over time. TCN has concluded that taking into account the current policy framework, with changes in practice and in people’s behaviour, and the economic situation, this process will continue.

1274. TCN sees strong possibilities for reducing residuals dramatically through food waste collection, and believes that the evidence shows that once introduced there is a high level of loyalty to this process from residents. This together with other measures will impact directly on waste reduction and recycling rates and help Cornwall to achieve what other authorities are already achieving, namely a
recycling rate very significantly above that proposed by the appellant. TCN concludes that success in this area will leave the appellant with a huge shortfall in the municipal waste requirement of the incinerator.

1275. In addition recent information shows that high kerb-segregated recycling is cheaper for the local authority overall than high residuals.

1276. TCN also asserts that the presence of an incinerator has an adverse effect on recycling rates, and this conclusion is supported by a number of planning refusals for incinerators.

1277. TCN considers that the same process is taking place with C&I waste as is for MSW, with a decline in arisings over time which shows no evidence of being halted. Indeed, TCN sees no reason why it should not continue and, with the correct incentives, increase. These incentives, in the form of the landfill tax and commercial pressure to show prudence at a time of economic stress, are already in place. TCN found the appellant’s claims on the proportion of C&I going to incineration unpersuasive.

1278. TCN also disagreed with the appellant’s acceptance of WDA claims on the timing of new landfill facilities and on the cost of delays.

1279. This Rule 6 Party’s conclusion is that the appellant has failed to make the case for the need for an incinerator, and that every indicator, every driver, every policy points towards an ongoing reduction in residuals and a very significant increase in recycling over the next few years.

1280. TCN concludes that the case for needing this incinerator has not been made. In Section 5, TCN addresses the issue of how to manage the lower residual levels which will arise in Cornwall.

3 Proposal is not policy-compliant

3.1 The proposed plant would be disposal not recovery

3.1A Argument from TCN’s evidence & EP application

Objection

1281. It is TCN’s contention that the proposed incinerator does not meet the requirements for energy efficiency to allow it to be counted as a recovery operation (European Directive on Waste 2008/98EC). The EP application is being assessed as a disposal facility as the EA agree that the proposal would not meet R1 requirements. It is therefore disposal and not moving Cornwall’s waste management up the waste hierarchy, and hence is not compliant with the waste hierarchy or waste policies.

Why this matters

1282. The entire thrust of policy development in waste management is to move waste management up the waste hierarchy. This is enshrined in several EU Waste Directives, the most recent being EC 2008/98 (see CD/H7). These Directives have been taken through as the main framework on which UK Government policy on waste matters has been developed. This is shown in WS2007 (see CD/F1), as well as other Government policy documents, such as PPS10 (see CD/E6 and CD/E7).
3.1A1  Evidence Presented

1283. The starting point is the Waste Directive 2008/98 EC Annex II (see CD/H7). The detailed formula in this Directive is:

\[
\text{Energy efficiency} = \frac{E_p - (E_f + E_i)}{0.97 \times (E_w + E_f)}
\]

Where
- \(E_p\) annual electricity produced x2.6 plus annual heat sales x1.1
- \(E_f\) annual energy input for fuels for steam raising
- \(E_w\) annual energy input in the waste incinerated
- \(E_i\) annual imported energy excluding \(E_w\) and \(E_f\)

0.97 is a factor to account for losses in bottom ash and as radiation.

1284. The Directive requires that facilities approved after 31 December 2008 must have an energy efficiency of 0.65 or higher to be classed as recovery operations, otherwise they are to be classified as disposal operations. It further states that ‘the formula shall be applied in accordance with the reference document on Best Available Techniques for waste incineration’.

1285. The appellant claims that the Directive has as yet no guidelines on the meaning of \(E_p\). Whilst this is so, it is not a complete picture as the Directive refers directly to the EC document “Best Available Techniques for Incineration”, known as BREF (TCN 03/1) for the method of working out the calculation.

1286. Figure 3.1.2 in the TCN evidence shows the system boundary as given in that document. This indicates clearly that only exported energy counts as exports. Page 590 of this document states:

“...Energy outputs (exported)
- Only the actual amount of energy exported is included (i.e. the gross production minus the energy circulated and consumed as losses to run the process itself)...”.

1287. In addition the later EC document explicitly builds on the BREF work in document TCN 03/1 and gives interim guidelines for efficiency calculations for recovery vs. disposal in its “…Non-paper on the background of the development of the Commission proposal on the distinction between energy recovery and disposal of waste in municipal incinerators...” (see TCN 03/2).

1288. This paper is the most up to date guidance available from the Commission until the more formal proposed guidance is made available. For the area of contention the quote is from page 2.

“...
- the energy efficiency factor \(E_p\) must consider the energy available to users\(^3\) and compare heat to electricity...”.

Footnote \(^3\) Use of electricity for the flue gas cleaning systems is considered as being made available to users- otherwise the threshold would have an inhibiting effect on strengthening the air polluting standards beyond the levels set by the Waste Incineration Directive.

1289. These notes and the diagram make it clear that the energy efficiency calculation takes account of the energy used to generate the useful energy, with
the only parasitic loss included on the output side being the energy required to control air pollution. It clearly states on the output side “output to users” and the footnote states to include air pollution control energy needs. This makes clear that internal uses other than air pollution control energy are not included as “output energy”.

**BAT Annex 10.4 energy efficiency calculation system boundary**

1290. Equally the DEFRA August 2009 document: Stage One: Consultation on the transposition of the revised Waste Framework Directive (Directive 2008/98/EC) (see TCN 03/2a) on pages 61 and 62 states that the R1 formula as advised in the Non Paper (TCN 03/2) above should be used with the same interpretation unless or until it is changed by later EC advice.

“...Para 2.182 Pending the development of such guidelines, advice from the EA is that the R1 formula should be applied on the basis of plant design figures to avoid any complications due to occasional operational variability. The EA further advises that the term Ep should be taken to mean the energy (as heat and/or electricity) made available to users but the Agency accepts the Commission’s explanation in its non-paper that the electricity used by the operator in flue gas cleaning systems is to be taken as being made available to users and included within the term Ep...”

1291. This is also quoted in Mr Aumônier’s evidence (see para 7.17 of SITA/2/3). However, he goes on to deny that this means that only heat and electricity exported plus air pollution control electricity should be used on the energy output side.
CALCULATION OF ENERGY EFFICIENCY FACTOR

1292. The electricity used in the internal operation of the proposed incinerator is 25,450 MWh pa of which some 6,261 MWh pa would be required for the air pollution control systems. Therefore 19,189 MWh is taken as internal uses and deducted from the gross plant electricity production.

1293. To make direct comparison with the ERM evidence for the appellant easier, TCN has amended its presentation of the calculation.

<table>
<thead>
<tr>
<th>Description</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Electrical energy generated</td>
<td>154,729 MWh pa</td>
</tr>
<tr>
<td>Internal electricity uses – air pollution control</td>
<td>19,189 MWh pa</td>
</tr>
<tr>
<td>Electricity output</td>
<td>135,540 MWh pa</td>
</tr>
<tr>
<td>Electricity output times 2.6</td>
<td>352,404 MWh pa</td>
</tr>
<tr>
<td>Heat energy generated for export</td>
<td>18,800 MWh pa</td>
</tr>
<tr>
<td>Heat energy output times 1.1</td>
<td>20,680 MWh pa</td>
</tr>
</tbody>
</table>

Total energy produced \( E_p \) = \[B\] + \[D\] or 373,048 MWh pa

1 MWh = 3.6 GJ for clarity with the extra complication of changing to GJ.

Energy used to raise steam 5,330 GJ pa 1,494 MWh pa \( E_r \)
Waste throughput 240,000 tpa at 9.8MJ/kg 653,333 MWh pa \( E_w \)
Electricity imported 650 MWh pa \( H \)
Energy used to heat boilers 5,330 GJ pa or 1,494 MWh pa \( J \)
Total imported energy 2.6 \( H \) + \( J \) = 3,170 MWh pa \( E_i \)

The plant efficiency factor is therefore determined as

\[
373,048 - (1,494 + 3,170) \\
0.97 \times (653,333 + 1,494) 
\]

= 59.5%

If phrased in GJ this calculation would be

\[
1,342,973 - (5,330 + 11,414) \\
0.97 \times (2,352,000 + 5,330) 
\]

= 59.5%

The Lower Limit for recovery is 65%

This calculation shows that the proposed incinerator falls below the limit to be called recovery and hence must be classed as disposal.

1294. On the appellant’s best case where some 35,800 MWh is sold as heat, the electricity output reduces to 125,110 sold + 6,261 air pollution control uses = 131,371 MWh pa. The calculation then results in 59.97% as the efficiency factor. This is still below the 65% required for classification as recovery under the Directive.

3.1B Rebuttals, cross examination and the EP application

Mr Aumônier's rebuttal (SITA/2/6)

1295. Paragraph 41 of the rebuttal states that the proposed incinerator would be a recovery facility as Government policy states that it is. He quotes page 109 of WS2007 as his authority for this. However WS2007 does not refer to the
requirements for certain levels of efficiency to be achieved, it is merely a reference to the general principle of recovery of materials and energy as a footnote, thus:

- ‘Recovery includes recycling, composting and energy recovery’

1296. In his second footnote, he notes in the Ince Marshes appeal decision (see para 3.23 of CD/I2) the criteria on whether EfW is to be regarded as recovery. Again this only refers to the general concept not the specific instance of an actual incinerator and the Waste Directive 2008/98. EfW covers a wide range of technologies as has been noted many times during the inquiry. The fact remains that the legal definition of disposal v recovery is covered under the Waste Framework Directive, and it is the interpretation of the formula which is in contention between TCN and the appellant.

1297. Mr Aumônier states that TCN have not quoted the appropriate Waste Framework Directive formula. This is not correct. The formula is fully quoted subsequently in TCN’s evidence in paragraphs 3.5 and 3.15 of TCN/1/2.

1298. The evidence from Mr Aumônier states that the EA regard Eₚ as in the notes above, but Mr Aumônier in his evidence then proceeds to use the produced electricity as the starting point, not the useful electricity, that is, he uses 154,729 MWh pa as the starting point not 129,280 MWh pa plus air pollution electricity needs.

1299. Mr Aumônier further contends in his rebuttal (see SITA/2/6) that because the Dimas letter (see annex E of SITA/2/7) concludes that most European incinerators equipped with CHP or heat only would meet the efficiency criteria, the same will be true for the proposed incinerator at St Dennis. This cannot be offered as proof without a full analysis of the European incinerators studied, which is not offered by the appellant. TCN believes that this contention should therefore be set aside.

1300. In cross examination, Counsel for the appellant pointed to the Directive Article 3 Definitions para 15 (see CD/H7) as an authority that the use of parasitic electricity should be included in the calculation of energy output from the proposed incinerator. However this definition refers directly back to Annex II where the list of recovery operations includes the requirement to meet the 65% efficiency criterion. This creates a circular argument, thus making the appellant’s contention meaningless.

**EP application**

1301. The Inspector requested that the EA draft permit and draft decision document should be made available to the inquiry. TCN has since then scrutinised this document and uncovered that in the EP application and in the draft permit (seeX/9A) the proposed incinerator is classified as a waste disposal facility under these regulations. EA staff agree that the plant does not pass the R1 test.

1302. The code for the permit application is Section 5.1 Part A (1 C), which is a disposal classification as per SI 2010/675 - *Environmental Permitting Regulations*, which adopts the Waste Framework Directive definition of disposal (2008/98/EC – see CD/H7), which is ‘all operations in Annex IIA including D10 incineration on land’.
3.1C Where TCN’S arguments differ from appellant

1303. The only point of difference between TCN and the appellant is in the meaning of Ep, where the appellant argues that E_p is all electricity produced and TCN argue that the guidance states only electricity exported to users plus air pollution control electricity should be counted.

3.1D Conclusions

1304. Despite the view from the appellant that the proposed incinerator would meet the R1 formula for efficiency it is clear that this can only be done by an incorrect interpretation of the regulations. Not only is the proposed plant classified as disposal in its draft EP, but it also would not be efficient enough to be classified as recovery under Directive 2008/98/EC.

1305. This means that the proposed plant:

- Does not enable Cornwall to meet WS2007 recovery targets;
- Does not move Cornwall up the waste hierarchy contrary to Government policy in this regard; and
- Does not meet the proximity principle as it is a disposal facility for the whole of Cornwall, rather than a locally appropriate scale facility for disposal.

3.2 Proposal would increase greenhouse gas emissions

3.2A Argument from TCN’s evidence

3.2A1 Objection

1306. TCN submits that the proposed plant would increase greenhouse gas emissions compared both to the present situation and to decentralised high materials recovery options. This is not compliant with a substantial and increasing number of relevant and high level policies.

3.2A2 Why this matters

1307. Climate change is an existential threat, now acknowledged in policy development across the board. Introducing projects that increase greenhouse gas emissions is both against the aim of mitigating climate change and the thrust of policy. The relevant acts and regulations include:

- **Climate Change Act 2008**
  To drive this transition, the Government has put in place the world’s first ever legally binding target to cut emissions, at least 80% by 2050, and a set of five-year “carbon budgets” to 2022 to keep the UK on track.

- **PPS1 & PPS1 Supplement: Planning and Climate Change** (see CD/E2 and E3)
  In particular it should be noted here that the PPS1 Supplement: Planning and Climate Change takes precedence over other PPSs. All the relevant objectives in the PPS1 Supplement require local authorities to plan and make decisions consistent with reducing carbon dioxide emissions. PPS1 states that climate
change is a material consideration, so it is important that any comparison of treatment options provides a complete picture of all the carbon on a like-for-like basis.

- **Consultation on a PPS: Planning for a low carbon future**
  This makes the point that "...Climate change is the greatest long-term challenge facing the world today. Addressing climate change is therefore the Government’s principal concern for sustainable development...". Again the emphasis is on cutting greenhouse gas emissions, but now they must be “radical cuts”, and recent reports show this is now beginning to be implemented in planning decisions, including at appeal.

1308. As part of the developing background to rapidly evolving policy in this area, the WRAP report *Meeting the UK climate change challenge: the contribution of resource efficiency* is important because WRAP has recently been given responsibility by Government for implementing waste and resource efficiency. This report shows how the use of materials will have to change over the next few years to meet our climate change policy requirements. This will lead to, for example, longer life products, significantly reduced food waste arisings etc.

1309. The new Government is strengthening their climate change mitigation policies by, amongst other things, aiming to negotiate higher greenhouse gas emission reduction targets throughout Europe for 2020. (see Coalition Agreement in appendix 56 of POC/0/3).

### 3.2A3 Evidence

1310. With the Climate Change Act 2008, the Government brought in carbon budgets, similar to financial budgets, which limit the carbon emissions each year. The legally binding target is to reduce the UK’s emissions of greenhouse gases to at least 80% below 1990 levels by 2050. Carbon budgets place legally binding ceilings on the level of allowed UK emissions over five year periods, with a 26% reduction required by 2020.

1311. Under this system every tonne of greenhouse gas emitted between now and 2050 counts.

1312. The proposed incinerator would increase the local levels of greenhouse gas emissions by burning 240,000 tpa of waste, over a period of 25 years or 62% of the forty years between now and 2050. Therefore, the long term impact of the project on greenhouse gas emissions over the whole of that period is an important consideration.

1313. At present most of the carbon is buried in local landfill sites. There the biomass fraction mainly decomposes to methane which, in Cornwall, is largely captured and burnt in engines to produce electricity. The fossil fraction however remains buried and sequestered for possibly hundreds of years.

1314. The appellant proposes that only the fossil derived carbon should be used in any calculations for carbon balance for the incinerator and hence for climate change impacts, whereas for the landfill option against which the incinerator is compared they suggest including the biogenic carbon which degrades to methane (CH₄), but not the fossil carbon, which stays in the ground. For this, they claim the authority of the IPCC. However the IPCC guidelines are for the purpose of
developing national and regional greenhouse gas _inventories_. The present proposal is for a _project._

1315. The IPCC has tackled this issue on its website ([http://www.ipcc-nggip.iges.or.jp/faq/faq.html](http://www.ipcc-nggip.iges.or.jp/faq/faq.html)) where the following Question and Answer is given:

"…Q16. How can we calculate the change in emissions from burning biomass residues for energy instead of using fossil fuels?
A: The IPCC methodologies are intended to estimate national, anthropogenic emissions and removals rather than life cycle emissions and removals. …. For calculating emissions from substitutions, all the changes in emissions and removals must be accounted for…".

1316. This therefore means that all carbon should be accounted for in the calculations on climate change impacts. Many other authorities including all carbon when comparing project options are given in TCN evidence (see section 3.2.3 of TCN/1/2). In particular, academics take this view for waste treatment comparisons, as they assess the actual emissions over time and research their impacts.

1317. The key issues in the decision on whether or not to include all carbon emissions when making decisions on waste treatment options are the questions of timing of emissions and the response of the atmosphere to such emissions. The climate responds exactly the same to fossil and to non-fossil or biogenic derived CO₂.

1318. The IPCC does not include biogenic carbon when preparing national greenhouse gas inventories but, their purpose is to develop national inventories. For technology choices in waste management, the applicable system boundary is different, as these have a different purpose - that of comparing the complete impacts of different treatment options for a set amount of waste over a discrete amount of time. Ignoring what happens to biogenic CO₂ during a 100 year period can only be an acceptable way to proceed if all technologies behave in a similar way over this time period, and if society is not especially interested in the time profile of emissions. Neither of these is correct.

**Summary of greenhouse gas calculation**

1319. In the interests of providing useful and accurate information to the appeal, it was decided to provide the carbon balances for three options for the treatment of the 240,000 tpa of residual waste proposed.

**Options for waste treatment**

<table>
<thead>
<tr>
<th>Option</th>
<th>Main materials effect</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Incinerator (present application)</td>
<td>Destruction</td>
</tr>
<tr>
<td>2 Landfill “Do Nothing”</td>
<td>Disposal</td>
</tr>
<tr>
<td>3 Materials Recovery</td>
<td>Recovery</td>
</tr>
</tbody>
</table>

**Materials recovery option**

1320. The high materials recovery option is assessed, because the EU Directive 2008/98/EC on waste (see CD/H7) encourages the separate collection and
treatment of food waste. The Coalition Government is also flagging up an intention to “...introduce measures to promote a huge increase in energy from waste through anaerobic digestion...” (see appendix 56 of POC/0/3), as well as to work to being a zero waste economy. As separate food waste collection is likely to be required within a short time, regardless of any decision on the proposed incinerator, the high materials recovery route was investigated.

1321. TCN has explained that this route assumes separate collection of food waste and its treatment in dedicated AD plant, followed by composting. This is supplemented by treatment in several locations of the residual waste (208,000 tpa), via autoclaves to sterilise material followed by material separation and AD treatment of the organic matter, and then separate composting of residues.

1322. This method allows high reclaiming of materials for re-use, and some energy production to offset the plant emissions along with the production of soil improvement materials. Further technical details of this type of approach can be seen in the POC evidence.

1323. The impact on actual greenhouse gas emissions of each treatment option is summarised in the table below, following the full calculations in TCN evidence. This table shows that the landfill option is the only one with a net greenhouse gas balance which is positive i.e. a negative number, largely because of the carbon which is left in the ground trapped in plastics and other materials. The incinerator, on the other hand, by burning all of the carbon containing materials, releases that carbon into the atmosphere as CO$_2$ and hence provides an immediate and long lasting boost to local greenhouse gas emissions totalling some 109,000 tpa.

1324. The incinerator, option 1, releases 2.7 million tonnes CO$_2$e over 25 years from its operations, and compared to the landfill option releases an extra 4.7 million tonnes CO$_2$e over the same period, when including sequestered carbon. Even without consideration of the sequestered carbon the incinerator option has the highest greenhouse gas emissions, nearly two and a half times those of landfill.

### Emissions for each option tpa CO$_2$e

<table>
<thead>
<tr>
<th>Activity</th>
<th>Incineration</th>
<th>Landfill</th>
<th>High materials recovery</th>
</tr>
</thead>
<tbody>
<tr>
<td>Transport</td>
<td>6,671</td>
<td>6,671</td>
<td>3,757</td>
</tr>
<tr>
<td>Operational emissions</td>
<td>194,883</td>
<td>50,802</td>
<td>76,920</td>
</tr>
<tr>
<td>Operational avoided emissions</td>
<td>-80,884</td>
<td>-7,862</td>
<td>-7,060</td>
</tr>
<tr>
<td>Recyclates avoided emissions</td>
<td>-11,861</td>
<td>-31,255</td>
<td>-31,255</td>
</tr>
<tr>
<td><strong>Total excluding sequestered C</strong></td>
<td><strong>108,809</strong></td>
<td><strong>49,611</strong></td>
<td><strong>42,362</strong></td>
</tr>
<tr>
<td>Sequestered Carbon</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fossil</td>
<td>61,601</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Biogenic</td>
<td>64,797</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Total for all carbon</strong></td>
<td><strong>108,809</strong></td>
<td><strong>-76,787</strong></td>
<td><strong>41,386</strong></td>
</tr>
<tr>
<td><strong>Total for plant life 25 yrs</strong></td>
<td><strong>2,720,225</strong></td>
<td><strong>1,919,668</strong></td>
<td><strong>1,034,650</strong></td>
</tr>
</tbody>
</table>
1325. Both of the other options (2 and 3) provide much lower impact on greenhouse gas emissions while the materials recovery option also provides significant value in terms of more recycled materials for use and some local energy value.

1326. Even allowing for the uncertainties in timing of emissions in the landfill option, the fact that “every tonne of carbon emitted between now and 2050 counts” has a significant bearing on methods of meeting climate change targets.

1327. As the Landfill Directive requires an increasing move away from landfill, this greenhouse gas emissions assessment indicates that the most environmentally sensitive option for the residual waste treatment would be the high materials recovery option. Section 5 dealing with alternative options looks at this in more detail.

1328. Whilst there is some debate about including sequestered carbon in the calculation, on balance it is fair to include it, as this is a calculation about relative performance of three options for treatment of 240,000 tpa of residual waste for 25-30 years only. As the sequestered carbon would otherwise be released, it is included in the calculation for this project evaluation.

1329. PPS1 Supplement: Planning and Climate Change states that climate change is a material consideration. Planning authorities are required to prepare spatial strategies and make planning decisions which “secure the highest viable resource and energy efficiency and reduction in emissions”.

3.2B Rebuttal and cross examination

1330. Mr Aumônier in paragraph 48 of his rebuttal (see SITA/2/6) suggests that the calculation made in WS2007 quoted by him is not consistent with the outcome of the calculations presented in TCN evidence. This is not surprising as the WS2007 numbers are not directly comparable to those presented by TCN. WS2007 indicates a saving of 372kg CO2e per tonne of MSW diverted from landfill into a wide range of other treatments, with no specific breakdown of percentages for each treatment option. TCN believes that this misconstruction undermines his criticism of the TCN calculations.

1331. Mr Aumônier then goes on to criticise the methodology chosen by TCN for assessing the actual greenhouse gas emissions from the three treatment options. This is to be expected, as to agree with the TCN methodology would destroy one of the main planks on which the case for the proposed incinerator has been built.

1332. TCN recognises that policy support for incineration does exist, and that biogenic carbon should not be taken into account in the preparation of national greenhouse gas inventories. Mr Aumônier was incorrect in his belief that TCN made a methodological error in its preparation of a set of greenhouse gas inventories for the proposed different treatment options.

1333. This is not what TCN has done. The argument has been repeated above and can be clearly seen there. The TCN method compares the actual total greenhouse gas emissions from each of the three options assessed. This is an appropriate method for determining, for a specific project, which of several options has the lowest greenhouse gas emissions from a set weight of waste over a set period of time. The waste project has a very different boundary of study from a national or even regional greenhouse gas inventory. To leave out any of
the actual greenhouse gas emissions from this calculation would result in inaccuracies and potentially a significantly different and incorrect result.

1334. A key issue here, ignored by the appellant, is that every tonne of carbon emitted between now and 2050 counts. Therefore, it is vital to reduce the greenhouse gas emissions from all activities as much as possible, especially for the next 40 years during the target reduction period, so that the global warming impact of Cornwall’s waste treatment can be minimised in practice, not just in theory.

1335. During cross examination Mr Aumônier agreed that “climate change is the most pressing environmental concern of our time.” He did not however seek to understand the difference between CO2 released immediately from the proposed incinerator and emissions spread out over a long time period for buried materials such as plastics. He was not prepared to speculate on timescales. He was not surprised that some polymers will survive for hundreds of years without degrading but they will all ‘degrade over time – the carbon will be emitted at some stage in the future’. This may be over ‘hundreds or thousands’ of years. It is ‘better not to put CO2 into the atmosphere at all’.

1336. This equating of immediate CO2 release with much longer term releases appears to TCN to fundamentally misunderstand the nature of the climate change problem, where policy is now focussing on reducing emissions immediately and as fast as possible.

3.2C Conclusions

1337. The main point of difference between TCN and the appellant is in the treatments of biogenic and fossil carbon in the greenhouse gas emissions calculations for each approach to waste treatment.

1338. The appellant argues that, as the IPCC guidelines state that for greenhouse gas inventories the biogenic carbon element of greenhouse gas emissions should be noted but not counted as emissions, therefore this proposal should follow the same guidelines.

1339. TCN argues that the proposal is a project and that the greenhouse gas emissions calculation, requiring a different system boundary to an inventory, is presented as a comparison of differing methods of treating a specific amount of waste, over a specific period of time. Therefore, the fate of all the carbon and all actual greenhouse gas emissions should be included in the calculation. To do otherwise is not providing an equitable comparison of the different treatment options.

1340. From the above analysis it is clear that the proposed incinerator does not meet the requirements of climate change and sustainable development policies to reduce greenhouse gas emissions.

3.3 PROPOSAL NOT COMPLIANT WITH OTHER POLICIES

1341. As has been determined by the Advertising Standards Authority, following a complaint from POC, the proposed incinerator cannot be labelled as sustainable development. TCN cross examination of Mr Greenwood, revealed a long list of issues relating to sustainable development where the proposed incinerator falls far short of key principles.
1342. This PPS has five main principles within which planning decisions are to be made and these were tested for the proposed incinerator with Mr Greenwood. TCN questions on PPS1 were against his Proof (SITA/10/2), which indicates the appellant’s view of how they meet the principles of PPS1. TCN completely disagrees with the appellant’s view on this.

1 Living within environmental means

1343. Mr Greenwood expressed the view that the proposed facility did fall within environmental limits as the appellant views the greenhouse gas emissions as lower than the TCN calculation shows them to be. He was unable to answer the charge that the proposed plant exceeds these limits by virtue of its increased greenhouse gas emissions amounting to 2.7 million tonnes over 25 years, or 62% of the time between now and 2050, when greenhouse gas emissions have to be reduced by 80%.

1344. Incinerating materials is lower in sustainability than high materials recovery options. As such, it does not meet the first principle, which Mr Greenwood answered by referring to PPS10.

2 Ensuring a strong healthy and just society

1345. The increased stress levels and potential for increased pollution inflicted on the local people of St Dennis and Treviscoe by the proposed incinerator was not an issue for the appellant as Mr Greenwood felt that the planning system dealt with such issues.

3 Achieving a sustainable economy

1346. Mr Greenwood stated here that the use of the bottom ash as replacement aggregate reduces demand on natural resources. This would be true if the bottom ash contributed to unmet demand. However the presence of hundreds of millions of tonnes of unused clean aggregate in the CCA, immediately adjacent to the proposed incinerator, seems to have escaped the appellant’s attention. Such a demand does not exist.

4 Promoting good governance

1347. After questioning on this TCN was still mystified as to how the imposition of the proposed incinerator could be construed as good governance. The mention of the Site Liaison Group only provoked derisive laughter from the local people attending that day. Details of why are given in PC-STIG’s evidence.

5 Using sound science responsibly

1348. Mr Greenwood was not familiar with the scientific evidence on climate change and so could not comment on the need to take account of this issue, nor on how to use the precautionary principle, for example how not to harm the local SACs. He was not aware of the UK Sustainable Development Strategy, which requires policy development and implementation to take account of public attitudes and values. Nor was he aware of the 994 individual objections and two letters in support of the original planning application, of which one was from the WDA.
1349. TCN believes that he had no grounds for considering the incinerator to conform to the principles of sustainable development, even though this PPS was detailed in his Proof (SITA/10/2).

**PPS1 Supplement: Planning and Climate Change (CD/E3)**

1350. Mr Greenwood claimed in his evidence that the proposed incinerator met the principles of the PPS1 Supplement: “Planning and Climate Change” as it would provide renewable electricity, thus saving on fossil fuel burning.

1351. He agreed that the purpose of this PPS is to use the planning system to encourage the reduction of greenhouse gas emission in line with climate change concerns. However the actual greenhouse gas emissions (as has been shown in evidence and above) are significantly higher with this proposal than any other scenario for local waste treatment.

1352. The implication of this either has not occurred to the Appellant’s witnesses, or they are unable to recognise its significance. TCN believes that this may be a case of, to quote Upton Sinclair, ‘it is difficult to get a man to understand something, when his salary depends upon his not understanding it’.

1353. The fact is that the proposed incinerator cannot assist in any of the Key Planning Objectives of the PPS1 Supplement. It does not:

- ‘Make a full contribution to delivering the climate change programme’ - It increases greenhouse gas emissions rather than decreasing them.
- ‘Secure the highest viable resource & energy efficiency & reduction in emissions’ - It unnecessarily burns at least 130,000 tpa which could potentially be recycled, it has low energy efficiency with over 90% of the heat going to waste, and it dramatically increases emissions of both greenhouse and local acid gases.
- ‘Make the fullest use of sustainable transport & reduce the need to travel’ - Placing a single centralised incinerator with the highest possible mileage for waste transport in a location where rail is not practically available does nothing to meet this principle.
- ‘Conserve and enhance biodiversity’ - Placing an incinerator next to SACs with some of the rarest habitats in the UK, where vulnerable species are very likely to be negatively impacted by the acid emissions from the proposed plant, does not contribute to biodiversity. The Council provides strong evidence on this topic.
- ‘Reflect the development needs and interests of communities and enable them to contribute effectively to tackling climate change’ - Increasing local greenhouse gas emissions by 145,000 tpa CO$_{2}$e, which the witness was not aware as being double the Council’s own emissions (including waste treatment) at 70,000 tpa. It would not be possible for the Council to meet its own targets for reducing greenhouse gas emissions should this incinerator be developed, as that would lead to local greenhouse gas emissions from the Council and the facilities in which it has an interest, being three times its present level (70k + 145k = 215,000 tpa). This would render the local community unable to tackle its emission levels.
- ‘Respond to the concerns of business and encourage competitiveness and technological innovation in mitigating and adapting to climate change’ - Despite questions on this topic it was not made clear how using old, tried and tested technology (as noted in Mr Greenwood’s evidence) would contribute to innovation in mitigating climate change. Nor was it clear how
the potential for predatory pricing from the proposed incinerator operators, with their high levels of grant aid, preferential rates of bank loans and guaranteed income for 25 years, would help with local business competitiveness.

1354. Mr Greenwood tended to answer all questions by reference to PPS10, which did not lead to much clarity on the issues of this particular PPS supplement. In concluding this section, TCN draws reference to the section on determining planning applications, para 39:

- “...Where proposals are inconsistent with the Key Planning Objectives set out in this PPS, consideration should be given to how proposals could be amended to make them acceptable or, where this is not practicable, to whether planning permission should be refused...”.

**PPS4 Planning for Sustainable Economic Growth (CD/E20)**

1355. The definition of sustainable economic growth in PPS4 is growth that can be sustained and is within environmental limits, but also enhances environmental and social welfare and avoids greater extremes in future economic cycles.

1356. When assessing the proposed incinerator against the Key objectives of PPS4 TCN concludes that:-

- prosperous communities around the incinerator would not be possible as they are and would be blighted as shown by STIG;
- the proposed incinerator does not reduce the gap in economic growth rates with England, as it would minimise the chances of local firms developing businesses in recycling & remanufacturing, through the local threat of predatory pricing;
- the incinerator would increase the need to travel both by its staff and by increasing the mileage travelled by waste for treatment, particularly compared to a decentralised high materials recovery solution;
- the incinerator would not promote vitality and viability in the local community centres as is well shown by STIG and others; and,
- it is the same for the other key objectives of PPS4.

1357. Further, in the assessment against page 17 of this PPS, the requirement ‘is to assess whether the proposed development has been planned over the lifetime of the development to limit CO2 emissions’. It is clear from TCN’s evidence that this is not the case.

1358. From all the evidence and discussions on the proposed incinerator TCN submits that it is clear the proposal does not meet the definition of sustainable economic growth, in any of the key principles.

**PPS10 Planning for Sustainable Waste Management (CD/E6)**

1359. When questioned about PPS1, PPS1 Supplement: Planning and Climate Change and PPS4 Mr Greenwood mainly referred back to PPS10, presumably assuming that this would provide the key answers. However the PPS1 Supplement: Planning and Climate Change clearly states that where there is any difference between itself and other PPS documents on climate change, that it takes precedence (page 1). Therefore the Key Planning Objectives of PPS10 as noted below need to be weighed in that light.
1360. The Key Planning Objectives of PPS10 are:-

- ‘To help deliver sustainable development through driving waste management up the waste hierarchy, addressing waste as a resource and looking to disposal as the last option, but one which must be adequately catered for’
  - Does not move up the waste hierarchy (see section 3.1)
  - Does nothing to increase recycling of materials, in fact some sectors have lower levels of recycling assumed in 2020
  - Seems to assume disposal not recovery (see 3.1) is the first option
- ‘To provide a framework in which communities take more responsibility for their own waste, and enable sufficient and timely provision of waste management facilities to meet the needs of their communities’
  - Takes responsibility away from communities by not allowing the process of a properly consulted upon WMS
  - Takes responsibility away from local communities by centralising to one large incinerator divorced from all communities except one, which it will tower over (see STIG evidence)
- ‘To help implement the national WMS, reflect the concerns and interests of communities, the needs of waste collection authorities, waste disposal authorities and business, and encourage competitiveness’
  - Does not meet WS2007 in either recycling targets for 2020, or in recovery targets, and would not meet any higher targets either
  - Does not reflect the interests and concerns of communities as is shown by the major involvement against the proposal over a wide area
  - Does not meet the needs of local business for work in recycling development because of the threat of predatory pricing

1361. TCN are unable to see how the proposal meets any single one of these requirements in spite of Mr Greenwood’s claims that it would.

1362. TCN concludes that the proposed incinerator is far removed from any of the key principles in any of these PPSs and therefore does not fall within the category of an appeal which could be accepted.

4 Technical case flawed

4A ARGUMENT FROM TCN’S EVIDENCE

4.1 Objection

1363. The technical case on which the choice of an incinerator was made is unsound and has been so since 1999. Later work has just compounded this original set of errors.

1364. The process is also flawed in the lack of community involvement leading to the present point in the incinerator proposal.

4.2 Why this matters

1365. If the technical case is flawed it cannot be relied upon for the decision in this public inquiry.

1366. The Government prescribed process is meant to be an open transparent and defendable method by which these technical choices are made. If it is not, any decision to go ahead will lack public acceptance.
1367. There is substantial policy and guidance on stakeholder participation and community involvement. It is a core theme of PPS1, PPS11 and PPS12, as well as being the subject of a specific guidance document, Community Involvement in Planning: the Government’s Objectives.

4.3 Evidence

1368. TCN showed in its evidence and outlines here the long list of reports promoting this proposed incinerator, with an indication of their flaws in argument, arithmetic and fact.

1369. 1999 BPEO and 2001 reports (TCN 04/1 and TCN 04/5). In these first two reports for Cornwall County Council, there are significant errors of bias, fact and arithmetic, particularly on the choice of technology options to assess, and in the AD assessment. The errors include halving the AD gas produced, giving the AD methane production emission values the same as landfill despite the burning of the biogas to CO₂, bypassing the AD plant to landfill significant material disregarding the front end treatment plant installed in the modelling assumptions etc. These errors are large enough to change the conclusions reached by the reports.

1370. The TCN evidence shows the many major flaws in the BPEO report which are large enough to invalidate the conclusions of the report. These include its erroneous results on AD which make it appear commercially unattractive and hence not considered further. Similar faults occurred with the 2001 report, which looked only at landfill, 31% recycling, and incineration. Again the answer falls out of the question.

1371. The WLP (CD/D5) was based in the unsound, incomplete, error ridden and secretive BPEO noted above. Unfortunately at this time, there was little awareness in the community of the importance of this report, which escaped serious scrutiny at that time, although the Inspector was aware of how difficult it was for local objectors to present evidence on these issues (TCN 04/8). Shortly after the WLP was accepted, the Government changed the assessment method as BPEO was not defendable and the Cornwall report had shown how easy it was to achieve a pre-determined answer. The question is raised as to the validity of the WLP given these factors:-
   o major flaws in BPEO
   o no WS prepared even though requested by Inspector
   o Government then changed methodology as BPEO not defendable, and
   o WLP now overtaken by many higher level policies.

1372. At appeal, it has been found on several occasions that there had been no realistic BPEO assessment and that a proposal for incineration with little recycling would almost certainly not form part of a BPEO.

1373. A number of features of BPEO assessment, which are relevant to this appeal are:-
   • WS 2000/PPG10 states that the BPEO approach should be comprehensive, flexible, iterative and transparent; and, local environmental, social & economic preferences are important in any decision. BPEO is the outcome of a systemic, consultative and decision making procedure.
   • BPEO analysis can be criticised for numerous faults which show no comparison of costs or performance of different options, which objectives take priority over others, nor give local weightings. Lack of consideration of smaller facilities
more closely related to centres of waste arisings, and less reliance on incineration under later EC policy.

1374. A quick look at the cover of TCN 04/1, the first BPEO report will show that this report was kept restricted-commercial for a number of years. In fact it was over six years before any copies were released, thus proving by default that no consultation was undertaken on this BPEO.

1375. In the Kidderminster incinerator appeal the Inspector found that there had been no realistic BPEO assessment in that case and the proposal for incineration with very little recycling would almost certainly not form part of a BPEO. In that case the developer’s attempt at BPEO analysis was criticised for:-

- no demonstration of the extent to which one objective is sacrificed to achieve another
- no comparison of the costs or performance of different options
- not giving numerical weightings to relevant factors in line with their local significance, and
- no proper consideration of social acceptability.

These comments are relevant in the present case.

1376. 2006 An assessment of options for the management of residual municipal solid waste in Cornwall. (TCN 04/9) This report used WISARD to assess options in the PFI tender process. However this model preferentially benefits incineration over recycling in most of its parameters and their chosen metric, as shown in TCN’s evidence Section 4.3.6. This approach has been criticised in AEA Technology work (TCN 04/10), where its deficiencies are enumerated.

1377. One example on the transport impacts shows the biases in action, where several options score within 3% of each other, but the ranking scheme dramatically widens the gap, to increase the apparent differences, disregarding the fact that 3% is within the margin of error in these assessments. Independent PhD work on the Cornish waste system showed that savings of 47% on transport and operational costs can come with decentralisation (TCN 04/11). Equally the report is inconsistent in its application of stated principles, generally in favour of incineration and away from other options such as MBT, which would otherwise score highly.

**Evidence and rebuttal for 2008 - WRATE reports**

1378. 2008 WRATE reports and their peer review (Section 4.3.7 CD/A2 and SITA/2/3 Annex L). Although these reports use WRATE which is a later model for assessing project options, the same approach to parameter choices and their metrics is used as in the earlier WISARD model.

1379. Generic problems with WRATE include its inability to properly value:-

- increasing soil organic content
- carbon sequestration
- balancing biogenic carbon emissions not made, with fossil carbon emissions
- local considerations
- waste reduction policy achievements

1380. See Section 4 of TCN’s evidence for the reasoning and authorities. The task of computer models which aim to use Life Cycle Assessment is to show all impacts of each option over the life of the plant being considered, this is not done by
WRATE. Table 4.3.4, shown below from the TCN Proof shows the default categories and the high proportion of decision parameters favouring incineration.

1381. Any assessment of these categories will show that the Kidderminster Inspector’s comments on that BPEO are relevant here, as apart from the faulty attempt in the 2008 reports to show the relative costs and performance of the different options, the other elements required by the Inspector then are not present here either. There is no demonstration of the extent to which one objective is sacrificed to achieve another and no weighting of relevant factors in line with their local significance. No doubt the appellant would argue that the local significance and consideration of social acceptability are not matters for the WRATE analysis. Whilst this is so in its present structure, equally there is no other location in the appellant’s case where these formal processes have been undertaken.

1382. The appellant at the last minute commissioned an independent peer review (SITA/2/3 Annex L), following repeated requests from TCN for full details on the model, its assumptions and how it was used in this application. This review showed significant problems with the WRATE assessment carried out by ERM. Some of the recommended re-modelling was carried out but not all. In addition TCN has identified other issues which indicate low validity for the results. In summary the issues are:-

- EA identified errors in several default processes
- varying calorific values used - increasing the calorific value by some 13% significantly favours incineration
- transport savings under-reported - ERM only assessed numbers of incinerators not a decentralised approach, a full assessment would yield savings of >40%, see TCN’s notes on PPS10 and TCN 04/11
- high metals recovery for incinerator and low for other options - the Reviewer notes that WRATE is relatively sensitive to recycling rates
- higher energy efficiency for incinerator than the EA permit application
- low air pollution residues for the incinerator option
- low quality default MBT + AD option, with incorrect use of fibre, compared to high efficiency incinerator option chosen as model facility
- bias against MBT + gasification, with bottom ash incorrectly treated compared to incinerator and a bias against delivery issues

1383. These analyses show the inbuilt biases in the WRATE model and its present use towards incineration and against high recycling options. This set of biases show that the results cannot be relied on and the WRATE model results should be given no weight in this inquiry. Mr Aumônier however claimed in cross examination that the WRATE model is not biased. TCN disagree with this claim and the list noted above shows the basis of this disagreement.

4 B REBUTTAL AND CROSS EXAMINATION

1384. Mr Aumônier’s rebuttal (SITA/2/6) makes the statement in passing that AEA Technology in their work for the EC on greenhouse gas emissions contrasts with their other work for Cornwall at the same time, where in the EC work they acknowledge the lower net greenhouse gas emissions from AD and for the other, reject AD for Cornwall.

1385. Mr Aumônier states that the “options appraisal is not intended to prove beyond doubt that the CERC is the best possible solution for Cornwall – it is to
demonstrate the nature, scale and direction of its impacts and benefits, and those of competing solutions”.

**Decision parameters in WRATE and what they favour**

<table>
<thead>
<tr>
<th>Decision parameter</th>
<th>Measuring parameter</th>
<th>Favours</th>
</tr>
</thead>
<tbody>
<tr>
<td>Abiotic resource depletion</td>
<td>Mainly by replacement of fossils fuel for electricity, some allowance for recycling</td>
<td>High electricity production or high materials recycling</td>
</tr>
<tr>
<td>Global warming potential</td>
<td>Replacement fossil electricity production, no biogenic carbon allowance</td>
<td>High electricity production</td>
</tr>
<tr>
<td>Human Toxicity</td>
<td>Mix of emissions impacting human health, scientifically uncertain</td>
<td>Favours emissions to one medium only i.e. incineration</td>
</tr>
<tr>
<td>Freshwater aquatic ecotoxicity</td>
<td>Emissions to water Scientifically uncertain</td>
<td>Favours options with low water emissions i.e. land based ones e.g. incineration</td>
</tr>
<tr>
<td>Acidification Eutrophication</td>
<td>Acid gases from combustion Leachate from landfill and land treatments, no allowance for reduced fertiliser use when composts used on land</td>
<td>High materials recovery Incineration</td>
</tr>
</tbody>
</table>

1386. Mr Aumônier then proceeds to state that the TCN evidence shows that other options are not “realistically achievable”. He does not go on to defend or elaborate on this statement however, so it can be safely ignored as a throw away line. That he has not taken sufficient time to digest the TCN evidence is suggested by his claim that TCN “would have us believe that an alternative option is the best”, when TCN’s evidence presents a range of alternative options which are better in several ways than the proposed incinerator, and which are both realistically achievable and being implemented by SITA and others, in other locations in the UK and elsewhere.

1387. The Aumônier rebuttal (SITA/2/6) infers that a main reason for preferring AD over incineration would be the soil carbon sequestration benefits. These, they dismiss as being short term i.e. years to decades. However in the context of the Climate Change Act and Government statements that between now and 2050 every tonne of CO₂ emitted counts, this is not a negligible benefit to be thrown away in pursuit of instant and increased CO₂ release via incineration, a point which has been missed by the appellant.

**WRATE analyses**

1388. As ERM were involved in the development of the WRATE model, it is hard for them to accept any criticism of its faults, and Mr Aumônier explicitly stated “I do not believe there is any bias in WRATE”. The use of the WRATE model is defended in Mr Aumônier rebuttal SITA/2/6 by attacking TCN’s Proof through a discussion on the use of composts and their value in carbon sequestration and the need for quality control. Mr Aumônier also seems to believe that there will not be separate collections of food waste in Cornwall at the present time, so
therefore the twenty five year plan which the incinerator represents is the only possible outcome.

1389. The other defence given in the rebuttal is that the Options Appraisal was not attempting to prove beyond doubt that the proposed incinerator “is the best solution for Cornwall - it is to demonstrate [what] the nature, scale and direction of its impacts and benefits, and those of competing solutions, might be”.

1390. TCN does not accept his logic which is faulty on several counts. Specifically as Mr Aumônier agreed in the discussion on greenhouse gas emissions, climate change is “the most pressing environmental concern of our time”. It is therefore important to minimise greenhouse gas emissions from any proposed plant for waste treatment. However, his logic for dismissing the option of carbon sequestration through soil conditioners from AD plant was that the carbon would be released over years or decades. This contrasts with incineration which releases more greenhouse gas emissions immediately. This issue is covered in more detail in TCN Section 3.2 greenhouse gas emissions and Section 3.3 non-policy compliant.

1391. The point has been ably made several times, by Mr Roger Miles for the Council that the Options Appraisal was carried out over a year after the decision on technology choice was made. Mr Aumônier agreed that the WRATE work for the options appraisal and number of facilities assessment was carried out after the event. He explained that even if the outcome had been against the incinerator, that “SITA would have persevered”.

4 C WHERE TCN ARGUMENTS DIFFER FROM APPELLANT

1392. The appellant’s case would appear to be that because ERM helped to develop the WRATE analysis and the EA takes this as a standard tool, therefore the work they have carried out for this proposed incinerator must be good quality.

1393. However TCN disagree with that approach and require that all work is assessed for quality, inbuilt bias and inaccuracies. TCN has found many issues with the WRATE analysis, which appear to continue the centralising approach adopted over a decade ago when the first flawed BPEO was carried out for Cornwall.

4 D CONCLUSIONS

1394. The analyses given here for each of the reports from 1999-2010, shows a consistent picture of:-

- errors are ignored where they reduce the value of non incineration options
- specific errors against AD are repeated through several reports
- unsound earlier reports were used as decision tools for later analyses, without any questioning even with obvious and large arithmetical errors which would change the conclusions
- modelling structures which consistently undervalue the benefits of materials recovery compared to materials destruction by incineration

1395. The most recent reports are equally unsound with use of a computer model which consistently undervalues non-incineration options, and over values the incineration approach. Even ERM are content to state that the WRATE analysis does not aim to prove that the incinerator is the best option and they agree that it was a post hoc analysis. As the Council witnesses have pointed out, such an analysis can have little weight.
1396. This series of unsound reports indicates that the WRATE analysis, which aims to show that the proposed incinerator is the “best” option, clearly does no such thing and should therefore be given no weight in the present inquiry.

5 Alternative options

5 A ARGUMENT FROM TCN’S EVIDENCE

1397. There is no pressing need to accept the incinerator proposal as there is a range of other options either under development in Cornwall or available in the marketplace ready for adoption as required.

Decentralised waste treatment activities in Cornwall

1398. There are already significant commercial activities in Cornwall directed to the development of waste treatment facilities on a decentralised basis, under present planning policies, as TCN’s evidence shows. TCN has demonstrated that the incinerator proposal is the one out of step with policy, being by definition a centralised technology. A logical conclusion is that it is the appellant’s technology choice that is at fault, not planning policies and their direction of travel.

1399. The Hallenbeagle BioPark, near Redruth was described in evidence and witness statements from Russell Dodge of Hallenbeagle Estates (TCN/4/2). TCN has showed how this project has made significant progress towards obtaining planning permission for an integrated C&I treatment plant, to treat 100,000 tpa, including separation, and a gasifier/pyrolysis unit. This project has progressed to a Framework Document in conjunction with the Council from the draft presented to the inquiry (TCN 05/1 draft, TCN 04/2). The most recent letter, requested by the Inspector, shows the positive approach and actions of the Council in progressing this important project for Cornwall, leading to an expected positive policy decision on the Framework in December 2010.

1400. Mr Dodge also noted the early progress being made in Roche in central Cornwall with a similar project with a similar planning background, which could be developed with a similar technology mix, about one year behind Hallenbeagle.

1401. This shows serious progress already underway in Cornwall for:-

- local treatment for recycling and residual treatment of 200,000 tpa available for building by 2011-2012
- potential advanced thermal treatment totalling 64,000 tpa in two locations with planning by 2012, operational by 2013-14

1402. Other local actions described during TCN’s evidence include an anaerobic digester for 5,500 tpa food waste alongside pig slurry, and several food industry leaders investing in their own food waste recycling and recovery systems. These examples and others give a local capacity for nearly 20,000 tpa commercial food waste in Cornwall. Food manufacturing is one of the major industries in Cornwall, and with the packaging regulations now covering fillers of packaging as well as packaging producers, recycling is increasingly incentivised.

1403. The cost of landfill to local commerce and industry is now £130.50 per tonne (TCN/1/2 para 2.64). Recycling to a MRF would be less than a quarter of this cost and composting would be well under half the cost. No business person is likely to take the more expensive options such as landfill or the proposed
incinerator seriously when there are other choices, as the recent rapid progress in on-site solutions for local food companies shows.

1404. TCN’s evidence shows that local business is moving faster under the present planning policies to develop a decentralised range of waste treatment facilities in Cornwall than large facilities such as the proposed incinerator can possibly manage. This evidence also shows that local industry and entrepreneurs have the ability and skills to develop the needed waste recycling facilities at a local level without significant opposition or environmental concerns.

1405. The Need section showed that there is around 400,000 tpa of C&I arisings in Cornwall, although this is not a firm figure. Of this, some 43% is thought to go to landfill, including around 12% going to land recovery. The only fraction the incinerator could hope to capture is that presently going to landfill, around 173,000 tpa, before allowing for increased recycling, or some 80,000 tpa after commercially viable increases. This fraction is likely to be mainly industrial and not combustible.

1406. As the proposed Hallenbeagle and later Roche plant would be recycling C&I as well as providing residual treatment, they will be able to offer a more complete and efficient local service on the one site. This is therefore likely to be more attractive financially and in management time for local businesses.

1407. As noted in the Need Section of this evidence, a major driver for the commercial and industrial sectors is the cost of competing options for waste treatment or disposal.

Decentralised Waste Treatment Elsewhere

Surrey

1408. During evidence TCN discussed the situation in Surrey, where Surrey County Council have a PFI contract for residual waste treatment with SITA originally to install two incinerators and to develop a recycling/composting minimum of 46% by 2012/13, against MSW arisings of around 600,000 tpa. They have recently changed direction and are re-negotiating their PFI contract to increase recycling and install decentralised advanced thermal treatment (AD and a gasifier) for the lower levels of residual waste.

1409. The Council's original plans were based on achieving household recycling rates of 60% by 2020. Some districts have already managed this. Surrey is now aiming for 70% recycling by 2013. Surrey County Council has in addition concluded that their high recycling option will save significant costs, following advice from Deloitte. In their view the high recycling option will save over £200m over ten years compared to the present situation and is significantly the lowest cost option.

SITA elsewhere

1410. As TCN evidence and that of POC shows, in Australia, SITA adopt a higher recycling policy for their waste management contracts and offer a range of technologies including recycling, composting and combinations of MBT including AD and more recently gasifiers. They also operate successful MSW separation and composting plant. In the UK SITA are preparing AD plant, as well as developing waste projects with a gasifier manufacturer and have an agreement with an AD specialist for mixed MSW (POC 0/3 App 11).
Fichtner report (CD/01)

1411. As has been noted by Roger Miles for the Council, the Fichtner report had only a limited remit. Although purporting to be a review of available residual waste treatment options for Cornwall it was in fact a report, targeted at the WDA, covering three options which happened to be in the minds of councillors at that time. None of the three decentralised options considered had prepared full presentations for consideration by the Council and two of the three did not even know they were being considered in this review. In addition, Fichtner chose to assess a centralised option for each decentralised approach, which none of the project proposers would have agreed to if given the option.

1412. There are several critiques of this report, which has not found acceptance in any quarter except apparently the WDA for whom it must have been prepared. (TCN 05/9, 5/10). It is also worthy of note that the WDAP, for whom the report was apparently prepared, did not accept the report, as it had so many flaws. Some months later it has still not been accepted.

1413. This report should be disregarded as:-

- it does not cover planning issues
- it is obviously slanted in favour of a central incinerator
- it is not a review of technologies, only a limited view of some approaches, with so little work put into them by Fitchner that most “proposers” did not know their project ideas were under study
- it has not been adopted by the WDAP

Bankable decentralised technologies

1414. AD (see also evidence from POC): AD has achieved proven status, is in wide use for mixed MSW, and its use in the UK is growing. For example Global Renewables in the Lancashire waste PFI contract, has built two plants for separation and composting and AD for mixed MSW, which have achieved operational status in 2010, with a four year delivery from planning submission to plant operation (TCN 05/12). TCN sets out in its Proof of Evidence how other approaches to AD are also well proven through many plant operating in Europe and around the world, including with SITA in Australia.

1415. Composting of MSW: Composting of mixed MSW is a well-established and proven technology in several parts of the world. SITA use the technology in a number of their waste contracts. It is relatively low cost to build and operate as well as low GHG emissions, and it is also developing as a modern technology (TCN 05/12).

1416. Advanced thermal treatment: Energos and several other gasifiers are in use on MSW in several locations in Europe. Energos, as an example, have a good environmental record, verified, approved, and observable with 160,000+ operational hours and 650,000+ tonnes of processed waste.

1417. Other gasifiers/pyrolysis plant technologies are developing rapidly as was shown by TCN’s witness Mr Tom Petty from New Fuel Technology. He showed in evidence and cross examination, that this new company has a robust technology which is progressing through the due diligence and technology proving processes. He also showed how the company is attracting contracts and backing from a FTSE 250 company and others. He quoted the lower capital and operating costs
as essential elements in their technology’s progress, as this results in profitable
 gate fees at landfill tax levels.

1418. This low gate fee will enable pyrolysis technologies such as this to sweep the
 board shortly with smaller scale, nimbler projects at 20% or more below
 incineration gate fees which need to be over £100/tonne, as indicated by Mr
 Scanlon in cross examination.

5 B  REBUTTAL AND CROSS EXAMINATION

1419. Mr Aumônier’s rebuttal (SITA/2/6) appears to mistake the purpose of TCN’s
 evidence in this section, where he suggests that the TCN evidence does not
 preclude incineration. The main part of TCN’s evidence, in concert with the other
 Rule 6(6) Parties, shows how unsustainable incineration is, and that decentralised
 waste treatment, allied to high waste reduction and recycling activities, will have
 significantly lower environmental and financial impacts.

1420. Mr Aumônier seeks to subvert TCN’s preferred approach of high materials
 recovery by suggesting that long transport distances for recyclates to markets
 would more than counterbalance the benefits of recycling, by in part, reference to
 the Blaise Farm inquiry. He neglected to mention that this was an inquiry on bio-
 waste for composting. The key issue in environmental and financial benefits for
 transporting recyclates is the weight v value equation. Naturally it is important
 to restrict transport distances for heavy materials of low value, such as compost,
 but other more highly processed material of higher value, such as sorted plastics
 and metals, can retain environmental benefits with longer transport distances to
 recycling facilities. If it were the case that transport distances for recyclates from
 Cornwall were too long, then recycling would not be occurring now.

1421. Mr Aumônier’s first rebuttal (SITA/2/4) suggests he thinks the Options
 Appraisal is good enough to enable a fair dismissal of alternative technologies.
 However TCN has provided evidence as summarised in the previous Section 4 on
 the flaws in the WRATE approach to decision making. Not only is the model and
 its application for this incinerator appeal flawed, it is also out of date in its data,
 especially for the non-incineration options where the technology is advancing
 faster than for incinerators. This was admitted by Mr Aumônier in cross
 examination, when he discussed the reasons why the EA has recently produced a
 new edition of WRATE with more up-to-date information. The model analysis of
 deliverability for the alternative technology options is significantly behind the
 present situation, for example, as regards the regulations on the treatment of
 digestate and its beneficial use on land, on planning issues and on markets for
 outputs.

1422. TCN’s Proof, in conjunction with the POC evidence, provides an up to date
 appreciation of the more environmentally benign and bankable technologies now
 in use throughout the world, which TCN contends more than counterbalances
 their dismissal in SITA/2/2.

1423. Mr Aumônier contends that the choice of technology is a matter for policy and
 the Applicant, not for planning applications: this entirely misses the point that the
 characteristics and impacts of chosen technologies are at the heart of planning
 decisions.
1424. Mr Aumônier makes much of the slow progress in the past for non-incineration options for residual waste treatment in the UK, whilst ignoring major and salient factors:-

- These technologies are well developed and proven in other countries, including those with similar MSW streams to the UK.
- There has been a preponderance of the PFI contract as the main method of financing.
- The market for merchant plants in the UK is only just beginning.

1425. These factors have put major obstacles into the pathway of non-incineration technologies, because of the structure of the process required to obtain PFI credits and their matching financing mechanisms.

1426. He also finds a series of minor problems (para 78) that are easily resolved. For example:-

- The clean-up of biogas before the gas engine is standard practice in many sewage treatment works to remove the siloxanes which would otherwise deposit in the engine and reduce its lifetime & efficiency.
- The use of digestate in Nitrate Vulnerable Zones is also not an issue provided standard practice is followed, as it must be for all fertiliser application in most of Cornwall in any case.
- The issue of bio-aerosol emissions from composting is also a minor problem with regulated solutions including risk assessment where a proposed plant is closer than 250m from nearby dwellings. Most modern plant would be undercover with appropriate air control, so minimising any such issues.

1427. Para 78 in Mr Aumônier’s rebuttal contends that the majority of outputs from the alternative technologies are destined for combustion or landfill. However, he ignores the Options Appraisal he has carried out which did not suggest this was a problem for some of the alternative technologies, such as pyrolysis or gasification. AD of mixed MSW, as TCN has already pointed out, has a long and proven track record in Europe, where bio-waste is separated and goes as compost to land after AD and maturation. Residual MSW after AD and composting in the UK has to pass the mirror-entry test as detailed by POC in their Proof (POC 0/3 app 22), and can then be used on land as soil conditioner. This process has been carried out by SITA at Ellington, where MBT separated MSW is composted for sales in land reclamation, as noted in the POC Proof. Mr Aumônier appears unaware of the successful activities in this field of his client, the appellant.

5 C WHERE TCN’S ARGUMENTS DIFFER FROM APPELLANT

1428. Mr Aumônier states in his rebuttal SITA/2/6 para 71 that “the principle focus of [waste] policy is diverting waste from landfill”. TCN’s understanding of the principle focus is different in that the sustainability agenda is primarily about reducing environmental impact from waste treatment through a range of measures. A major tool for reducing impacts is landfill diversion, but this is a means rather than an end. WS2007 (CD/F1) states at the beginning “Our goal is to make the transition towards….One Planet Living...Reducing waste is an important contributor to this goal...Our aim must be to reduce waste by making products with fewer natural resources”.

1429. The appellant quotes at length from one of TCN’s references (TCN 03/16 page 42 - which was quoted for issues on greenhouse gas matters only) on the issue
of transport costs -v- the economies of scale, which suggests that higher efficiency in a central plant outweighs the extra transport costs of getting waste to the central location. However TCN differs significantly with the appellant in several respects on this:-

- The example is not relevant to Cornwall as the distances are incorrect for the size and shape of Cornwall.
- The proposed treatments in the quote are all incineration.
- The proposed incinerator for Cornwall is less efficient, than suggested in the quote, as it can only sell a small proportion of its waste heat, so this quote does not apply.

1430. As noted above there are capital and operating cost savings with the decentralised technologies especially when allied to high recycling and taking on board the system savings noted in TCN’s section on Need.

1431. The appellant fails to notice the financial and environmental advantages of high materials recovery options, and Mr Aumônier states in his rebuttal (SITA/2/6 para 74) that a decentralised approach is riskier than the single site policy they have adopted. TCN disagrees with this view and cites recent local successes in decentralised waste planning in Cornwall such as the AD plant at Penare Farm, Ginsters biomass plant, and the expected planning in December 2010 for the Hallenbeagle site, which is close to completing its acceptance as a Framework Policy. TCN suggests that this approach has a much higher “certainty of delivery” than the “massive site and big fight” approach of the appellant. Decentralised approaches are certainly quicker.

1432. Mr Aumônier prefers to denigrate the work already underway in Cornwall and makes some mistakes in doing so. For example he has mistaken the plant scale at Hallenbeagle and quotes its proposed intake as 32,000 tpa, rather than the accurate figure of 100,000 tpa. At this scale the Hallenbeagle BioPark is nearly half the size of the proposed incinerator, but contains a large sorting plant at the front end, so that much higher levels of recycling will occur and only true residuals will go to the pyrolysis plant.

1433. TCN will ignore Mr Aumônier’s derogatory comments on the other work underway in Cornwall, but merely point, as an analogy and by way of response, to the recent implementation by DECC of the Feed In Tariff to encourage large numbers of renewable energy installations at the micro-scale, as a major plank of its renewable energy strategy. The UK Renewable Energy Strategy (CD/E21) flags the Feed In Tariff in its first mechanism for delivering its Renewable Energy Strategy.

5 D CONCLUSIONS

1434. Mr Aumônier raises a valid point in that local waste management has to be relied upon for all wastes including all residual wastes. He is however somewhat behind the times in his understanding of the progress made in other technologies in Europe and around the world and even by his client, the appellant.

1435. That he is apparently not aware of this progress nor in the progress in solving the “problems” he raises for non incineration technologies, suggests that he is also out of date in his approach to the issue of deliverability and reliability of other technologies than incineration.
1436. There is significant progress in Cornwall already in the development of decentralised and high materials recovery options for local waste management as TCN has shown in its Proof.

1437. TCN contends here that there is enough progress in the provision of decentralised projects and allied to that, strong enough information on the financial and environmental benefits of increased recycling and reduced system sizing for the remaining residuals, to be sure that the rejection of the proposed incinerator would only be of benefit to Cornwall, as it would “free up” activity in recycling and decentralised treatment.

6 The PFI contract

SUMMARY OF THE PFI’S FITNESS FOR PURPOSE

1438. This forms TCN’s response to the request to submit views on the weight to be given to the PFI contract between the WDA and the appellant.

6.1 COMPLIANCE WITH DEFRA EXPECTATIONS

1439. The PFI process followed in Cornwall did not comply with several important issues as noted by DEFRA in their website (TCN/1/2 para 1.16). These are:-

- Assumptions by DEFRA that solutions would be heavily weighted towards recycling and composting, and including waste minimisation
- Proposals should incorporate and demonstrate extensive public consultation
- PFI contracts should support the local WMS

1440. It is clear from TCN’s evidence (particularly Sections 1, 2 and 4) that the Council has failed to follow Government guidelines on WS development, on increasing recycling as a major element of the PFI contract structure and to incorporate extensive public consultation. This assertion was not contested by the Appellant in cross examination.

6.2 RELATIONSHIP BETWEEN THE COUNCIL AND THE APPELLANT

1441. Before and during the inquiry it has been clear that conflict exists between the WDA, which supports the application, and the WPA, which opposes it.

1442. The appellant has sought, with the WDA’s support, to maintain that the penalty clauses in the PFI contract are such that only the incinerator option is viable. TCN/1/2 section 2.3.8 shows how the WDA prepare partial information for their Elected Members, with the effect that the Members see only very large costs in relation to trying to dispense with the PFI contract. As TCN shows in its evidence, there are other cheaper and quicker solutions open to the Council.

1443. TCN believes the WPA would state its position as being that this is a democratic decision reached by Elected Members of their own freewill and that the penalties described are simply one of many factors to be taken into consideration. If the appellant and the WDA are correct, it is feared that a planning issue might be settled on cost, not planning grounds.

1444. Theoretically the conflict within the Council should be resolved at Chief Officer level where the two functions come together in the management structure of the Council. The appellant has sought to characterise the correspondence between the Council and DEFRA at this level as resolving this issue in their favour (see letter of July 2010 to DEFRA from Mr Flanagan), which aims to keep the PFI
credits intact by supporting the incinerator option. This is of course only a partial story, as any organisation would wish to keep £3m pa PFI credits coming in for as long as possible, until its policy issues are settled one way or the other.

6.3 FACTORS AFFECTING THE EFFICACY OF THE PFI CONTRACT

1445. TCN believes that the PFI contract is not fit-for-purpose for the following reasons:-

- The only response to a successful move by the local authority to achieve higher recycling is by the contractor increasing the levels of C&I feedstock in the incinerator, or by taking feedstock from a wider area and greater distances.
- The need by the contractor to take increasing levels of local C&I arisings in an area such as Cornwall with few other choices would be to stifle local competition, through cost-cutting on a “supermarket pricing” model, until such time as market dominance is achieved. No local firms will have the resources to compete against such monopolistic behaviour.
- With the expected change to the definition of MSW to include more C&I arisings the lack of flexibility will have an even more detrimental impact on local recycling levels.
- It was clear from Mr Scanlon’s cross examination that the contractor will not only be able to raise its charges if operational costs rise, it will also not have to carry the risk when fuel prices increase. There is therefore no incentive to minimise lorry miles, directly in opposition to the aims of WS2007 to follow the proximity principle and to minimise waste management impacts.
- The contract incorporates no flexibility on technology choice, or on location. In a field where technology is developing rapidly, and where optimal locations may change, this is a serious drawback.
- TCN shows here and elsewhere in evidence that the approach taken through this contract has the effect of increasing waste management costs in Cornwall significantly above the costs of following a high materials recovery pathway.
- The choice of technology imposed by the contract was derived through a flawed process - as outlined in Section 4 of TCN’s evidence.
- The focus on the PFI contract has had the effect of stifling the development of the local WMS and any thoughtful approach to waste management. TCN believes that all parties are aware that a properly consulted upon WMS based on Sustainability Appraisal would reach a variety of decentralised, high materials recovery, solutions.
- The fear of losing the PFI credits has had the impact of disabling the minds of local Members when discussing future waste management plans in Cornwall, as can be seen in the WDAP minutes offered in evidence, where other conflicting information often cannot be understood if it impacts on the flow of PFI credits. This occurs even where there are net savings to be made through other choices in waste management.
- Major features of the PFI contract restrict the development of recycling in Cornwall, including the need on the Council’s side to provide feedstock (full details of this are still hidden in the closed sections of the contract) and lack of flexibility e.g. the appellant states no action on being requested to develop AD.
- The long timescale of the contract, 30 years, during a period of rapidly emerging technologies and policy and regulatory development renders it liable to become outdated long before the end of its natural span.
6.4 CONCLUSION

1446. TCN has long believed that the PFI contract has been an obstacle to building an effective, long term, durable and sustainable solution to the management of Cornwall’s waste stream. TCN has seen nothing in this inquiry to change its views and believes that the PFI contract should be given very little weight in the Inspector’s deliberations.

7 Balancing benefits and harms

1447. TCN believes that the reason that the incinerator option is still under consideration is that it superficially offers a simple single response to the challenge of waste management in Cornwall; and that it has been pursued with the single-minded ‘decide, inform and defend’ mentality of past eras. However this somewhat “macho-technology” approach whilst on the surface may appear to solve all our problems at a stroke, does in fact raise many questions and problems.

BENEFITS

1448. Benefits proposed are waste diversion from landfill for some time to come, and 48 jobs, with 16MW of electricity generation of which a small amount would be ROC-able, and sales of 8% of the surplus heat. There are also huge commercial benefits to the operator.

HARMS

1449. Set against this is a raft of harms which have been enumerated by the Council and the other Rule 6(6) parties. TCN concurs with their analysis on local issues and add TCN’s views on other local and on global issues of concern to TCN.

1450. Financial and commercial harms include the increase in costs for waste treatment for Council Tax payers and local businesses if the incinerator is built, compared to the local actions advocated in TCN’s Proof, of higher waste reduction actions, separate food waste collection, increased recycling, backed up by decentralised residual treatment technologies such as AD and pyrolysis, some of which is already under development.

1451. The appellant claims this approach is not deliverable, but TCN maintains that this approach is not only more deliverable, it is also less expensive to the Council and local business. In addition this decentralised approach allows local business to be in the business of waste recycling and residual waste treatment, rather than the passive recipients of services from external large companies. The decentralised approach is therefore better for the local economy as it reduces leakage. The incinerator approach is also contrary to local sustainable development which includes economic as well as social and environmental factors, and hence is contrary to PPS1, PPS4, PPS10 and others.

1452. Environmental harms include the likely death of Western Rustwort which is both rare and vulnerable as noted in detail by the Council and POC and in TCN’s cross examination, and increased dangers to other rare species in the SACs. This is contrary to the European Habitat Regulations and against the precautionary principle which should be applied in this case, because of the major uncertainties. As a minimum an appropriate assessment should be carried out.
1453. A major environmental harm, inflicted at a global level, would be an increase of actual greenhouse gas emissions from waste treatment in Cornwall. This increased emission is around 2.7 million tonnes of CO$_2$e over the 25 year life of the plant. This is not compliant with policy as noted in TCN’s evidence, especially the PPS1 Supplement: Planning and Climate Change which is a material consideration and requires to be given greater weight than other PPS documents.

1454. Nor is this proposed increase in greenhouse gas emissions compliant with the aims of the Coalition Government to be the “greenest government ever”. The requirement to reduce greenhouse gases by 26% by 2020 and 80% by 2050, enacted in the Climate Change Act 2008 is recognition of the serious and urgent nature of climate change. It is important therefore to include in all decisions relating to infrastructure, which will be in use for a large part of the next forty years to 2050, the Government statement “between now and 2050 that every tonne of carbon counts”. This in practice means that, unless there are no other choices, it would be hard to defend decisions which move infrastructure towards increasing greenhouse gas emissions.

1455. The harm of increased resource depletion would also be incurred by building this incinerator, as it would burn many materials which could otherwise be put to beneficial use by recycling. The burning of 240,000 tpa of material of which around 130,000+ tpa is potentially recyclable on present day practices provides a loss of over three million tonnes, over the proposed plant life, of materials which could otherwise be re-used. A resource depletion of this magnitude is a harm to the global commons.

1456. In conclusion, TCN respectfully requests that the Inspector, in developing his report for the Secretary of State recognises these major harms set against a low level benefits and so recommends dismissal of the appeal.

The Case for The Power of Cornwall

Introduction

1457. POC is a consultancy that provides integrated and holistic solutions for renewable energy, resource management and civil, structural and environmental engineering.

1458. POC has used the evidence brought by its witnesses and its cross examination of the appellant’s witnesses to prove the points raised in the POC Statement of Case (POC/0/4). The basis of POC’s Statement of Case was the material contained in Objection of Cornwall County Council’s (subsequently the Council) reasons for refusal of planning permission (CC/0/1). In particular the reference to lack of consideration of alternatives which give rise to lesser environmental impact.

1459. It is noted that due to changes in policy by the Coalition Government the draft RSS will not now be adopted. The manner in which any change to the weight accorded to the draft RSS will affect POC’s case is dealt with later. All other policies mentioned in the reasons for refusal are extant.

1460. In addition to the policies mentioned, by the application of evidence brought in to support Reason 6 there is a mechanism within legislation for considering alternative technologies, but this was not applied. The reasons why it should
have been applied are related to the balance between need and impact. If correctly applied, this would have resulted in a beneficial effect upon:

- Health
- Environment
- Air Quality
- Visual Amenity
- Traffic
- Global resource, Greenhouse Gas and Low Carbon Initiatives.

1461. A further choice had to be made between the use of one or more sites. This was also relevant for the above effects/considerations and was inadequately addressed.

1462. In addition to factors related to impact, POC also took issue with various documents from consultants that the appellant chose to use to support their case, because POC feels that they are flawed and distort the performance and viability of alternative technologies. This obviously affects the subsequent choice of technology used.

1463. POC's final consideration in putting forward its case was that the public had been prevented from exercising their right to influence the outcome of the planning process due to flawed or non-existent public consultation.

1464. It is recognised by all parties to the inquiry that the current reliance on the use of landfill for the management of residual waste is unsustainable, and must be addressed as a matter of urgency. Therefore there is a need. This inquiry has arisen because of a fundamental disagreement as to how the need is defined and how it is to be addressed.

**Evidence heard which points to shortcomings in the overall exercise of choice**

*Choice in relation to need*

1465. Evidence of Mr Scanlon in his main proof (SITA/1/2 page 4 point 3.4) states that need relates to the long term security of waste disposal because legislation and availability are driving disposal away from landfill.

1466. At 3.10 on page 7 Mr Scanlon says that in 2003, when discussions between SITA and the Cornwall County Council first started, choice of technology was still open. With regard to identifying the choice of the best technology to replace landfill, he says that the proviso is that it should be robust and proven. Mr Scanlon now clouds the issue by saying that these were the reasons why EfW was chosen. As with all other SITA witnesses, he is unable or unwilling to distinguish between EfW and mass burn incineration, which is but one form of EfW.

1467. Paragraph 5.39 of the WLP states:

"...EfW is a generic phrase covering a range of existing and emerging technologies which have been going through a period of rapid change. Such technologies currently include gasification/pyrolysis and AD. It is possible therefore that a new optimal method of EfW could emerge, although this is considered unlikely..."

EfW technology is not just incineration.
1468. Nowhere in Mr Scanlon’s evidence does he conclude that need has to be met by incineration rather than any other form of EfW technology.

1469. However, on page 15 at point 5.5 he indicates that choice was restricted to incineration (still referred to as EfW) because other systems were not robust or proven.

1470. Under cross examination Mr Scanlon admitted that SITA had entered into a close relationship with OWS Dranco with regard to the supply of large mixed waste MSW AD plants in Australia. He agreed that SITA had stated publicly in a Press Release submitted as evidence by POC (POC/0/3 Appendix 11) that AD was a robust and proven technology for dealing with waste currently being sent to landfill.

1471. Mr Aumônier, in his main proof (SITA/2/2) covers the same ground as Mr Scanlon, but in greater depth. He does this in points 3.2-3.5 on pages 7-8 of his proof.

1472. The conclusion is that need is concerned with moving waste away from landfill not that the need is for a mass burn incinerator.

1473. Mr Aumônier produced a table indicating waste arisings in Table 1.3 on page 5 of Annex C (SITA/2/3). These figures were supposed to show the predicted need for the proposed incinerator as likely in 2020, and indicated an increase each year. The table was drawn up in 2007, but actual figures since then have shown a downward trend. Mr Aumônier claims that this is just a blip caused by the current recession.

1474. Ms Larke in her proof of evidence for TCN (TCN/1/2), and also in her cross examination of Mr Aumônier showed that the downward trend started long before the recession and that Mr Aumônier’s figures were an overestimation. These figures did not take into account any effect from a concerted drive to improve recycling rates, which would be one of the major outcomes of selection of alternative technologies. This point was emphasised by Dr Trier in his evidence for POC (POC/2/1).

1475. Mr Greenwood devotes section 5 of his Proof of Evidence to need. This section can be found in SITA/10/2 pages 28 -31. Mr Greenwood also relates need to the necessity to move away from landfill. In addition he also adds the data to show the need in physical terms related to waste arisings. Mr Greenwood says that the documentation to support the planning application in terms of need can be found in the WLP, the unsubmitted WDF, and SITA’s own Need Assessment. All of these documents refer to an EfW plant, and do not indicate that any choice of technology has taken place. There is also no indication anywhere that consideration has been given to the use of choice to lessen the impact on the environment as a whole, while satisfying the need for a WMS to replace landfill.

1476. In the supporting statement to their Need Assessment (CD/A1) page 38 SITA state that need is definitively related to:
   a) legislation
   b) arisings
   c) value of recoverable material, and
   d) choice of site.
1477. In other words they do not address the need for there to be an assessment of the type of technology.

1478. However, in the Executive Summary of the SITA Need Assessment itself (CD/A2), Phillip Short stated that need will be met by the balance between increased arisings, and decreasing landfill, with the key position being governed by recycling and recovery targets.

1479. Several people have given evidence that this is an incorrect assumption because the arisings are decreasing rather than increasing, notably Ms Larke in her evidence (TCN/1/2).

1480. Mr Short is of the opinion that the best choice to produce the balance would be what he calls EfW, in other words mass burn incineration. He says this would be the only viable technology as the totals of MSW residuals were rising year on year, meaning that unless you burn the waste, Cornwall will be swamped.

1481. However, as other witnesses have shown, as recycling levels are increasing and contractors address increasing amounts of C&I, there will be less material for the incinerator, ensuring that its viability becomes even more marginal.

1482. Dr Jean Venables, giving evidence for POC (POC/1/1), explained why the demonstration of need is an important factor to be considered in planning.

1483. Ms Larke, in evidence submitted to the inquiry on behalf of TCN, provides a whole section devoted to consideration of need (TCN/1/2 Section 2.0). The gist of Ms Larke’s evidence is that there are two strands to need, i.e. the need to divert waste away from landfill, and the need to use methods to reduce waste that can potentially go to landfill. She reinforces POC’s argument that the amount of residual waste is falling year on year. She also points out that the incinerator will act as a disincentive to Reduce, Reuse and Recycle, the policies that will in themselves reduce need to landfill. Finally she indicates that Government policy is looking to encourage the need to be met by those same “Three Rs”. This is again a reinforcement of POC’s evidence given by Dr Trier (POC/2/1).

Choice in relation to IPPC Legislation. (Pollution Impact)

1484. In several places in their evidence various SITA witnesses quote statements to the effect that planning has no right to select one technology over another.

1485. This is quite correct, as far as it goes. However, there is a proviso, and that is that technologies can only be considered to have this “non-selective” status if they measure up to all the various parameters placed upon them. These parameters are largely related to pollution impacts.

1486. If we look at the factor of pollution as an impact, it must be remembered that this covers emissions to water, land and air. It must also be noted that this includes dust, noise and smell. All of this is covered by IPPC legislation, in particular the EU Directive 2008/1/EC which was produced as evidence (CD/H4).

1487. EU Directive 2008/1/EC is directly relevant for the following: -

1488. The overarching principle of the legislation is to prevent or at the very least minimise emissions to air, land and water from any waste facility. (Directive
Preamble sections (2) & (9) and Article 1). Confirmed in evidence by Dr Jean Venables (POC/1/1).

1489. That the function of the EA is to check whether the predicted emissions for the chosen technology are within the WID limits and is the lowest of the options selected for the BAT. The functions of the Competent Authority(ies) are laid out in Article 2 (8), confirmed in evidence by Dr Jean Venables (POC/1/1).

1490. That the consideration of the kinds of technologies to be compared in the BAT is outlined in the legislation and that AD falls within this. The Directive outlines BAT in Preamble (18) and defines it in Article 2 (3) a), b), c). Confirmed in evidence by Dr Jean Venables (POC/1/1).

1491. That the duty of the contractor, the Council and the EA is to enter into communication to make sure that a suitable range of technologies are considered by the BAT. This communication requirement is outlined in the Preamble sections (14) & (15). Confirmed in evidence by Dr Jean Venables (POC/1/1). In the opinion of Dr Venables, there is no evidence that she has seen that this consultation took place.

1492. That the Directive says that the key section of the Directive is Annex iv) is also found in Article 2 section (12). Annex iv) lists the factors which the BAT must address:
   a) In the BAT there is no comparison of the recovery of recyclates (point 3).
   b) There is no comparison with other technologies that have been successful on an industrial scale (point 4), only comparison with other very similar techniques.
   c) The BAT must take into account changes in scientific knowledge (point 5). There was no evidence that the BAT had considered the advances made in the efficiency of other technologies.
   d) The BAT must compare the nature, effects and volumes of emissions (point 6). The BAT did not take into account that incineration techniques produce large volumes of gaseous emissions while techniques which do not rely on combustion have a much smaller volume of emissions.
   e) There should also be a consideration of the length of time needed to introduce the technology (point 8). Incinerators take far longer to build than most other waste technologies e.g. about three to four times longer than AD.
   f) Finally in point 10 is the reiteration of the need to prevent or reduce emissions to the minimum.

Dr Venables gave evidence that none of these points have been considered in the BAT (POC/1/1).

1493. The other main point covered by the EU Directive was the need to ensure the community was actively involved in the determination process. POC could find no evidence that the public had been informed of the comparison between the emission levels of the various technology options, or of its relevance to future waste management. The need for this is stated in the Preamble section (24) and in Article 15.

1494. Dr Venables confirmed that from evidence contained within the core documents, no suitable consultation had taken place (POC/1/1).

1495. Evidence was brought forward to show that the Site Liaison Group was not a public consultation mechanism (POC/0/3 Appendix 7) and that the membership was heavily weighted in favour of SITA (POC/0/3 Appendix 4). This was
confirmed by Ken Rickard and other community representatives at the public session held at St Dennis (KR/1).

1496. Ken Rickard, as a representative of a local environmental organisation, also gave evidence that, contrary to EU Regulations, no assistance, either in terms of finance or information had been provided to his group to enable the public to be informed (POC/0/3 Appendix 6).

1497. This is required in the Preamble to the Directive in section (25). There are several parts of the actual process which POC believes give cause for concern and indicate that the conditions of Annex IV of 2008/1/EU will not be met. These have been raised in POC’s main Proof of Evidence, (POC/0/1) and during cross examination of SITA witnesses.

1498. The Environmental Statement (CD/A2) describes the method by which the bunker will be washed down and leachate will be collected. This is also the subject of a request for further information contained in CD/A13. The destination of the leachate is the contaminated waste water tank shown in the figure 7.2 on Page 7-10 of Volume 2 of the ES. It says in the accompanying note that excess water from this tank will be tankered off site for licensed disposal - in other words it is contaminated water.

1499. The bunker sump is also the destination for all wash down water from cleaning the tipping hall floor. Under normal circumstances a considerable saving in raw materials could be made by using this water for other similar uses, but it will become too contaminated by this method.

1500. POC are also not convinced by the methods indicated in response to a question in CD/A13 concerning methods to prevent unauthorised waste from entering the bunker. The method described suggests that a cursory examination will be carried out at the weigh bridge and any other inspection will be carried out by the crane driver situated some distance above the pit in his control box. From here he will be able to spot the offending item among thousands of other black bags and pick it from the pit for further inspection. This does not seem sensible or possible and does not comply with the regulation. It is hardly practicable. It should be emphasised that hazardous waste could release high loadings of pollutants from the stack.

1501. Another part of the process which does not seem to comply with at least two parts of the IPPC regulations is the ash handling plant. As a result of Mr Scanlon’s evidence which raised the issue of an ash treatment process by Ballast Phoenix, not yet described or presented for planning approval, POC are not sure that anybody understands the implications of bottom ash treatment. However, POC thinks that by looking again at figure 7.2 of the water use plan, the ash in the storage area will not be weathered but will be subject to continuous re-washing with process water. There is no indication in any plan of the site that drainage is built in to collect either the initial water draining from the ash, or from water sprayed over it. POC points out that this building is very close to the edge of the site, and any leakage would contaminate the adjoining land which has a water table only just below the surface. If this has been missed, what else has been missed?

1502. Ancillary to the IPPC regulations 97/11/EC (CD/H4) contains the section of the BAT legislation that relates to the duties of the local planning authority. Within this are the duties of the proposer of a project (in this case SITA) to complete an
Environmental Impact Assessment and Statement (This is contained in CD/A7-A10). Under the regulations 97/11/EC Article 5 (3) Point 4 The proposer must consider the effects of alternative technologies on the environment and explain how the choice of technology was made. Article 4 (1) and (2) makes it clear that this applies to lists of technologies in Annex I and Annex II of the directive. Thermal treatments of waste are contained in Annex I other treatments of waste such as AD are in Annex II.

1503. The Environmental Impact Assessment and Statement which the proposer has submitted, contains no justification for not including AD (an Annex II technology) in their consideration of choice, given that it is a technology they are familiar with, use elsewhere and meets the criteria of being both robust and proven.

1504. 97/11/EC Annex III (1) Bullet 2 States that the Environmental Impact Assessment must consider the environmental impact “cumulative with other projects”. POC interprets this to mean that the emissions from the power station, clay works, and the A30 By-pass should have been considered in total with the proposed incinerator in the EIA. It is obvious that they were not.

1505. 97/11/EC Annex IV (f) states special attention should be given to “Areas in which the environmental quality standards laid down in Community legislation have already been exceeded”. Work carried out by Mr Webb and mentioned in evidence (CD/K9) shows that the critical load values for SACs associated with this project, already have a background level that is 300 - 400% of critical load. The EIA contains no mention of this or what special attention has been given to it.

1506. In the opinion of Dr Venables, (POC/1/1) with reference to the Environmental Impact Assessment and BAT for the Costessey Project in Norfolk, (POC/0/3 Appendix 1) this was a good example of how the process should have been executed. Mr Phillips, for SITA, dismissed this because the Norfolk site was never developed for mainly logistical reasons. However, the point still stands that this is a very good example of an Environmental Impact Assessment. Material contained within the Costessey Environmental Impact Assessment produced evidence that there were a number of other technologies which had less environmental impact than incineration, and that the one which came nearest to the criteria of the EU Directive was AD, but this very technology was excluded from consideration in the appellant’s ES.

1507. For the above reasons POC believes that the application for the St Dennis incinerator does not comply with the requirements of 2008/1/EC and 97/11/EC with regard to BAT and EIA compliance.

1508. POC has taken this matter up with the EA and they are considering POC’s concerns.

1509. POC also drew attention to the regulations relating to the release of POPs as detailed in EU Document 1.209/3 known as the Stockholm Convention 2001. This has been submitted as document POC 0/3 Appendix 15. POC specifically draws attention to Part V (A) of Annex C.

1510. This lists measures to prevent the formation of POPs:
   a) The use of low waste technologies
   b) The use of less hazardous substances
   c) The promotion of recovery and recycling of waste and of substances generated and used in the process
d) “...When considering proposals to construct new waste disposal facilities, as part of the overall proposal, consideration should be given to minimising the generation of municipal and medical waste, enhancing waste separation, recycling, recovery and reuse, in parallel with promoting products that generate less waste...”

1511. POC can see no evidence that any of these measures have been applied.

1512. Part V (B) considers BAT, particularly “The need to prevent or reduce to a minimum the overall impact of the releases, (of POPs), to the environment and the risks to it”.

1513. The release of substances to air is controlled by the ‘APC’ system. The system will only work effectively if the correct dosing is applied in relation to the emissions from the substances being burned. To be in any way effective this requires the homogenisation of the feedstock.

1514. When asked for further information by the local planning authority on how the waste in the bunker would be mixed (CD/A13). The appellant stated that the black bags in the bunker would be mixed by stirring with the crane. The crane is fitted with a large grab on the end of a wire hawser. This would be totally ineffective and will lead to increased POP emissions because the APC system will not be able to accommodate the peaks created by the burning of hard plastic which is the main source of PCBs and other harmful POPs. The alternative is to overdose with APC chemicals and this has an equally harmful affects on the environment.

1515. Therefore POC do not consider that the proposed installation will comply with the POP regulations.

Choice in relation to visual impact

1516. As with other impacts, the difference between one site and multiple sites is a major factor. The following sections address the general implication, and leave specific consideration until the choice of number of sites is referred to.

1517. The major visual impact of incinerators in general is the fact that in order to disperse emissions to air, they require a tall chimney stack. In this case POC believes this would be the tallest incinerator chimney in the UK. As has been demonstrated on two occasions, using a tethered balloon, it will be visible from across a large area of central Cornwall.

1518. The associated buildings are large and high and are not in keeping with the general features of the surrounding landscape. At night there will be an impact from lighting both on the buildings and on the stack. All of this has been adequately documented in the evidence given by Ms Butcher on behalf of the Council (CC/5/2).

1519. When it was put to Mr Greenwood during cross examination by POC, that the image of Cornwall is of a place of golden beaches, beautiful public gardens and tourist attractions not to mention pure and wholesome niche food products, he agreed. When the point was made that the welcome that tourists would get on the way to Newquay, and all points west of Roche, was the sight of a 400 foot incinerator chimney close to the A30, he was unable to counter the assertion that its effect would be detrimental.
1520. Over the last 150 years the area round St Dennis showed the obvious impact of the China Clay Industry. The industry has introduced a continuous regeneration programme which has restored some of the countryside and this process will continue as the clay industry shrinks. The introduction of a new industrial impact in the form of an incinerator will totally derail the regeneration process, as far as the quality of life of the local people is concerned.

1521. With regard to alternative choices and visual impact, no other technology requires such large buildings and chimneys to deal with the same throughput of waste. This is largely due to the fact that incineration oxidises and gasifies the products. In the case of the proposed St Dennis incinerator over 71% of the waste is not accounted for in the fly ash and bottom ash and therefore escapes up the stack. The products of gasification and pyrolysis are not oxidised and therefore are easier to contain. More significantly, there are no combustion products from the AD treatment process. The only part which requires a stack is the exhaust from a CHP engine if this is the method used to produce the energy output. Similarly the buildings used by alternative technologies are also much smaller because, for example there is no need for an ash storage plant. The details of these arguments are contained within the main POC Proof of Evidence (POC/0/1).

1522. It is therefore POC’s conclusion that alternative technologies would considerably reduce the visual impact of such a waste plant and that this factor should have been considered.

Choice in relation to Environmental Impact

1523. The effects of direct impact on the environment associated with this plant not only concern the choice of technology, but also the choice of site. Dealing with the issue of technology, as previously mentioned, the majority of the waste stream ends up being vented via the stack. The exact distribution of the deposits from the plume is not known, because the meteorological figures were taken from a station about twenty five miles west north west of the site. Apparently, figures taken in a one year survey from St Dennis School, less than a mile from the site, have not been made available to anybody else except SITA. Thus it is possible to know what will come out of the stack, but not where it will land.

1524. This is very important when determining the effects on the SACs and SSSIs which are adjacent to the incinerator site.

1525. POC are particularly concerned about the fate of the Western Rustwort, especially as 2010 is Biodiversity Year. It does not make any sense to encourage the introduction of new species to increase biodiversity, if you are letting the most fragile ones drop off the other end. Western Rustwort is probably the rarest plant in the UK. It is the only UK Red Book species in Annex II.

1526. During POC evidence (POC/0/1) particular attention was paid to this plant explaining why it was vulnerable and quoting the only two world experts on this plant. David Holyoak, who last examined the St Austell Claypits III site in 2009, said that the site was unfavourable and declining and that Western Rustwort existed in only 40 square centimetres.

1527. The other expert, Ron Porley stated that, due to the way that Western Rustwort feeds and reproduces, deposition of chemicals onto the cuticle is likely to have a disastrous effect.
1528. During cross examination POC put these points to Mr Picksley who was the appellant’s nature conservation expert. Firstly POC pointed out that Western Rustwort did not take up nutrient through a root system, so the fact that it was already growing on an acid soil should not influence the matter. What would be of significance was the deposition of acids in droplet form on the cuticle of the primitive leaves. He was unable to disagree with this point.

1529. He pointed out that the calculation of deposition of pollutants from the proposed incinerator would not add 1% to the critical load values. POC reminded him that the only known published critical load values were for the habitat type, not this specific plant. This is because it is so rare that no data is available. POC made the suggestion to him that as the acid deposition was directly from the air, then it should be the critical level value that should apply and this is not even known for the habitat let alone the species. He declined to give an opinion.

1530. POC attempted to question Mr Picksley about the likely danger to the reproductive habits of Western Rustwort, as these will ultimately determine its survival. Mr Picksley frankly admitted he knew nothing at all about the reproduction of Western Rustwort. POC is concerned about this plant. If it is destroyed we need to question our motives.

1531. There are several other rare species within the SACs and SSSIs. If a system of waste treatment were used which did not emit most of the pollution to air over a wide area then there would be no threat to the eco-system at all. As has been shown by the Environmental Impact Assessment for the Costessey plant (POC/0/1 Appendix 1), all other methods of waste treatment have a lower environmental impact than incineration, and AD has the lowest.

1532. It is POC’s contention that the doubt raised by experts such as Porley and Holyoak should be sufficient to trigger an Initial Determination of Likely Significance. This should in turn lead to an appropriate assessment under the Regulation 48 of the Habitats Regs (CD/K4).

1533. Reiterating the point made at the beginning of this section, the other factor here is the choice of site. If incineration has to be chosen, and POC sees no evidence for that, then it is ludicrous to site it a few metres from a SAC and close to other SACs and SSSIs.

Choice in relation to air quality

1534. POC feels that the appellant’s assertions on the impact on air quality are not credible. POC brought forward evidence that this was the only known incinerator in the world that would be built on a site shared with a china clay works (POC/0/1). Over the years there has been considerable research into the effects of the existing clay dust in the air because this has been a cause for concern for some considerable time. POC mentioned various scientific papers in POC’s proofs of evidence and these were presented to the inquiry within PC-STIG/0/2 Appendix 11.

1535. Very few experiments have been done on the interaction of clay dust and pollution, but those that have been suggest that the situation above the stack of an incinerator would be the prime place for this to happen. All research quoted shows that in the presence of ammonia, heavy metals stick to droplets formed on the surface of the clay dust particles. In several cases this has been shown to include fly ash and other combustion products such as soot. When asked of his
opinion on this Mr Barrowcliffe, the appellant’s air quality expert, said that the stack emissions would not come into contact with moisture and clay dust closely enough for the reaction to occur. This was despite evidence from several local people that the bowl effect caused steam and dust from the clay dryers to hang in the air over the proposed site for days at a time if weather conditions were right.

1536. Mr Barrowcliffe and Mr Greenwood (who is not an air quality expert) were led by the appellant’s Counsel (Mr Phillips) to express the opinion that even if there were to be an association between heavy metals and clay dust, it would not increase the amount present. This assumption is in contradiction with scientific evidence presented in the PC-STIG Appendix 11 that some heavy metals such as lead actually aggregate up to 40 times normal concentration on clay dust. This is a method used to track dust particle origins in Asian dust storm events.

1537. POC cannot understand why assertions that there will be no combined adverse effect between the clay dust already present in the air and the emissions have been accepted without the need for experimental proof.

Choice in relation to health effects

1538. The inquiry heard substantial evidence from Professor Howard (a Pathologist) for PC-STIG (PC-STIG/0/1 (6)) and Dr Downing (Harley Street and BSEM) for CSWN (CSWN/2/1) on the health effects of particulate emissions associated with incineration. In cross examination, the appellant’s Counsel was keen to point out that there was no epidemiological evidence to support the claims of adverse health effects originating from incinerators.

1539. The appellant called Professor Bridges as their medical expert witness (SITA/4/2) despite the fact that he has no medical qualification but is qualified in toxicology. Under cross examination by POC, Professor Bridges agreed that the main drawback in epidemiological studies was the influence of confounding variables. Because of this it was not sound to use these methods to attempt to show that incinerators caused health effects. He had to admit that for the same reason it was impossible to show by these methods that incinerators did not cause health problems.

1540. Professor Bridges agreed that the best way out might be to use longitudinal studies to test health effects. He said that he knew Professor Grandjean from Denmark, but was apparently unaware of the last twenty five years of Grandjean’s work. He agreed, when shown POC evidence (POC/0/1 Appendix 44 (a)) that the research was robust. He agreed that the experimental result showed that minute traces of toxins had caused permanent brain damage in children exposed to the poison while in the womb and that this was still apparent 15 years later. He agreed that detailed findings by Grandjean showed that damage was likely to occur about four days after conception.

1541. It was put to Professor Bridges that if a body burden of chemicals below the danger level, was placed upon the mother, then the same burden would act upon the foetus. As Grandjean had shown that minute traces of toxins administered in food (whale blubber), had an effect on the foetus, then why shouldn’t the same chemicals have the same effect if inhaled from incinerator emissions? Professor Bridges was unable to answer this point.
1542. Professor Bridges has no qualification in psychology or psychiatry. However he produced evidence about supposed lack of mental health problems associated with incinerators. He claimed to show that any problems that might exist would be due to panic and scaremongering in the press and by pressure groups. In cross examination it was pointed out to Professor Bridges that the arguments he had used applied to theories mostly between a hundred and two hundred years old, which had long been discarded in favour of cognitive behavioural theories and neural science. He was also unable to answer factual evidence about the rise in stress and depression levels in populations who had plants such as incinerators imposed upon the community.

1543. POC feels particularly strongly at the continued insistence by the appellant that there will be no risk to health from the proposed incinerator, because it is obvious that some harm has already occurred. Families close to the crossing between the haul road and the access road are already suffering stress related illnesses. They know that they cannot sell their homes because they are blighted. They know that they will have to keep their windows closed during working hours because of lorry noise and have already been offered forced ventilation. They know that they will be unable to use their gardens. Stress related mental illness can only get worse in these cases, and POC thinks it is ridiculous that this has not been taken into account.

1544. The work on the precautionary principle by Professor Arteensuu of Finland was mentioned to Professor Bridges who claimed to know this gentleman as well. When details of Arteensuu’s learned paper (POC/0/1 Appendix 48) were shown to Professor Bridges he failed to appreciate that both the definitions of the Rio Declaration and the Wingspread Declaration would fit into Arteensuu’s argument. Professor Bridges kept referring to the definition of the Precautionary Principle given in HPA and DEFRA publications without realising that they were the same as the Rio Declaration. This just reinforces POC’s argument that the precautionary principle is relevant in this case and must be applied.

1545. POC is of the opinion that because there is a conflict of scientific opinion on the potential harm to unborn children by the emissions of incineration, then the precautionary principle should stand. POC also points out that such health effects are not present to the same extent with technologies with lower proportions of emissions.

Impact on Global Resources, Greenhouse Gas Emissions and Climate Change

1546. POC presented evidence from Dr Trier (POC/2/1) concerning the depletion of abiotic resources. These are the materials in the Earth’s crust that do not originate from a living, or once living source. These materials are finite. They require energy to mine and prepare for manufacture into everyday objects. If the abiotic material is not recovered to be reused or recycled, the stock of such substances is depleted. Dr Trier explained that incineration depletes these resources, whereas other technologies which either required materials to be separated at source or else sorted them from the waste stream, would recover them.

1547. POC has presented evidence in its main proof in the form of a report by AEA Technologies to European Commission on Climate Change (POC/0/3 Appendix 20). This is a long and complicated document but, in essence, it reveals that the comparative greenhouse gas emissions are:-
- MSW sorting with Compost/AD has a net negative flux 340 Kg/CO2/eq. tonne of MSW.
- Mass burn incineration with CHP has a net negative flux of 180 kg/CO2/eq.tonne of MSW.

It should be noted that as these are negative scores, the larger numbers are better.

1548. Ms Larke for TCN (TCN/1/2) has also produced figures for CO2 emissions which show that incineration has about seven times the CO2 emission when compared to a plant which recovers and recycles materials.

1549. The appellant’s EP application within the Environmental Statement (CD/A8) says that the incinerator will produce just over 173,000 tpa of carbon dioxide. The Climate Change Act says that there must be an 80% reduction in CO2 by 2050. This is not likely to happen if we allow incineration plants to operate at seven times the level of a suitable alternative.

**Impact of Traffic**

1550. This is of course, inextricably linked to the issue of the number of sites. However, at this stage POC wishes to treat it as an independent issue. Under these circumstances, where all material is trucked from across Cornwall to a central site, there would appear to be an advantage in incinerating waste (SITA/2/2 Annex D). This is primarily because the majority of the products of incineration escape from the stack and are distributed onto the countryside without the need of transport (POC/0/1).

1551. In general terms, one would expect the number of staff used in a central plant to be similar, irrespective of the technology. Thus staff transport numbers will not alter. Similarly, if the amount of waste input remains the same then the transport bringing it to the site will not depend upon the technology used to treat it.

1552. Where there will be differences, will be in the delivery of raw materials, and the transport of recovered materials from the site.

**Alternative sites and number of sites**

**Alternative sites**

1553. A number of parties and witnesses have given evidence which they believe shows that the site selection process was flawed. POC would like to add its weight to that and particularly to mention the evidence presented by Cllr Cole for PC-STIG, (PC-STIG/0/1 (1)). He says that the reason for the choice of site was due to the WLP and the resulting CCAS.

1554. The current WLP (CD/D5) is very nearly time expired. The whole rationale for waste management in Cornwall has changed, and is continuing to do so at an accelerating rate.

1555. The choice of site was supposed to depend upon ease of transport access for the waste. As we now know, there will be no possibility of rail usage until the plant is nearing the end of its contract (SITA/9/8). Therefore, to all intents and purposes, the site will not be served by rail.
1556. The road connection to the site is not ideal. The project requires a long and expensive private haul road to be built which will be paid for by the public via taxation. It necessitates the crossing of a C Road by all the traffic serving the site. It would appear therefore, that the site is not well served by any method of transport, considering the number of lorries that are going to use it each day.

1557. Traffic coming from the west up the A30 from the St Erth and Pool Waste Transfer Stations, will have to negotiate a single carriageway five mile section of the A30 between Chiverton Cross and Carland Cross. This is always very congested in the summer, and often at a standstill.

1558. Traffic coming to the site from the east will have to exit at the same junction as the holiday makers heading for Newquay and all the works traffic for the industrial estates at Fraddon and Indian Queens. Ms Hawken for CSWN has raised this matter and given supporting evidence (CSWN/0/3), and POC would agree that this is a circumstance where more thought should have gone into site selection.

**Single or Multiple Site Option**

1559. Evidence on this point was given by a number of witnesses and from two distinct angles. Firstly, whether there would have been any lessening of the various environmental and other impacts if the “load” had been spread over a number of sites, for example in terms of traffic. Secondly, evidence was given as to how the input and output of raw materials and energy would be more sensibly distributed using a number of sites around Cornwall.

1560. With regard to transport impact, Mr Millington, giving evidence for the Council (CC/7/2), believes that the proposed incinerator does not comply with the RSS (CD/D2). This is because it does not seek to minimise the distance waste is transported, and because there are alternative plans which would reduce road miles it does not comply with the SP (CD/D3) either. POC agrees with Mr Millington.

1561. Mr Millington then produced some highly complex calculations to show that a multi-site option actually produces less road miles. He pointed out that the only evidence being put against this was that of Mr Aumônier for the appellant. Under cross examination Mr Aumônier agreed with the figures presented by Mr Millington.

1562. The evidence given by Mr Miles (CC/1/2) matches, in many ways, the evidence presented by POC.

1563. Mr Miles agreed that there has been a considerable miscalculation in predicted MSW arisings.

1564. He explained that various planning documents point to the use of brownfield sites, better transport access and less community impact than the proposed plant.

1565. He is adamant that there will be conflict between recycling and disposal, and is certain of the fact that the incinerator will not recover sufficient material to benefit recycling rates, because there is no sorting facility.

1566. Most importantly, in his Section 6, he echoes the solution put forward by POC for a distributed network of sites using Advanced Treatment Technologies. He
supports POC’s point that this would greatly decrease all the impacts, which the
appellant argues that we must suffer in order to reduce our dependence on
landfill.

1567. In every way, Mr Miles supports POC’s contention that the process for
considering alternatives was misapplied and deeply flawed.

1568. In addition to Mr Millington’s work, POC has its own research confirming that it
is possible to greatly reduce the mileage associated with waste management in
Cornwall. Firstly, in evidence given for POC by Mr Broadhurst (POC/5/1), he
explained that if a suitable method of treatment is chosen, it is perfectly feasible
to utilise land at, or adjacent to, existing transfer stations and community
recycling facilities for the new treatment plants. Thus, one whole level of waste
associated mileage will be removed from the equation. Secondly, Dr Trier, for
POC (POC/2/1) gave evidence that some alternative technologies would benefit
from increasing separated waste collection. However, as the weight of total
waste would remain the same, a single vehicle making one pass could collect
food waste, recyclates and the much reduced residual waste. This compares with
the current system, which utilises at least two separate vehicles and two
separate rounds. As far as can be determined this is their basis for future
contracts, highlighting the reluctance of the WDA and appellant to consider
anything other than their already discredited proposals.

1569. With regard to other impacts, POC has already pointed under visual impact
that other technologies do not need such large buildings as incinerators. This
factor becomes even more significant when there are a number of smaller plants.
Low roof lines can be more easily disguised by tree belts than 120 metre high
chimneys.

1570. Mr Greenwood (SITA/10/2) put forward evidence that Government policy was
aimed at local and community level. Given that, he was asked in cross
examination, how people in Penzance, or anywhere else other than St Dennis,
could use their locally collected waste to provide energy benefit to their own
community. He was unable to answer this point.

1571. He was also asked by several Rule 6 (6) Parties to explain how it was fair and
just for the people of St Dennis to take the full burden of disposing of
everybody’s waste, but again was silent.

1572. Both of these points would be solved by small community plants which
encourage the community to be careful with waste and use it to the benefit of
local people.

1573. Apart from Mr Greenwood’s general comments on planning matters in relation
to multiple sites, the main thrust of the appellant’s argument on this matter was
contained in Mr Aumônier’s Appendix D, the ERM “Assessment of Number of
Facilities” report. The huge flaw in this report was that it only considered the
multi-site option for one technology, incineration. Therefore, it failed to give any
credit to technologies which would benefit from very local feed stock, (such as
the use of waste material from a particular industry). It also did not consider
technologies where local industry or public could benefit from a by-product such
as compost.
Factors Associated with the distribution of local heat and power

1574. Very large parts of the Renewable Energy Section of The Government Energy White Paper (CD/E1) are concerned with DE/DG. It means that instead of large central energy plants (such as the proposed incinerator), the Government recognises that local generation and distribution have significant advantages in minimising resource use and addressing the issue of climate change. These plants would be close to where the fuel (or in this case waste) arose, and would supply the energy to local users through a smart grid.

1575. Virtually the whole of the evidence given by Mr Peter Jones for POC (POC/3/1), was based on his research into how market forces and Government taxation were leading to a situation where DE/DG would be the only realistic option. He cited supermarkets which would have plants using food waste and scrap cardboard to generate power for the cooling systems. By way of example, Tesco’s and Sainsbury’s are already planning for a number of centralised and store based facilities. Public buildings such as schools, hospitals and prisons etc will have to offset the Carbon Tax and could use the community waste as a fuel for a local DG plant.

1576. Dr Scibor-Rylski for POC (POC/4/1) gave evidence about how smart grids would be most useful in places like Cornwall where renewable energy will form a large part of the future energy mix. These technologies typically do not have the power output to allow ease of connection to the National Grid. Mr Broadhurst (POC/5/1) in his evidence also showed that DE/DG would be much more sensible in the context of AD which produces biogas. The gas could be used to generate CHP in the conventional way via a gas engine, but it could also be purified and liquefied to produce mains gas and motor fuel.

1577. Localised generation and use overcomes the major problem of transmission losses.

1578. Compared to this the proposed incinerator can only generate power on a central site and then run a cable over a mile to the National Grid connection. Of the potential 50% CHP heat, only 9% can be used locally by the china clay dryers.

1579. The provision of DE/DG is a core part of the Council’s Green Initiatives policy, and has been partially implemented in certain community projects which are underway at present. The incinerator is completely at odds with the Council’s policy on sustainability and green issues.

The weight given to The Emerging RSS for the South West (CD/D2)

1580. It is unfortunate that one of the main documents related to this inquiry, the RSS, has not made it past the draft stage and come into effect. It is obvious that because of this the RSS has no legal weight. Because of its originally intended status, perhaps the question should be asked as to whether it still has guidance value and is there any moral weight that can be given to it?

1581. There are a number of measures in the Emerging RSS, which can be referred to as common sense measures. If they do not come into effect through the RSS they will need to be applied in some other way. Therefore, POC would like to list those features of the RSS, which seem obvious and therefore POC feels should be given weight.
1582. The Region will reduce greenhouse gas emissions (draft RSS policy SD2). Both POC and Ms Larke have shown that incineration will increase greenhouse gas emissions over other technologies and will make it near impossible to achieve Government targets.

1583. Planning must respect ecological thresholds, reduce environmental impact, reduce pollution and contamination, and maintain tranquillity. It must enhance local character. It must contribute to regional biodiversity through restoration, creation, improvement and management of habitats (draft RSS policy SD3). The siting of an incinerator at St Dennis is directly at odds with all of these considerations.

1584. Places where people live must be safe, fair, tolerant and considerate of the environment (draft RSS policy SD4). POC has previously expressed the opinion that to dump all of Cornwall’s waste on St Dennis is not fair.

1585. Mr Phillips and Mr Greenwood have tried to define “Community” as meaning the whole of Cornwall. The draft RSS defines communities as “Small towns and Villages” (draft RSS section 1.6.18), something that the people of Cornwall will identify with.

1586. The draft RSS says that the primary focus of development should be at centres of population so as to minimise transport. It calls these SSCTs and lists two in Cornwall, at Camborne/Redruth and Falmouth/Penryn. It says that development on a large scale in these areas should be on brownfield sites (Development Policy A). The proposed incinerator is not near a centre of population, does not minimise need for transport, and is not on a brownfield site.

1587. When considering rural locations away from SSCTs the development should be limited and on a scale more closely aligned at supporting the role and function of these locations (draft RSS section 3.4.1.). This factor of scale is also mentioned in Development Policy C. A 240,000 tpa incinerator is not a limited scale development suited to the role and function of a village like St Dennis.

1588. With regard to planning for waste facilities, the draft RSS stresses the need to minimise the transport of waste (draft RSS section 7.4.8.). This is a factor already noted by Mr Millington (CC/7/2).

1589. Waste proposals should consider the opportunities for treatment facilities for multiple waste streams. These should include recovery through MBT and/or Advanced Energy Conversion technologies (draft RSS section 7.4.3). The incinerator does not deal with multiple waste streams. It simply incinerates it all in one waste stream. There is no proposal to use agricultural waste, or food waste. It should be noted that Advanced Energy Conversion technologies as defined in The Energy White Paper (CD/E1) does not include incineration. There are no proposals for pre-treatment recovery by sorting from the waste stream.

1590. The RSS identifies the mineral assets of the region and set out a strategy for the exploitation of secondary aggregate, from whatever source, as a resource (draft RSS policy RE12, section 7.20). The secondary aggregate produced during china clay extraction has a long track record of successful use. Given the availability of the china clay aggregate it is questionable as to what demand there will be for a material (incinerator bottom ash) that may or may not even be available, depending on the chemical analysis for any given batch.
1591. With relation to air quality, the RSS says that traffic increases as a result of new planning developments must be taken into account when assessing air quality, particularly the effect on internationally designated nature conservation sites (draft RSS policy RE9, section 7.17). The appellant and the EA have steadfastly stuck to their interpretation of the requirement, resulting in the determination that the only traffic impact to be considered “in combination”, is the traffic actually operating within the site boundary. This of course ignores all traffic approaching and leaving the site, which would not exist without the need to feed the incinerator. This is contrary to the intention of the draft RSS.

1592. (Inspector’s note: POC’s comments received as a result of the High Court’s decision in the Cala Homes (South) Limited case are summarised as follows. POC’s case addresses the weight that should be attached to the draft RSS. However, its view has subsequent changed in the light of the judgement in the Cala Homes (South) Limited High Court case in respect of Secretary of State’s decision to revoke RSSs. POC now considers that even though the document is in draft form, some weight should be attached to it. Attention is drawn to the draft RSS’s emphasis on locating large developments near SSCTs and its intentions regarding waste management, greenhouse gases, business in the CCA and fairness to communities, such as St Dennis). (Inspector’s note: see Document POC/0/7).

Attempts to limit the range of possible choice

ERM Cornwall Options Appraisal

1593. If POC was convinced that all possible alternatives to incineration had been considered, and that a correct and scientific assessment had been carried out, resulting in a clear result that mass burn incineration was the best option for waste management in Cornwall, then POC would not have cause to object as a Rule 6 (6) Party. However, POC feels that this is far from the case. Some of the arguments have been touched on in other places but need to be reiterated to reinforce the point.

1594. Firstly, the legislative case that the widest choice should be considered. This is mainly contained in the EU IPPC legislation found in 2008/1/EU and 97/11/EC (CD/H4). Under the BAT/Technology sections consideration of the choices is divided between the competent authorities (in this case the EA and the local planning authority). This has already been detailed in the Choice in relation to IPPC Legislation section above and POC hopes that it has successfully shown that AD and other less aggressive technologies should have been included in the planning BAT assessment. This contradicts evidence from Mr Scanlon, (SITA/1/2) Mr Aumônier (SITA/2/2) and Mr Greenwood (SITA/10/2) that it is not a planning matter and is therefore outside the scope if this inquiry. It is not.

1595. The appellant claims to have assessed alternative technologies in a number of reports but say that these are not documents of choice. These documents include the AEA Report, the ERM Cornwall Options Appraisal (Both CD/A2 Vol.2) and the Fichtner Report (CD/O1). POC wishes to draw attention to evidence brought in relation to all of these documents.

1596. The ERM “Cornwall Options Appraisal” report (CD/A2 (iii)) is the main piece of evidence put forward by SITA to show that they have looked at all the alternatives. It should be noted that Mr Aumônier (SITA/2/2) states adamantly
that this is not a document concerned with choice. POC fails to see what else it can be.

1597. POC produced evidence in its main proof (POC/0/1) that POC thought that the structure of this document did not fit the basic requirements of an options appraisal. POC compared it to guidance within The Government Green Book – Appraisal and Evaluation in Central Government (POC/0/3 Appendix 16). This is part of the Treasury guidance for those involved in PFI projects. In respect to determining Rationale the Green Book says – (Introduction Page 5):
   a) Are there any better ways to achieve this objective?
   b) Are there better uses for these resources?

1598. In POC’s opinion, the ERM “Cornwall Options Appraisal” report falls way short in considering these two major objectives.

1599. Mr Aumônier (SITA/2/4) dismisses the use of The Green Book which he says is only a Treasury document. Dr Venables (POC/1/1) in her evidence for POC says that it complies with the kind of options appraisals that she has used and seen used in major civil engineering projects such as the Thames flood alleviation scheme.

1600. At the beginning of his proof of evidence, Mr Aumônier explains that he was responsible for helping to write the software for the WRATE life cycle assessment tool which has been used in the ERM Cornwall Options Appraisal. He also explains that he was responsible for the acceptance of WRATE by the EA as a method of assessing option choices for major schemes. POC feels that as ERM supply the software and train EA staff to use it, and as the EA are responsible for the grant of a permit to the appellant, Mr Aumônier has put himself in a very biased position by acting as a consultant in this case.

1601. From the very beginning of the “Cornwall Options Appraisal” report, Mr Aumônier sets out to show that the preferred scenarios, as he calls them, were limited to a choice between EfW (by which he meant mass burn incineration) with CHP and a gasification plant with an autoclave at the front end. All other options were rejected out of hand.

1602. It is POC’s position that this document is totally flawed and this was demonstrated both by POC’s initial evidence and through its cross examination of Mr Aumônier. POC finds it very difficult to know if it has been successful due to the aggressive and obstructive behaviour of Mr Aumônier when being questioned. POC feels that this kind of witness behaviour was tolerated by the appellant in order to prevent the weakness of their case being exposed.

1603. One of POC’s main criticisms of the “Cornwall Options Appraisal” report is that it does not use a level playing field approach. Why is the gasifier the only technology tested with an autoclave on the front end? An AD plant would have shown equally good results in terms of recycling, if that option had been included. Similarly, the only form of pre-treatment tested for AD was MBT which incorporates shredding. Under these circumstances it is not surprising that the shredded material prevented the digestate from being useable for anything other than landfill.

1604. Even though considering the autoclave to have potential as a method of producing high levels of recyclates from residuals, Mr Aumônier says that at the normal operating temperature, plastic would be denatured and only suitable for
low value recycling. He agreed that POC’s research into the use of lower range
temperatures which would allow the autoclave to sterilise the waste without
denaturing the plastic was “an interesting idea”.

1605. At various points in the report Mr Aumônier attempts to cast doubt on the
other options without much evidence. An example of this is where he quotes the
failures of AD plants documented by K & R Schu. However when POC produced
the whole of their report in evidence (POC/0/3 Appendix 31) their criticisms had
been directed at low technology farm scale plants in the old Eastern Bloc
countries and, in addition, they were critical of wet-mix plants. Reading further,
it was obvious that they were trying to promote their own semi-dry technology.
In addition, POC produced evidence to demonstrate the reliability of AD plant
when used to treat both separated bio-mass waste and mixed MSW (POC/0/3
Appendices 34, 40, 41, 42 and 46).

1606. The “Cornwall Options Appraisal” report also indicates technical difficulties with
clogged autoclaves. Mr Aumônier admitted that he had not watched or
monitored the performance of Aerothermal Autoclaves that have an angled
chamber. Mr Broadhurst (POC/5/1) gave evidence for POC about these machines
concerning their performance and robustness which contradicted that of Mr
Aumônier.

1607. Probably the most damning evidence that the ERM Options Appraisal should be
discarded as not fit for purpose came from Mr Aumônier himself. This was
because in Annex L of his evidence he produced a peer review of the Cornwall
WRATE model by RPS. This showed some flaws in the system that directly
relates to its use in the assessment of the Cornwall options. It also revealed that
the WRATE version used on the Cornwall Options Appraisal was out of date and
had since been updated.

1608. One of the major findings of the RPS peer review reinforced the point that POC
had made, that the shredding of waste in the AD MBT pre-treatment process
unfairly discriminated against the AD option.

1609. The other major finding was that it would be possible to use MRF systems to
sort the residual waste stream, a point always denied by both by the appellant
and Mr Aumônier. It would appear that it would be applicable to consider front
end sorting of metals under the WRATE analysis, but this hadn’t been done.

1610. The final, but possibly most contentious aspect of the application of WRATE
modelling for the scenarios in the “Cornwall Options Appraisal” report is that only
one default is allowed concerning AD digestate. That is that it must go to landfill.
This is mentioned as a highly negative aspect in well over ten places in the
report. As this factor comes into play in both of the other appraisals, detailed
POC consideration is left until the end of this section.

The Fichtner Report

1611. The second document put forward by SITA as an options appraisal is the
Fichtner report (CD/01) which was originally commissioned by the WDA.

1612. It is an example of the peculiarity of this appeal that a document
commissioned by one part of the Local Authority is being used against another
part of the Local Authority by an outside private company. The Fichtner report
was presented to the WDAP who have so far refused to accept it. A peer review of this document is supposed to be underway but it cannot be traced.

1613. The report has received tremendous criticism. Mr Tom Petty, a witness for TCN (TCN/5/1), whose company “First Power” had proposed a solution based on Stein Gasification, but this had been classed as non-viable. Yet little attempt had been made to obtain relevant evidence before writing the conclusions. In his opinion the Fichtner Report was more of a “sexed up” document than the one justifying the war against Iraq.

1614. POC has produced its own critique of the report which has been submitted as evidence in POC/0/3 Appendix 35. A couple of the main points are reiterations of flawed thinking within the ERM Cornwall Options Appraisal (CD/A3 Vol.2) which have been previously mentioned and explained, these are the temperature of autoclaves and the shredding of the input by MBT.

1615. There are two other important features of the alternative scenarios contained within these options appraisals which will need detailed analysis. These are the fate of the AD digestate, and how the residual MSW came to be MSW. As the second point bears on the first, that will be the starting point below.

1616. It seems to have been assumed that a waste stream is a waste stream full stop. This is not the case. As Dr Trier pointed out in evidence for POC, (POC/2/1) the ideal way to deal with the management of waste would be to bring the maximum effort to bear to achieve the greatest source separation of the waste. It would appear that this is what the WDA are belatedly trying to do. This is achieved by getting the public to separate food waste and recycling from the residual waste stream. If this were achieved then the residual MSW would shrink to a very small amount. Further points will be made on this when consideration is given to what effect incineration has on the recycling rate.

1617. The second contentious argument contained in the Cornwall Options Appraisal is that the digestate produced by residual MSW when treated by AD is suitable for no other purpose but landfill. POC produced evidence, in (POC/0/3 Appendix 23), to show that non-mixed waste could be treated as a quality digestate and not subject to being labelled as a waste product. This would automatically occur if the waste digested was from a source separated feedstock.

1618. Even if the digestate came from mixed waste, it did not necessarily have to be landfilled, as POC showed by the process outlined in (POC/0/3 Appendix 22). This extract from the Environmental Permitting Regulations shows that any waste must carry a six figure code, and this includes non-quality digestate from a mixed source. Each category has a starred and non starred section. The star represents hazardous waste. If a waste is to be proved to be in the non-hazardous category it must undergo testing to establish its content. This is known as the mirror-entry test, to show which of the two mirror images, hazardous or non-hazardous, it belongs to. Digestate proven to be non-hazardous can be the subject of an application for a permit to be used in ways other than as landfill.

1619. Several commercial operators of AD plants have benefited from this legislation recently, by having their digestate passed as suitable for other purposes, including SITA and BIFFA. DEFRA also say that it is their policy to make the process easier.
1620. There is little prospect that the Government will be able to implement their policy outlined in (POC/0/3 Appendix 56) to “promote a huge increase in the treatment of waste through AD”, unless they streamline the process for designating and using digestate.

**Public Consultation**

**Legislative Framework**

1621. IPPC European Directive 2008/1/EU (CD/H4) Preamble section (24) refers to “effective public participation” being part of the accountability process.

1622. In the case of the proposed St Dennis incinerator, only the immediate area of St Dennis village was provided with the material to consider the planning application. Other neighbouring Parishes had to make arrangements for the public to view the material from their own resources. Some chose not to bother.

1623. As the boundaries of some of these Parishes are under two miles from the incinerator site, they will be subject to impact from emission, transport, and visual intrusion. Therefore, they should have been fully consulted as part of the process.

1624. Where documents were provided for inspection, there was no representative from the local planning authority or SITA UK to help the public interpret the documents which amounted to ten or twelve large ring binders and several wall panels of plans.

1625. 2008/1/EU (CD/H4) Preamble section (25) says that the public participation includes groups promoting environmental protection and education should be fostered. Mr Ken Rickard, as Chair of the Strategy Group which represents all the interested groups in this project has given evidence (POC/0/3 Appendix 10) that none of the strategy group members have received any assistance, financial or otherwise. This would enable them to disseminate information or educational material to the public so that they can make an informed choice as to whether to support or reject the incinerator.

**The Site Liaison Group**

1626. SITA initially encouraged participation in this group as being a method of fostering public participation. However, it soon became evident from the “rules” that this was not the function of this body. The newsletter, presented as POC evidence (POC/0/3 Appendix 7), says that it is a liaison group not a “public” group because this will make it more productive. In other words less awkward questions will be asked. It goes on to say, “Members of the public can come along on the condition that they only observe and do not take part in the discussion”.

1627. According to the published minutes, an example of which is shown in (POC/0/3 Appendix 4) the make up of the group consisted of either SITA employees or Officers appointed by SITA. Additionally there were representatives of the Parish Councils. There was also one token member of the public, but he had a vested land interest in the project.

1628. Despite this information, the newsletter claims that SITA do not run the Liaison Group. The topics for discussion come from the “members” and experts are called in to give information. It is interesting to note that of all the experts
called, the vast majority were either SITA employees or SITA consultants who have since given evidence at the inquiry on behalf of SITA.

1629. The SITA information on the Liaison Group states that it contains representatives of the four local Parishes. However, for the first eighteen months of its existence, there was no representative of St Enoder Parish Council, despite the fact that the meetings were being held in that Parish rather than St Dennis. The reason for not meeting in St Dennis was initially said to be because there was no suitable venue. When this was disproved, the excuse became that St Enoder was more central. In fact it is the most peripheral of the four Parishes. The real reason for not meeting in St Dennis was probably the fear of a hostile reception. So much for public participation and liaison.

1630. Both Mr Rickard for PC-STIG and Ms Hawken for CSWN have given evidence on the farcical nature of the Site Liaison Group. The irony is that now when any responsible body mentions a new liaison group, with the best intentions, it is met with hoots of derision.

Other Public Consultation

1631. The main meeting at which objections could be aired was the so called “tent” meeting. This was held in a marquee on St Dennis Playing Field. Over one thousand local residents turned up, and the vast majority of them were opposed to the incinerator. The only speaker for it was Mr Buckle of SITA.

1632. The local Police, including officers from Devon and Cornwall Tactical Unit which is more usually involved in armed incidents, were in attendance and there were also private Security Guards on patrol. The whole thing was such a PR blunder that it is now used as an example of how not to do it.

1633. POC feels that throughout the process there has been a significant lack of provision for public participation, and relevant information available to the public in a suitable format

Impact on Sustainability and Recycling

Sustainability

1634. The appellant has claimed that the proposed incinerator is a sustainable development. This statement can be found in the booklet published by SITA and produced in POC’s evidence as POC/0/3 Appendix 8. The Advertising Standards Authority have ruled that under conditions laid down by DEFRA the proposed incinerator should not be described as a sustainable development (POC/0/3 Appendix 9).

1635. This ruling is hardly surprising when even the most basic definitions of sustainability are predicated on current generations leaving sufficient resources for future generations. If we are consuming resources faster than the natural environment can restore the balance we are, as described in evidence from Dr Trier (POC/2/1), responsible for abiotic resource depletion. Incineration prevents materials recovery, that is, we are not behaving sustainably.

Recycling

1636. Numerous Government policy documents including PPS10 (CD/E6), WS2007 (CD/F1) and the Energy White Paper (CD/E1) emphasise the need to drive waste
management up the waste hierarchy. The second level up from the bottom is the recovery of energy. An observation was made to Mr Greenwood in cross examination that the appellant perhaps should not claim to be driving up the waste hierarchy given that this project is very firmly on the bottom step, which is disposal.

1637. The reasoning behind this is that as Ms Larke showed in her evidence (TCN 1/2) the energy efficiency of the proposed plant does not reach the required level on the “R1 Formula”.

1638. For this reason the appellant has only applied for the plant to be permitted as a waste disposal plant and not an energy recovery plant. The primary purpose of installations permitted under Part A (c) of the Environmental Permitting Regulations is the disposal of waste. Any energy recovered is a secondary function.

1639. POC therefore thinks that the continued insistence by the appellant that the plant is designated as an EfW plant and the official CERC title is designed to mislead the public.

1640. Mr Greenwood (SITA/10/2) was insistent that a high recycling rate could co-exist alongside an incinerator (although he didn’t call it that). He was unable to explain how he could make the available waste for both processes add up to more than 100%.

1641. Mr Greenwood’s assumptions seem to have been based on the fact that the maximum recycling rate envisaged would be the Government target of 50% during the life of the incinerator. He seemed to be confident that the incinerator could run effectively on the other 50%.

1642. This was contrary to evidence given by Dr Trier (POC/2/1) who pointed out that the latest figures from the WRAP survey into waste food collection showed a correlation between food waste collection and other recycling to the extent that some local authorities had already reached 70% recycling leaving only 30% residuals.

1643. Mr Greenwood was also content with the fact that as residuals from household waste reduce, the shortfall would be met by an increase in the use of C&I for the incinerator. This is despite the fact that the contract is only for residual MSW waste and the EP application is for household MSW and any C&I will be “like MSW in composition”.

1644. As other companies target the C&I stream, in particular that which is “like MSW in composition”, the likelihood of there being sufficient material to feed the incinerator is very marginal.

1645. POC fails to see why the implementation of higher recycling rates and a considerable increase in landfill tax resulting in high gate fees will not produce a parallel reduction in C&I with MSW content. Put simply, with the need for increasing carbon awareness and the correspondingly high disposal costs, it will be cheaper for businesses to recycle than dispose.

1646. POC has produced evidence (POC/0/3 Appendix 37) and shown by cross examination that it would be perfectly feasible to introduce food waste collection and dry recyclables collection in Cornwall. By the application of state of the art
sorting processes using automated MRFs it would be possible to recover materials so that the residual fraction was less than 10%.

1647. No evidence was brought by the appellant that such processes were impossible, they just didn’t think it was the duty of the waste contractor to do it and it should be left to the householder to drive waste management up the hierarchy by separating the waste (CD/A13).

**The Contract**

*Financial constraints*

1648. Throughout the duration of the inquiry it has been obvious that there is a conflict between two different parts of the Council, the WDA who are not a party to the inquiry and the WPA who are. This is because this is a planning inquiry and as POC understands it, they represent the Council as a whole.

1649. It has been obvious that the WDA feels that they should support the appellant, even to the extent of undermining their own employer. The various interjections, both verbal and written, either direct to the inquiry or to the press, have been designed to assist the appellant, not their own employer.

1650. Even during the inquiry, the WDA has resolutely refused to accept that there are viable alternatives to their proposed central mass burn incinerator, and their actions reflect that.

1651. In evidence given by Mr Greenwood and also in details within the Fichtner Report (CD/O1), the view has been given that because of the penalty clauses in the contract, it will be impossible to pursue any other course of action but to go ahead with the incinerator, even though POC, and others, have shown their assumed timescales and overall costs to be a significant exaggeration.

**Conclusion**

1652. This has been a lengthy and, for those people new to inquiries, an educative process whilst watching the professionals at work. With no offence to either the Council or the appellant, this is merely a job for them. Other people and parties who objected have been driven by the passion and belief that, not only was the proposal wrong, they could prove it and show that there are viable alternatives.

1653. Along with the other objectors POC has shown, time and again, that every stage of the process that has been followed is fatally flawed.

1654. POC has produced evidence to show that the planning need is to divert waste from landfill, not for an incinerator. Most importantly POC has shown that there was an inadequate attempt to select the correct technology. POC has also proved that the incinerator was the wrong choice in terms of visual impact, environmental impact, air quality, health, global resources and climate change and traffic impact.

1655. The appellant has tried to argue that the proposal must go ahead on the basis that this facility will have a strategic value, so with a major benefit for the many and minimal disruption for a few, the balance would be acceptable.

1656. Unfortunately for the appellant, they have to demonstrate need, in order to demonstrate strategic value. All of the objectors have shown that waste arisings are reducing, recycling is increasing and other companies are targeting C&I, the
combination of which means that the potential feedstock for the incinerator is disappearing with no opportunity to use C&I in its place.

1657. The evidence has demonstrated that this proposal is flawed, and has failed so many of its planning related issues. Additionally POC has shown that the alternatives are viable, so refusal of the appellant’s case will not be a catastrophe for the Council, as pictured by the WDA, but will be perfectly easy to address in a manner that will be far more acceptable and affordable for Cornwall.

1658. In summary, POC feels that there are two key points on which the appeal must be refused. These are that the overwhelming evidence from world experts is that Western Rustwort will be significantly affected and put at risk of extinction. Due to the status of the site as a SAC, an appropriate assessment under the terms of the Habitats Regs will be required.

1659. Secondly, POC feels that it has more than justified refusal on the grounds of the Council’s original Reason for Refusal 6 “the lack of consideration of alternatives which give rise to lesser environmental impact.”

1660. Therefore, by way of finishing, POC asks that the Inspectors recommend to the Secretary of State is that the appellant’s case is dismissed.

The Case for Interested Persons

1661. Mr Brian Arthur – Local Resident: St Dennis  Having worked as an analytical chemist, at one time Mr Arthur was pro-incineration, but now has concerns regarding the potential impact of emissions from the CERC, including nanoparticles, on human health. Effects from CERC pollution would be heightened by local topography and weather conditions that would trap these emissions in the bowl where the plant would be located. These matters have not been seriously addressed. EA regulation is seen as weak and acting after a problem arises, which will be too late for the people of St Dennis and Treviscoe.

1662. The plant would be likely to depress levels of recycling and would be a large alien industrial feature in an agricultural and mining area. The Eco-town is probably too far into the future to be relevant to this proposal, and like rail, would be too expensive to connect to the CERC. Both of these factors seek to give the proposal green credentials that it does not have. This is especially so, as the plant would be fed with plastics that are not a renewable resource. Modern waste treatments are much cleaner and are being used by local authorities elsewhere.

1663. Cornwall County Council was so desperate to sell heat to obtain CHP status that they were prepared to spend £7m of tax payers’ money to build a haul road to access the site. There are also concerns about potential future development around the CERC, which would totally ruin the area.

1664. The lack of consultation continues and disquiet is felt in relation to the Fichtner Report and the Council’s choices of technology and site. Noise, traffic and industrial plant would affect the quality of life for local residents and walkers. (See document BA/1 and attachments).

1665. Mr Oliver Baines OBE – Local Resident: Grampound Road  It is hard to believe that in the UK in 2010 we are still considering such an imposition on so small a community, with the associated impacts on the image of the village and the health and well-being of its residents. There are better, more equitable ways
of managing our waste, many of which are within evidence to the inquiry. The CERC stack would be apparent from Mr Baines farmland between St Stephens and Coombe, which is steeped in history. No party to this inquiry has sought to factor in the implications of peak oil for the incinerator.

1666. Peak oil demands that this is not the time to rely on a 25 year ‘predict and provide’ model of planning. The debate on when peak oil occurs in immaterial, the point is that we are now at or approaching an historic change in direction. Oil would be the source of plastics that would provide energy from the incinerator and fuel for the trucks taking it there. Flexibility will be required to address the effects of peak oil. What is needed is a number of small, resilient, locally responsive solutions linked to campaigns of waste minimisation, re-use and recycling. The inquiry has heard how this can be achieved. To opt for one large rigid, long term, oil dependent facility would be a financial and economic calamity for Cornwall and the appeal should be dismissed. (See documents OB/1).

1667. **Ms Joanna Batterby – Local Resident: St Dennis** Inincinerating 10,000 tonnes of waste creates 1 job, landfilling it would result in 6 jobs and recycling the material would create 36 jobs. CERC would employ people from outside the county, while recycling or AD would employ local people. It would stifle other waste initiatives. WS should start by asking residents what they want to help them recycle. Why should one small village be responsible for the county’s waste? It is a local problem that should be dealt with locally. If recycling were to increase, how would the incinerator be fuelled and where would it come from? Would it be hazardous waste? There seems to be both a lack of accountability regarding the contract and a lack of consultation. CERC would be wrong outmoded and outdated technology in the wrong place. (See document JB2/1)

1668. **Ms Pat Blanchard – Local Resident: St Dennis** The refusal of the planning application was fully justified. The site is clearly unsuitable, given the need to extend the original stack height to a staggering 120 metres. Rather than a landmark building, it would blight the landscape and tower over us. Even with the proposed mitigation measures, noise during and after construction would be seriously detrimental to local quality of life and amenity and therefore, contrary to Government guidance.

1669. The Contract commitment to mass burn incineration has led to a systemic failure to address the real issues, compromised Cornwall’s finances and delayed the introduction of cleaner, more benign decentralised waste technologies. AD and maximum resource reclamation should be pursued, rather than a smaller plant capacity on this site. The proposal questions our ability to meet Greenhouse gas emission targets for 2050 and local decisions have global impacts. No community should be forced to bear the impacts of this proposal. People must be at the heart of policy making, if politicians are to regain their trust. (See document PB/1)

1670. **Ms Lynda Bowman – Local Resident: St Dennis** Ms Bowman also spoke on behalf of her father and brother who are both called David Bowman and are local residents. Some matters of concern have already been raised in other parties evidence. CERC would add to existing air emissions with potential health effects. While the EA consider CERC emissions, it is understood that they do not consider lorry emissions. Many electricity pylons and cables are present in the Goss Moor and St Dennis areas. Scientific papers in 1996 and 1999 indicate the potential for ions associated with electricity transmission to adhere to pollution and
peoples lungs. These factors, in combination with local weather conditions, could increase the risk of harm occurring to the health of local people, including through childhood leukaemia. The Precautionary Principle should be applied to avoid the risk of an Erin Brockovich type of environmental catastrophe.

1671. Concerns are also raised regarding potential increases in surface water running along Footpath 18 next to Little Trerice. In addition, Ms Bowman’s brother is a shift worker who lives at Godstone on Trerice Slip. The haul road would be constructed behind this property and CERC traffic would potentially disturb users of the garden and anyone resting during daytime periods. It is therefore requested that the appeal be dismissed. (See document LB/1)

1672. **Councillor Jackie Bull** – **Local Resident: St Austell**  Cllr Bull was elected to the Council in 2009 for the Bugle division after being Cornwall County Council member for St Austell Bay and a member of Restormel Borough Council.

1673. The vote on the Contract occurred very soon after the Council was elected. Prior to voting on this matter, Councillor Bull sought reassurance from senior Council Officers that the contract was sufficiently flexible to enable new technologies and locations to be investigated. That assurance was given both then and later, even though it subsequently emerged that there was no flexibility in the contract.

1674. The incinerator would stand in front of an area of mineral extraction tipping where reprofiling has been carried out to improve the environment for St Dennis. It therefore would directly contravene the Council’s own aspirations. Vehicle movements associated with the plant would also be inconsistent with the strategic objective of reducing travel movements, not least as the plant is remote from population centres. Alternative strategies, locations and technologies are available if there was a will to use them.

1675. It was apparent to the majority of councillors that the proposal was unacceptable. There is also considerable local opposition and concern about this scheme. A high degree of political consensus exists with politicians working together for this inquiry. St Dennis is a china clay community that suffers from considerable economic disadvantage. It is inherently unfair to further damage that environment and implement development that would deter further economic investment. The appeal should be dismissed to enable a solution to come forward that reflects today and tomorrow, not yesterday. (See document JB/1).

1676. **Mr Carley** – **Interested Party: Chacewater Parish Council**  The Parish Council has particular concerns as it is next to United Mines and includes the Hallenbeagle site. The principle of reduce, re-use and recycle and the generation of energy in the most sustainable way from the residual waste stream is supported. Proposing a single site to serve the County is fundamentally flawed as the proposed technology would reduce recycling and increase road haulage mileage. If a range of sites and recovery technologies were to be developed this would enable individual waste streams to be addressed and spread any benefits and negative impacts. Refusal of this appeal will assist the bringing about of the sustainable future sought by the Parish Council. (See document CPC/1).

1677. **Councillor Armoret J Carlyon** – **Local Resident: Truro**  Councillor Carlyon is a member of Truro City Council and former County Councillor, first elected to Cornwall County Council in 1973 and retiring in June 2009 when it became a Unitary Authority. It is impossible to divorce the contract and the PFI decision...
from the planning application. In 2005 Councillor Carlyon and a colleague sought to ensure that the former County Council would put on hold the waste PFI process until consultation was carried out on the WDF. The implications of the PFI process on existing County Council employees at that time were also highlighted. The inquiry has already heard about the debacle regarding the Officer’s Report on the application. Members of the public spoke against the application, as did Matthew Taylor MP. He said that wrong decisions had been made in the past and the application should be refused. Unexpectedly, the Liberal Democrat councillors changed their stance on the matter and all but one obeyed the call.

1678. Attention is also drawn to an article by someone who has at some time been employed or engaged by Cornwall County Council. It suggests that deprived areas have residents that are not as politically influential as in other locations. Such views are not tolerated in Cornwall, where the motto is “Onen hag oll” – “One and all”. (See document AC/1 Exhibit 15).

1679. Mr Chris Charnock – Local Resident: St Dennis  Mr Charnock and his family have lived at La Mount for many years. CERC traffic would pass directly outside the house. The full extent of the potential noise impacts on their living conditions and the mitigation proposed have only become apparent through the application and appeal process. Initially, mitigation was to include a 2.5m high fence to be erected around the front of their home. However, during the inquiry the family found out that secondary double glazing and mechanical ventilation are now proposed for the house and that windows would need to be kept closed to reduce the noise.

1680. The family enjoy living in their home and use the garden whenever possible. Family members, including Mr Charnock when he is on night shift, can be expected to be at home during the day when traffic associated with CERC would significantly increase noise and disturbance on the highway outside the property. The family consider that the incinerator will blight their home and lives in the future and dramatically change their living conditions for the worse and seek the appeal to be dismissed. (See document CC2/1).

1681. Mr William Corbett – Local Resident: St Mawgan  Mr Corbett is a Parish Councillor and former Borough Councillor that has farmed at St Mawgan since 1976. As a farmer, it is in his interest to ensure that his land is kept free from dioxin contamination. The presumptions in planning policy are now against a single mass burn incinerator at the proposed location. Strong objection is raised in respect of the lack of consideration of alternatives. Indeed, events at County Hall have had all the appearance of a self-fulfilling prophesy. In the absence of a strategy for municipal waste, the statutory requirement for which is only being avoided by the authority’s “excellent” status, the SITA contract has driven strategy rather than vice versa.

1682. The conclusions of the 4th Report of the British Society for Ecological Medicine into “The Health Effects of Incinerators” are compelling. An obvious economic imperative explains the lack of the incinerator lobby’s acceptance of the report. Yet the report draws on years of qualified academic research and has a list of references that is 14 pages long. It cannot be dismissed as simply ‘not being mainstream’. It is impossible to calculate quite how far nanoparticles will travel from the CERC stack. What is incontestable is that Cornwall has high wind speeds. If the report’s conclusions in respect of the impacts of incineration on
farming are accepted, Cornish farm produce could become seen as tainted with dioxins. Furthermore, an incinerator located in the relatively deprived area of St Dennis would only be likely to add to health inequalities. A recommendation should be made for the dismissal of the appeal. (See document WC/1).

1683. **Mrs Mollie Fox** – **Local Resident: St Dennis**  Mrs Fox and her husband moved to St Dennis 3 years ago after holidaying in Cornwall over a 40 year period. Views from their home are across the CERC site to Goonhilly and the elevated position of the dwelling places it at the roof level of the CERC. The loss of this rural aspect is not the only concern. Lack of research regarding dioxin release and in-combination effects with clay particles, especially in relation to asthma sufferers, can be compared to the lack of awareness in respect of asbestosis. Mr & Mrs Fox have experienced the impacts of large scale construction works next to their previous home and are concerned for those nearest to the appeal site. Operational traffic levels associated with the CERC will cause fumes and road congestion. Visitors have already said that they will not come to the area if the incinerator is built. No indication has been given of the potential additional employment for local people the scheme would bring. The Council had the courage to stand up and be counted and we deserve a greener alternative to this incinerator, which we do not want or need. (See document MF/1).

1684. **Mr Stephen Gilbert** – **Interested Party: Prospective Liberal Democrat candidate for St Austell & Newquay**  The Liberal Democrats believe that incineration is not the right technology, one site is not the right solution and St Dennis is not the right place. It is of such scale and massing that would completely dominate the village and would be a further landscape impact in addition to that from existing industries. Council Officers and SITA have pursued this application even though it is self evident that times have changed. Recycling can be improved. Transport costs are likely to increase. Cheaper, cleaner and more local technologies are available. Neither Council Officers nor SITA have been up-front and honest with people. Nevertheless, the application was rejected by local elected Parish, District and then County Councils. The incinerator is not needed. The appeal should be dismissed so that a sustainable solution can be found that is in the best interests of Cornwall. (See document LD/1) (Inspector’s note: since giving evidence Mr Gilbert has become the Member of Parliament for St Austell & Newquay).

1685. **Councillor Fred Greenslade** – **Interested Party: St Dennis Parish Council**  Councillor Greenslade is Chairman of the Parish Council and a Member of the Council. He is Chairman of the Council’s Environment and Economy Scrutiny Committee and previously served on Restormel Borough Council.

1686. The proposed building would have an unacceptable impact on landscape character and visual impact by virtue of its scale, massing and height, especially when seen within the residential context of St Dennis and Treviscoe. This is not seen anywhere else in Cornwall and no mitigation or landscaping would overcome it. People were shocked when the raising of the balloon in January and February 2009 confirmed the proposed height of the chimneys.

1687. Policy criteria require a good road network and rail access. The site currently has neither. The CERC would significantly encroach into undeveloped countryside, with an associated loss of established Cornish hedge and the impact of the 120m chimney would be emphasised by it being on relatively high ground. Cornwall has brownfield sites that are available and that could take smaller more
eco-friendly systems. Emissions from the CERC would exacerbate the existing levels of pollutants on Goss Moor, which have already reached saturation point. The original PR recommended refusal and the CERC would be a departure from current guidelines. The appeal should be dismissed. (See documents FG/1).

1688. **Mr Charles Hall** – **Interested Party: Friends of the Earth** Comparisons can be drawn with Robert Scott who was widely seen as dealing with heroic difficulties on his return journey from the South Pole, but which led to disaster. For 10 years and at great expense, we have been on a much longer journey and have gone nowhere. Friends of the Earth drew attention to alternatives that were dismissed as unrealistic, but are now common practice. County Council Officers have always acted as if there was no alternative to incineration and had no interest in considering changes to strategic direction.

1689. The WLP is an inflexible and short sighted document that failed to read the changes that were taking place in society. County Hall has always viewed the WLP as prescriptive. However, sections 4.5 and 4.6 in Chapter 4 recognise that a variety of waste management options and locations will meet the County’s needs and attention was drawn to the future Municipal Waste Management Strategy. Although the legal necessity for this strategy disappeared, the need for it did not.

1690. The Council chose not to progress a Municipal Waste Management Strategy and ceased involvement with Rezolve, the Waste Working Group that brought together organisations to advise the County Council on waste policies and practices. Initially, Rezolve was sympathetic to incineration, but then sought to look at new ideas and saw the Strategy as a means of achieving community involvement and consensus.

1691. District Councils in Cornwall made progress in increasing recycling, along with the Cornwall Paper Company and the person who set this business up in the 1980s was also instrumental in establishing the Bodmin MRF. This demonstrated that appropriate facilities can get planning permission. Zero Waste should be a beacon to light the path toward the future, with the aim of higher recycling and consideration of AD and MBT for Cornwall’s waste. (See document FOE/1).

1692. **Mr Malcolm Higginbottom** – **Interested Party: Eco Petitions** Eco Petitions are the organiser of an on-line petition that states “We the undersigned agree with and enforce the reasons for the council’s decision to refuse permission for the construction of an EfW plant known as ‘Cornwall Energy Recovery Centre’ (CERT) and ancillary developments”. 400 people had signed the petition at the start of the appeal and a sample of their additional comments was read out to the inquiry. These, and the other comments made are within document ECO/1. The petition includes hoteliers and farmers. Evidence to the inquiry has indicated that the legacy of the incinerator is tantamount to eco-terrorism.

1693. **Ms Hilary Hughes** - **Local Resident: St Dennis** St Dennis may not be the prettiest village, but it is a special place to live. The peaks around St Dennis can be seen from many areas in Cornwall and so would the proposed incinerator. Originally from Derbyshire, Mr & Mrs Hughes are aware that Derby City Council has refused planning applications for two incinerators due to concerns regarding health. In contrast to the St Dennis proposal, these were smaller plants that would have been in industrial areas. On behalf of the residents of St Dennis, Mrs Hughes urges that this appeal be dismissed. To inflict a massive incinerator on
the village, the lives of its residents and their health is nothing short of criminal. (See documents HH/1 and HH/2).

1694. **Mr David James – Local Resident: St Dennis**  Mr James spoke on behalf of his family. Although the Site Liaison Group was set up to provide local residents with factual information, estimated vehicle movements have doubled in 6 months. The village magazine provided a means for SITA to liaise with local people, but the company decided not to use it. Like the United Downs landfill site (and the possible financial incentives for people living in that location), the site at St Dennis will be seen as a profit making machine for its investors. Public consultation only began after the site was chosen. This included the public meeting in a marquee in St Dennis, which occurred 6 months after the planning application was made. Council Cabinet Members who spoke of the importance of the proposal in the local press represented constituencies in North Cornwall and did not attend the St Dennis meeting.

1695. SITA has said that this is the first time that they would be building a plant like this next to a village. The model at the St Dennis meeting had a stack that would have been 75m, not the 120m chimney currently proposed. It did not communicate the true visual impact of the incinerator, for which St Dennis would become known.

1696. The Council voted clearly against this scheme by 20 votes to 1 and determined it on planning, rather than financial considerations. Recycling in the County could be much improved. While the incinerator would relieve pressure on certain parts of the Council, it will discourage the separation of waste. Dust accumulates in houses due to the unique local circumstances. Insufficient scientific evidence has been provided to confirm the effects of PM$_{2.5}$s combining with incinerator emissions.

1697. Edmonton incinerator in London has been referred to as an example of good practice, but there has been enforcement action in respect of the operation of the plant and a fire. Local circumstances ensure that many direct comparisons cannot be made between St Dennis and the Edmonton incinerator, which was a brownfield site with industry all around it. A current crisis in waste management cannot be solely attributed to the people of St Dennis, who value their quality of life. All we ever wanted was a level playing field, but SITA and County Council Officers were working hand in hand to undermine other possible ways forward. (See documents DJ/1 and DJ/2).

1698. **Reverend Dr John Johnson – Local Resident: St Dennis**  The application seems to be directed at the need to dispose of Cornwall’s waste in relation to financial capabilities, with no reference to the moral issues involved. SITA’s opening statement lacks any consideration of the cost of the development to the local population. St Dennis has suffered from dust and other effects of the mining industry for many years. Noise from the proposal would not only be experienced at residential properties close to the site. SITA’s view that existing conditions around St Dennis result in further pollution and visual impact being acceptable displays an absence of a moral code, which is to be sharply rebuked. There is no consideration of the impact of the proposal on human society. To evade or ignore any moral compass is unforgiveable. “The ultimate test of a moral society is the kind of world it leaves its children.” (See document JJ/1)
1699. **Ms Lucy Kelly** – _Local Resident: Penzance_  
Ms Kelly works as a local school teacher and for an environmental project. The proposal should be rejected for the following reasons: it would increase reliance on an out-of-date technology that requires huge resources; it creates more greenhouse gas emissions and would add to those from local sources; traffic generation, including during the congested holiday season. We should concentrate on minimising waste production in the first place. Council waste contracts should treat residual waste in an appropriately sustainable and environmentally sensitive manner in-line with EU and UK targets and recognising the financial interests of residents. Examples of best practice should be taken from elsewhere, including much greater emphasis on composting. The Council’s Business Plan aims to provide the highest quality services. Addressing the matters above would make people more responsible for their waste and as a result communities would be strengthened and be more socially responsible as a whole. (See document LK/1).

1700. **Mr Gwylym Lewis** – _Local Resident: Truro_  
Mr Lewis is a Further Education Tutor with Truro and Penwith College, which has several centres and annexes across Cornwall. Education for sustainable development is embedded into all lessons. 16 to 18 year olds at the college would be middle aged and may have children of their own at the college when the contract for this facility ends and decommissioning of it is paid for by the people of Cornwall. Rubbish should be seen as a resource and greater awareness is needed of the options for its management.

1701. Incinerators give rise to a diverse range of emissions and whether those from the chimney at St Dennis would land in the village, Bodmin or Exeter, it would still be pollution. Alternatives should be considered. Other authorities nationally and internationally demonstrate that waste can be separated for recycling and the remainder subjected to AD and composting to produce a fuel and/or a soil improver. Evidence from Mr Lewis includes a recording of the BBC radio programme “You and Yours” from 12 April 2010, in which authorities adopting such an approach are interviewed. 77 authorities in Europe sort MSW and AD the biological element. There are at least 4,000 AD plants in Europe and indeed, in 1897 the street lights of Exeter were run on biogas from AD. (See document GL/1).

1702. **Ms Lynn Lintott** – _Local Resident: Bugle_  
Ms Lintott also spoke on behalf of her daughters and granddaughters, who live in St Dennis. St Dennis, its people and its school are in a bowl shaped valley that is often entrapped in mist. The proposal would release emissions into this air over a thirty year period, which could affect the health of local residents. It would increase noise, traffic and congestion in St Dennis. There would be risk of explosion and stack collapse. All waste going to the incinerator would need to be checked for recyclables and poisonous items, for example, burning foam can release cyanide gas. The plant would be comparable in scale to the Statue of Liberty or Truro Cathedral, but the CERC would be of a destructive nature that would overshadow local homes and would be apparent to everyone travelling across Cornwall. It would be a monstrosity within the context of the landscape and fresh air in the county that attracts people to holiday here. Planning permission should not be granted for it. (See document LL/1).

1703. **Mr Mike Martin** – _Local Resident: St Dennis_  
The former County Council were never honest regarding site selection and consultation was non-existent. Site investigation work started on the appeal site prior to the contract being let.
Although the County Council referred to other locations, evidence suggests these were not seriously considered. The site was originally listed thirteenth for suitability and first for availability. Simply choosing a site due to availability favours one company. Only 4% of the heat produced would be used by the clay industry.

1704. There is no local need for CERC ash to be used as aggregate. Additionally, the stack height would have implications for the re-opening of RAF St Mawgan. Emissions from the stack would be trapped by local topography and add to those from existing industrial sources. In relation to health, the precautionary principle should be applied in this case. AD is an alternative that is supported by Government.

1705. Waste management on multiple sites would reduce vehicle mileage considerably in comparison to that proposed and more than that estimated by the Fichtner Report. Financial implications should not be a consideration in this case. People underestimated the local capability to put up such persuasive opposition. In the absence of a WS, Cornwall County Council took the easy, rather than best option. (See document MM/1).

1706. **Mr Paul Matthews** – Interested person

1707. In addition to Mr Matthews’ Opening Statement, Preamble and Executive Summary the themes within the evidence are indicated by parts listed in the Table of Contents below (See document PM/1):

- **IV CERC: GOVERNMENT ADVISERS** – Allegiance of official expertise pledged to private interests – example of asbestos industry.
- **V CERC: EXECUTIVE SUMMARY EIB FINANCING FOR THE INCINERATION INDUSTRY** – Siphoning off public money for private profit.
- **VI CERC: CASE STUDY CORNWALL COUNTY PPP – SITA** – Proven unreliability of SITA UK – Record of poor industrial hygiene in UK.
- **VII CERC: THE UK HEALTH RESEARCH TEAM’S SMOKING GUN** – Increase in perinatal mortality rates linked to air pollution exposure
- **VIII CERC: REDHIBITORY DEFECTS OF COMBUSTION-DRIVEN WASTE MANAGEMENT** – Multiple unauthorised exemptions in UK
- **IX CERC: STATE OF THE ART TECHNOLOGY FOR SWEEPING THE DIRT UNDER THE CARPET** – Biology or chemistry as baseline?
- **XII CERC: A DEEP-ROOTED CULTURE OF DENIAL** – CADAS Paris – Dow Michigan USA – Industry’s web of conspiracy and deceit. (See document PM/3 which adds to this section).
- **XIII CERC: A CASE STUDY BYKER** = *Citizen Participation in Policy Setting* by Lyn Woods & Bill Hopwood. EA’s role.
The matters listed above range from the work of the chemist Antoine Laurent Lavoisier, anticipating what we now know about organohalogenes, through institutional conflicts of interest and health hazards – which we fail to recognise at our peril – to a review of practicable alternatives and viable solutions, that the Rule 6 Parties develop.

It is impossible to discuss investment in huge infrastructure without referring to political culture. This is especially true of Cornwall where major policy decisions have been complicated by the transition to a unitary authority, a move many would argue was motivated by a desire to concentrate more power in less
hands. Either way this factor has not impeded until now the furtherance of a secretly brokered £500 million contract privileging incineration.

1710. Neither health nor economic and social issues have been sufficiently considered by the majority of the WDAP in taking forward the contract. People holding high elective office should defend the public interest and respond honestly to public concerns when planning proposals have been submitted which involve costly, dangerous and potentially lethal combustion technology that belongs in the last century.

1711. Whilst members of the Council are effective politicians, only a fraction of them possess sufficient knowledge or experience for dealing objectively, on a truly sustainable long term basis, with their gruelling task of governance. Members of key committees in the County are often starved of information by their Officers. The less proficient appear as ‘stooges’ for the ‘professionals’ be they in-house or external consultants. Taxpayers fund directly or indirectly ‘expertise’ which concerns complex technical or legal issues, but also relates to know-how of the type of ‘social engineering’ which passes for public relations. Reference is made to a 1947 Edward Bernays’ essay entitled *The Engineering of Consent*. Mr Matthews considers the various consultants and reports commissioned for the CERC have resulted in reports being flawed and facts being skewed to mould public opinion. This has cost the taxpayer unnecessary expense.

1712. Politicians delegate power too but also moral responsibility and statutory liability for situations their judgements help to create. Their opinions and elected office combine with those who practice risk management, which is perceived as a rational means of dealing with increasing technological complexity. In the name of evidence-based policy-making, the Council has become over-reliant on ‘expert advice’ from private companies and corporate entities. This, along with financial interests, results in a fragmentary political response to crucial strategy options.

1713. Some councillors realise the implications of experiencing so much pressure and having to decide on issues without being adequately briefed. However, the last ten years of waste implementation policy in the county has been characterised by a slowness to act on the urgent need for AD and separation at source kerbside collection. This is evidenced by the apparent conflict between the planning and waste disposal functions of the Council, which is beyond the understanding of most ordinary people.

1714. Unelected officers and consultants can influence the decision-making process and make it accountable to them alone and consequently, responsive only to private interests. Usually few of the contractual parties are willing or able to admit the true impact of what they do. So-called ‘expert advice’ short-circuits input from grass roots organisations critical of multiple conflicts of interest and that are dismissed as irrational or politically motivated.

1715. People who live their lives responsibly should not be held accountable for the waste of others and the economic implications of its disposal, which is within a system that is answerable only to the banks and financial institutions. There is no need for another panic buying spree, like the one for Penzance Harbour, except this time involving even more money and public health issues. All the data should be considered in this case. Despite the self-confidence of the waste industry, the alarm bells should not be ignored.
1716. A local newspaper has reported that 95% of planning decisions are made by Council Officers. Members are trained to abide by their officers’ advice and be fired if they do not, such radical views in the light of The Regulation of Investigatory Powers Act 2000 has the potential of stifling political opposition from those using the web as a tool to combat social injustice.

1717. Given the situation in Cornwall, reference is made to *La pesée embarquée* which is an ingenious and well managed, separated at source, kerbside collection scheme, which is operated in the Communauté des Communes de la Porte d’Alsace. Dustbins are micro chipped and weighed on collection by SITA, with local residents paying on the basis of their recycling performance, which is now 76% in the locality. The yearly waste production per person is 83 kilos (with limited fly tipping) compared to a national average of 300 kilos. Such a reduction would significantly reduce the waste available for the CERC.

1718. If SITA France can achieve this in Alsace, where they have produced a CD in cooperation with local residents and the enlightened Mayor who established the system, why can this scenario not be replicated here? In addition, SITA UK has announced a planning application for an AD plant in South London and SITA Environmental Solutions Australia are delivering AD, composting and recycling. Attention is also drawn to the ability of green waste composting to save as much CO₂ and energy recovery. The fly in the ointment in Cornwall seems to be some WDAP Members, SITA UK and DEFRA.

1719. Two incineration facilities have been closed down in France. As highlighted within the evidence, endocrine disruption is an issue with this technology and there is a corollary with smoking related illnesses and comparisons can be drawn with asbestos. (See documents PM/2, PM/4, PM/5, PM/6 and PM/7).

1720. **Mr Clive Medway – Interested Party: Prospective UKIP candidate for St Austell & Newquay** The visual impact of the scheme on the local community is much greater that SITA suggest. Other parties’ evidence refers to the reversal of the planning officer’s recommendation without any clear evidential reason, which is a matter of concern, along with the closeness of the relationship between Council Officials and SITA. Local people feel their views have been ignored and it seems to be a case of ‘don’t ask the people in case they give the wrong answer’.

1721. This proposal would see the incineration of recyclable waste and therefore, conflicts with the emphasis in EU guidance. Future reduction in waste production would result in a need to import waste to the incinerator. This would increase heavy traffic and the use of C&I further increases concerns regarding toxic output that could spread over a very wide area. Dioxin poisoning can lead to many ailments and early death. Many areas of Cornwall rely on tourist and farming industries for much of their income. Once fears arise the financial damage would be severe. There would be no going back once the harm is done. If the alternatives raised at this inquiry are pursued, none of this need happen and so, the appeal should be dismissed. (See document UKIP/1).

1722. **Ms Diana Padwick – Local Resident: St Dennis** Ms Padwick’s family moved to Cornwall for a better quality of life and in doing so, have found help with a number of medical conditions that are increasingly common in the modern world. These can be associated with additives and chemicals in the food chain and domestic environment. Evidence to the inquiry indicates that PM2.5 emissions from the CERC would contribute to the medical conditions of one family member.
and organic food grown in the family’s garden would also be contaminated with PM$_{2.5}$. Examples are given of previous legislative and regulatory failures that cause a lack of confidence in respect to the potential impacts from the CERC.

1723. The family work hard to be “zero waste”. Incineration is a crude technology and this proposal does not have the flexibility to cope with a greener more caring world. The CERC would undermine Council initiatives for better resource use and reduced travel. If it goes ahead the financial implications are such that this family will be trapped in a home that no-one will want to buy. Ms Padwick would be next to a building that she does not want and a process that runs contrary to her views, business practices, lifestyle and hopes for her family’s future. (See document DP/1).

1724. **Ms Sue Richards** – Local Resident: Nanpean Many people in this area suffer from asthma and similar conditions. Foggy local weather conditions can prevent smoke and dust dispersing in the atmosphere for days on end. Just because the appellant considers our environment to be ‘less than pristine’ does not mean that we have to accept an ugly carbuncle on it and in doing so, undermine the area’s regeneration schemes. Alternatively, the incinerator could be located in a holiday location where, unlike the clay area, people do not live throughout the year. It is not the local residents’ fault that smaller more up-to-date alternatives were not investigated by the County Council. This building would take from the landscape without giving and therefore, is clearly not sympathetic to it. Local residents have a high regard for their nearest and dearest and are no less important than anyone who does not live in a ‘less than pristine environment’. The appeal should be dismissed – lives and livelihoods depend on it. (See document SR/1).

1725. **Councillor Ken Rickard** – Local Resident; St Dennis Cllr Rickard is a former Chair of STIG and, amongst other positions currently held, is also a Parish Councillor.

1726. Reference is made to Sections 24 and 25 of EU Directive 2008/1 in respect of people having an opportunity express a view on the possible effects of waste installations prior to decisions being made in respect of them and an obligation to foster groups by promoting public participation and environmental education. No information has been provided which sets out the emissions from technology that could have been chosen for the Cornwall plant.

1727. St Dennis and the surrounding communities have never been consulted on any alternatives to incineration. SITA’s public consultation for its planning application has been far from satisfactory and has not followed statutory process. Not one public consultation meeting has been held in St Dennis by SITA. While a public exhibition occurred in St Dennis, the model of the development was not fully informative and questions remained unanswered. A liaison group formed in 2006 consisted of members of the public that were chosen by SITA and only met once in St Dennis Parish. A large crowd gathered outside this meeting and this ended in a boisterous confrontation with police involvement.

1728. Cornwall County Council organised two events in St Dennis, one with individual pre-arranged and timed meetings that had to be accessed through security controls and a marquee event where people could speak by prior arrangement. Again, questions went unanswered at these events.

1729. No use was made of the St Dennis Parish magazine, which is published on a monthly basis. In addition, the Advertising Standards Agency found that a leaflet
produced by SITA was too absolute and could be misleading. Consultation should be a major factor in the public’s involvement, especially with a planning application of this size.

1730. The situation surrounding the planning officer’s recommendation is dubious to say the least and was not of a standard that the public are entitled to expect from the Council’s leadership. The original report by those working on the application recommended refusal, but was re-written for approval by a planning officer who when previously working for Restormel Borough Council had recommended that they seek the refusal of the application. This sequence of events and the lack of explanation for the planning officer’s change of mind were highlighted at the meeting to determine the application and the relevant facts should be made known at this inquiry.

1731. The proposed haul road would be detrimental to the well-being and preservation of our environment, which includes features of great historic value, protected trees and species. In addition, no proof has been provided that the proposal would not irreversibly damage protected species on the nearby Goss Moor SAC. Vegetation has been removed from the route of the haul road, which circumvents the planning process and has resulted in the loss of wildlife habitat. The use of the haul road would undoubtedly cause inconvenience and frustration to regular road and footpath users and create the potential for road traffic accidents. Its steepness would also result in unacceptable noise and emissions levels.

1732. CERC would reduce the quality of life for the local community. By its size, the building and stack would pervade every aspect of the community’s lives. It is not clear why the EA and Natural England do not adopt a precautionary approach when assessing the potential damage to the natural environment they are charged with protecting. If carried out, an appropriate assessment which includes an in-combination assessment would have presented the potential of saving a large amount of time, effort and taxpayers money.

1733. This combination of emissions from the CERC would also be harmful to humans. It has not been proven otherwise. Incineration is an out of date technology that has resource, climate change and financial implications.

1734. The Fichtner Report must be one of the most controversial ever submitted to the Council and was used by the WDAP to convince the Panel to continue with the SITA contract. The background to the Report and those involved with it is far from satisfactory and has caused the Council to seek a peer review of it. Evidence at this inquiry demonstrated inaccuracies within the report. Due to these matters, it is hoped that any evidence in relation to the Fichtner Report is completely ignored.

1735. I am disappointed, disgusted and feel let down by the establishment and the people promoting this planning application who have shown little or no regard for democracy or others quality of life. Financial implications have outweighed their logical thinking and as a result of these things, I have no confidence in them.

1736. The selection of this site so close to St Dennis and Treviscoe will no doubt unacceptably reduce the quality of life of the local community and have lasting impact on its well-being. Landscape is one of the most important economic drivers in Cornwall and every effort should be made to preserve that image.
1737. Financial costs or benefits to the Council should not be a material planning consideration per se. The relevant consideration should be the need to meet national policies to treat waste in a more sustainable way. The site specific benefits of energy use in this location would amount to 6% of the output from the CERC, which demonstrates that CERC does not produce any great benefit on this site. It is hoped the points in this evidence prove that the decision made in respect of this proposal was correct and should be endorsed by the Inspector and the Secretary of State. (See document KR/1).

1738. Ms Caroline Righton – Interested Party: Prospective Conservative candidate for St Austell and Newquay The process is in error and the proposal contravenes planning policy. The proximity principle would draw the proposal to a site closer to towns and cities. However, it would be on greenfield land, with visual and historic environment impacts. There is a perceived risk and a fear regarding the incinerator and concern in relation to the potential source of waste for the plant. Failings regarding this site have led to an inappropriate design. It would dominate the local landscape and detract from the area’s future prospects. Planning is about thinking ahead and the Eco-town would contribute to a ‘Green’ county theme. Other options are available to SITA. Everyone, including SITA, knows the CERC is the wrong solution.

1739. Ms Lynn Sims – Local Resident: St Dennis Ms Sims has lived in the shadow of an incinerator before and the children from that street in their adult years went on have a range of serious medical conditions, including respiratory problems. At one time the few scientists who were concerned about BSE were said to be wrong. Potential impacts will be from noise, vibration, traffic, air emissions, highly toxic residues and in-combination effects of emissions from CERC with those of the clay industry. The visual impact will be huge and would be made worse by illumination at night. It took 18 months to resolve noise and low vibration issues at the Isle of Man plant. The increased stack height, need for new roads and lack of industry that is able to utilise more than a small amount of the available heat indicates that this is the wrong site. SITA has provided inaccurate and misleading information, including in photomontages. Is CERC the image that Cornwall wants to portray to visitors that use the A30? (See document LS/1).

1740. Ms Val Sterling – Local Resident: Mawgan Porth Ms Sterling and her family are organic growers approximately 8 miles from the appeal site. Tourists looking for unspoilt beauty would experience considerable visual impact from the proposal. The family are told that incinerators produce emissions that would fallout on their land, which the Soil Association require to be tested and shown to be free from contaminants for the farm to maintain organic status. More and more people are becoming aware of how farming can play a significant role in reducing the impact of our food for the better by, for example, increasing the UK’s arable soil carbon store. Although incinerators are regulated, standards set do consider the cumulative and cocktail effect of emissions in the area. Also, there is always the chance of accidents or unregulated emissions. Organic farming can play a role in addressing climate change and providing healthy living. The risk of contamination from the proposal is not wanted. (See document VS/1).

1741. Mr Matthew Taylor MP – Representing the parliamentary constituency of Truro and St Austell A former Liberal Democrat environment spokesman, Mr Taylor has been a long term opponent to a single site solution, even though Cornwall County Council saw it as the easiest planning solution. The single issue
that drew the plant to this site was the Goonvean heat utilisation. Although not objecting to the CERC proposal, EH has stated clearly in their letter of April 2008 that it would be an alien feature and dominant from Castle an Dinas. It would be so from the A30 as well. The draft RSS included proximity principle to reflect the settlement pattern. While the Regional Assembly are not objecting and SWERDA are supporting, this is within the context of these bodies seeking to meet targets. WLP Policy L6 sets out that sites should be served by rail and should not have an impact on the SAC. The resulting stack height and impact on the landscape indicates clear incompatibility with the WLP policy criteria. The site must be acceptable looking beyond the advantages. (See documents at MT/1).

1742. Councillor Roy Taylor – Cornwall Council Liberal Democrats A former member of Restormel Borough Council, Cllr Taylor now serves on the Council’s Waste Panel and spoke on behalf of at least 32 of the 39 Liberal Democratic members of the Council. This evidence seeks not to repeat that of others, although footpaths, the SAC, process emissions and the historic environment are all important issues.

1743. Work is ongoing that will leave the Council in a position to put forward alternative proposals after this appeal. Other technologies (including composting, AD, autoclave, pyrolysis, gasification) all outperform incineration and are less damaging to the environment. The proposal would be huge and hugely out of keeping with its setting. The height of the stack confirms the air emissions are not innocuous and Cllr Taylor’s employment in the clay industry has confirmed to him that bag filters will fail. If this appeal were to be allowed, action to address bag failure should be the subject of a condition.

1744. CERC would result in unacceptable traffic levels and recently the cost of transporting waste to and from the plant has risen significantly. The cost of road fuel (and alternatives) can be expected to remain high. The economic arguments for a single plant are wrong and local solutions will become more and more cost effective. The use of plastics as a CERC fuel is also wrong, as these materials will not be a cheap commodity in future years. SITA’s own figures confirm the proposed plant is bigger than we need to deal with Cornwall’s household waste. Rather than a single site, waste should be managed locally by a means determined suitable for that community. (See documents RT/1).

1745. Mr Tim Thomson – Interested Party: Green Party Mr Thomson is also a member of the Council’s Public Waste Management Group, CSWN and Chacewater Parish Council.

1746. The incinerator proposal does not take account of the needs and concerns of the people of Cornwall nor the wider cost to the whole Duchy in either environmental or energy recovery terms. Alternative technologies would be more energy efficient, less damaging to the environment, more flexible and have more easily dealt with residual output.

1747. The plant will need a supply of feedstock that is already in excess of the available residual waste in Cornwall. C&I waste can only fill this gap if the price is right within an increasingly competitive industry. The best deal for C&I waste producers may not be the one which suits the Council or SITA. In addition, given the quantities of aggregate in Cornwall, incinerator bottom ash is not needed to supplement the supply.
1748. Rather than displacing energy from fossil fuels, it is likely to reduce generation from greener sources. Energy would be utilized by a diminishing clay industry, whereas smaller alternative technologies could be used to supply small scale industry and housing with locally produced energy. A dispersed network of sites close to population centres would also be likely to reduce vehicle mileage. This and other considerations for such an approach are addressed by the evidence.

1749. Evidence before the inquiry indicating the cost and timescale involved in bringing forward a different solution need not prevent this from happening. The availability or otherwise of PFI credits should not be relevant to this inquiry. Any additional cost should be accepted to achieve the right solution for Cornwall. Condemning Cornwall to 30 years of the wrong solution without proper consideration of future cost and environmental impacts would be doing us and future generations a grave disservice. (See document GP/1).

1750. **Mr Alan Trethewey – Local Resident: St Dennis** Mr Trethewey worked in building and engineering associated with clay extraction and processing. The industry employs significantly fewer people in the locality now than in the recent past. The clay industry does not require heat 24 hours a day 7 days a week. These matters along with changing clay drying technologies, queries the potential opportunities for heat from the CERC to be used by the industry and therefore, this being a reason for locating an incinerator on this site. EfW facilities should be located on industrial land that is close to the source of waste, existing infrastructure and greater numbers of potential users of the heat.

1751. The CERC building and stack height will tower over St Dennis and people taking views from the vantage points at St Denys Church and its car park. It would also have a significant visual impact on tourists travelling on nearby highways. Concerns are also raised regarding the effect of fumes from the CERC chimney and associated vehicle movements on air quality and related impacts on health. Other issues include the effect of the proposal on property prices, noise from lorries on the steep haul road, the ongoing cost of maintaining the haul road and smell. Mr Trethewey fears for the future general health and well-being of the people of St Dennis and surrounding areas. (See document AT/1).

1752. **Councillor Andrew Waters - St Enoder Parish Council** Copies of representations made by the Parish Council at the application stage are supplied and certain points within them are highlighted. The Parish Council were unanimously opposed to the construction of a single incinerator in Mid-Cornwall on the basis of planning grounds that included highways implications and on health concerns. Highway survey data for the road network that would be used by CERC traffic is out-of-date and the Parish Council also has concerns regarding the design of existing highways and the proposed Stamps Hill junction.

1753. The Parish Council was treated abysmally during the consultation period. SITA Liaison Group meetings clashed with full Council meetings. Only after space became available within the Group and a change in nominee did Parish representation occur. The Group may well be viewed as a ‘lip service’ exercise in consultation.

1754. Over 70% of people who responded to the St Enoder Parish Plan questionnaire in 2008 objected to a single incinerator, but were very supportive of recycling, reuse, waste minimisation, alternative EfW solutions and smaller incinerators distributed throughout Cornwall. This proposal would undermine these
alternative approaches. Incineration should only be accepted if proven not impact human health, which has not been done in this case.

1755. The WLP area of search approach is out-dated within the context of WS2007, PPS10 and emerging RSS. It became a pre-determined decision to locate a facility in the CCA, where financial deprivation, dust and health are matters of concern. The proximity principle should apply, indicating that waste should be dealt as close as possible to where it arises, so reducing transport costs. The Redruth/Pool/Camborne area produces the highest volume of waste in Cornwall. Financial issues should not cloud the issue regarding the decision to be made. Cornwall needs to be forward thinking to be a truly green economy. Incineration and landfilling need to be eliminated. (See document SEPC/1).

1756. **Ms Clarice Westlake** – Local Resident: St Dennis  
Ms Westlake has been a committee member of the local branch of Cancer Research for 47 years and for 20 years worked at the local primary school. Reports have highlighted increases in respiratory and neurological development problems and above all, in Infant Mortality Rate, where incinerators are in operation. Alternative technologies have become available and therefore, can it be right to take a chance with the well-being of the area’s children? While there may be financial penalties if the scheme is turned down, Ms Westlake is a local taxpayer on a very limited income who would be willing to pay her share to safeguard the children in the area. A poem was read to the inquiry on behalf of present and future children who have no voice to plead their own case. (See document CW/1).

1757. **Mr Derek Williams** – Local Resident: St Dennis  
Mr Williams has lived in St Dennis all of his life. Mr Williams and his wife have provided evidence that includes photographs of views taken from a walk along the proposed haul road. A DVD presentation of these images is included within the evidence and the views were seen by a walk along the proposed haul road on 11 May 2010 during the programme of site visits arranged in the middle of the inquiry.

1758. The photographs indicate the steepness of the topography that the haul road would use and include a section of ancient hedgerow on the Parish boundary that would be lost to the scheme. Underground cables and overhead power lines would need to be moved.

1759. During October and November 2008 survey work cleared a large swathe of land and this is evident in the photographs. Tree guards were scattered around and the young saplings they once protected have been lost to the local environment and wildlife within it. Ancient woodland is present alongside the proposed route and large trees from more recent planting have already been felled on the other side of the track, areas of which are very wet. Other trees will also be required to be felled that are the subject of a Tree Preservation Order.

1760. Few vehicles use the route at present and in parts this is evidenced by the grass growing in the middle of the route. Nonetheless, tracks from dog walkers, horses and wildlife can be seen along its length. Mr & Mrs Williams consider the proposed haul road junction with the highway at Highgate Hill to have restricted visibility for traffic approaching down the hill and little warning for vehicles approaching the junction from Stamps Bridge. These matters are thought to be especially important given the size of the vehicles that would be using the haul road and the nature of the manoeuvres required to turn into and out of the junction. (See documents DW/1 and DW/2).
1761. Mr Michael Wilson – Local Resident: St Dennis  Photographs are presented to illustrate a number of points. These include the appellant company’s opening submissions relation to the lack of effect from an incinerator on local food production. Aerial photography shows greenhouses next to the Isle of Man incinerator. These have now gone and nearby dwellings are boarded-up with no apparent explanation except the presence of the plant next to them. Attention is drawn to an autoclave plant in Rotherham. People do not notice the plant, which is near to the Magna Centre. (See document MW/1).

1762. Councillor Mrs Kim Wonnacott - St Stephen-in-Brannel Parish Council  The Parish made a six page submission that was reported by only a single paragraph at the application stage. This, and the attitude and behaviour of the panel at the marquee meeting in St Dennis did not help public perception. Although waste has been taken to a central point in the past, at last years fuel prices smaller facilities located throughout Cornwall would save millions of pounds in transportation costs and would meet policies seeking waste to be dealt with close to its source. In addition, the occupiers of houses bordered by the new haul road would be substantially inconvenienced, with associated pressure on their health. The public perception that this facility will do harm is evident and this will affect peoples lives in one of the country’s most deprived areas. Rather than paying for scientific reports to prove that EfW would cause physical harm, the Parish Council is sure that there are alternative arguments and reiterates its full support for PC-STIG. (See document SBPC/1).

1763. Councillor John Wood – Local Resident: Roche  Cllr Wood was elected to the Council in 2009 and is a former Chair of Planning at Restormel Borough Council. He has lived and worked in the area for over 35 years and represents an electoral division that includes parts of the Parishes of St Stephens and St Dennis.

1764. A similar scheme to that now proposed was abandoned 10 years ago and an alternative to centralised mass burn was expected. The delays created by a lack of imagination and intransigence are being used to financially frighten the people of Cornwall. The financial implications are not a planning matter. Protection of health and the environment is a planning matter. It is planning law that must take precedence when determining planning applications.

1765. Attention is drawn to the second and seventh reasons for refusal in respect of the scale, massing and proximity of the building to surrounding areas. Both reasons for refusal are clearly supported by planning policy. The incinerator would dominate the area and destroy the character of St Dennis. The Eden Project placed its Biomes within a quarry, which is not as close to local communities and lessened its visual impact on them. The CERC proposal contravenes local planning policy and should be dismissed as the appellant’s mitigating circumstances cannot be upheld. (See document JW/1).

Written Representations

1766. A substantial body of written representations were made at the planning application stage (See documents X/1/2 to X/1/10). A number of written representations were also received as the result of the notification of the inquiry and some of those who submitted representations also appeared at the inquiry. Whilst a letter of support was submitted by a former County, District and Town Councillor, the majority of representations objected to the proposal on a wide
number of grounds. The points raised include: failure to meet local, regional and national planning policy; public health and well-being; lack of energy efficiency; the proposed use of greenfield rather than brownfield land; that incineration is too low in the waste hierarchy; that the appeal site is not in sufficient proximity to waste sources; the potential benefits of using of multiple sites; the impact of the incinerator on recycling; the future availability of waste to the plant; the availability of more advanced alternative technologies; the effect of the development on footpaths and their use; the visual impact of the plant and its stack; the proximity of the incinerator to residential development; the effect on the historic environment; the effect on the natural environment; noise emissions and odour; the proposed method of waste transport and the associated costs; vehicle routing and highway safety; pressures in respect of timing and finance; the effect of the proposal on property prices; conflicts of interest and corporate lobbying.

1767. Mr Matthew Taylor MP spoke at the inquiry. In addition to this, Mr Taylor’s written representation stresses that while the proximity principle had been dropped from most other RSSs, it has been retained in Cornwall. The RSS also states that waste management disposal facilities should be located in towns and cities. He points out that the PR to the planning committee recommended approval ‘on balance’ and indicated that a clear case for refusal could be made. Members found the case for refusal convincing. The only reason for choosing this site is the sale of heat to Goonvean. On all normal planning grounds the location is clearly inappropriate.

1768. The EA representation highlights that incineration has a role to play in waste management and may form part of a sustainable WS, where it does not undermine the prevention or minimisation of waste or other waste management options. In addition, the proposal is expected to represent BPEO for managing specific waste streams and form part of a regional or local strategy for sustainable waste management. Energy generated by incineration should be recovered as far as practicable. Additional information was sought to demonstrate that the proposal would not pose an unacceptable risk to the environment. The EA raised no objections to the use of the appeal site for waste management when consulted during the WDF and PFI process. In respect of the current proposal, negotiations with the appellant enabled the EA to withdraw its objections to this scheme. (See document X/2 for the bundle of written representations)

**Conditions and Obligations**

1769. Schedule 2 of the SOCG submitted before the inquiry contains a list of proposed conditions. At an early stage in the inquiry, I said that I would consider the proposed conditions in the light of the guidance in Circular 11/95 “The Use of Conditions in Planning Permissions” and circulate my comments for further consideration by the parties. This was to save inquiry time being taken up in unnecessarily detailed discussion of the proposed conditions. (Inspector’s note: see the SOCG at CD/C2).

1770. I subsequently circulated three schedules of conditions to the parties for their written comments. The re-working of the proposed conditions in the three schedules reflects the guidance in Circular 11/95 that, amongst other things, conditions should be precise, enforceable, necessary and must serve a planning purpose. I have taken the latter to mean that if a matter is also subject to
control through another regulatory regime then, to avoid duplication, it should not be necessary by way of a planning condition. (Inspector’s note: see X/10 for my schedules of the re-worked conditions).

1771. Of the three schedules, “A” includes conditions that I regard as being necessary and serving a planning purpose, “B” lists conditions which are necessary but are concerned with matters which are more appropriately dealt with in the EP, whilst “C” includes conditions that are unnecessary. Having considered my three schedules, the appellant and the Council then circulated a list of agreed amendments to my re-worked conditions. The appellant and Council in a separate document also suggested a further condition. (Inspector’s note: see CD/C10 for the agreed amendments to my re-worked conditions and CD/C10A for the agreed additional condition).

1772. In the following paragraphs I consider the conditions that have emerged from the above process and which are being put forward by the appellant and the Council. I deal first with the proposed conditions in the order that they appear in Annex B to this report. Annex B contains the conditions that I recommend should be attached to a planning permission in the event that the Secretary of State is minded to allow the appeal. The numbering of the proposed conditions in brackets is that given in the Annex.

1773. In addition to the standard condition requiring development to commence within three years of the planning permission, it is proposed that a condition should be imposed which requires the development to be carried out in accordance with the submitted plans. This is important as the submitted plans and drawings define the scope and extent of the development. (Inspector’s note: see conditions 1 and 2 in Annex B. The list of agreed plans and drawings forming the development is in Annex A).

1774. Two phasing conditions are proposed. The first condition divides the development into two phases: a first phase incorporating the haul route and access road and a second phase covering the CERC development itself. The second condition requires that, with the exception of the diversion of utility services, the stripping of top and sub soil and earthworks, nothing shall take place on the CERC site until the first phase of the development has been completed. This phasing of the development is important. It would mean that the traffic generated by the construction of the CERC complex would travel along the haul route and access road rather than the network of local roads which could impinge upon the amenity of those living along these roads. (Inspector’s note: see conditions 3 and 4 in Annex B).

1775. A condition proposing the removal of permitted development rights has been suggested for the erection of buildings not shown on the submitted plans. This is necessary. The ad hoc accumulation of small buildings and fixed plant or machinery could have an adverse visual impact. A further condition has been put forward to require details or samples of external materials or finishes of buildings and structures to be submitted to the Council for approval. Although an indication of colours and finishes are shown on the submitted plans, it is important that the Council is given an opportunity to assess the visual impact of the finally chosen colours and finishes of buildings. (Inspector’s note: see conditions 5 and 6 in Annex B).
1776. A raft of conditions has been proposed by the main parties dealing with access arrangements to the CERC facility. These include the submission of details of the design and construction of the haul route and access road and submission of details of the new bridge taking the haul route over the River Fal. These conditions are necessary to ensure that satisfactory access arrangements are put in place. A number of conditions have also been put forward to retain existing ground levels within the flood zone in the Fal Valley, require details of the culverting of Bodella Stream and also require details of surface water management for the CERC development. These conditions are needed to safeguard the surface water regime in the vicinity of the development. (Inspector’s note: see conditions 7 to 13 in Annex B).

1777. A condition has been proposed to control the impact of construction operations by, amongst other things, requiring details of hours for the delivery of materials and plant during the period of construction, measures to be taken to limit dust emissions and requiring details of construction buildings and external floodlighting. These measures are needed to protect the amenity of those living near to the CERC site during construction operations and also to control the visual and other impacts of such operations. (Inspector’s note: see condition 14 in Annex B).

1778. A condition has been put forward which requires details of piling operations, site excavations and the measures of controlling the discharge to groundwater during construction operations. This condition is necessary for safeguarding the groundwater regime in the locality. (Inspector’s note: see condition 15 in Annex B).

1779. A landscaping condition has been proposed by the main parties. This requires the submission of details of hard landscaping, such as fencing and car park surfaces, and soft landscaping, such as earth mounding, establishment of Cornish hedges, planting of trees and shrubs and the protection of existing trees during the course of development. It also covers the submission of details as to when the landscaping proposals should be carried out. The condition is needed to ensure that the hard and soft landscaping which is carried out is in keeping with the surrounding area and contributes towards reducing the impact of the proposals. (Inspector’s note: see condition 16 in Annex B).

1780. It is proposed that there is a condition requiring the submission of an environmental management plan. This is required so that the impact of the proposals on protected species can be mitigated and the removal of hedges for re-planting elsewhere can be managed. The condition would also enable the eradication of the invasive Ragwort and Japanese Knotweed to be carried out. A condition is also proposed which would require the submission of a programme of archaeological work that would be carried out before the start of development. This is necessary to enable any features of archaeological interest to be recorded. (Inspector’s note: see conditions 17 and 18 in Annex B).

1781. A number of conditions are put forward to control lighting, including the aviation warning lights on the stack and external lighting around the CERC site. The conditions also require no lighting to be installed along the haul route. These conditions are important to limit the visual impact of external lighting upon the locality. (Inspector’s note: see conditions 19 to 21 in Annex B).
The proposal affects a number of rights of way. A condition is proposed which requires the submission of details of diversions of rights of way. Such a condition is needed to ensure the safety and convenience of users of paths in the locality. A condition is also proposed which provides for a travel plan to be submitted. This is important to reduce reliance of employees and visitors to the CERC site on the private car. A further condition is proposed to limit the placing of skips and containers containing waste or other materials to be kept outside of the CERC buildings except within designated bays or within vehicles. This condition is necessary to avoid the visual impact that could result from uncontrolled placing of skips and containers outside of the buildings. (Inspector’s note: see conditions 22 to 24 in Annex B).

A raft of conditions has been put forward by the main parties relating to residential amenity. These include requiring all vehicles carrying ash or recyclable materials to be sheeted, restricting the hours in which vehicles carrying waste, recyclable materials or ash can enter or leave the CERC site, restricting the hours in which construction works can take place, establishing noise limits for HGV traffic at certain locations and also setting out noise limits during construction operations. These conditions are needed to protect the amenity of those living along the access routes to the CERC facility. (Inspector’s note: see conditions 25 to 30 in Annex B).

A condition has been suggested that vehicles employed in operational works and landscaping be fitted with single pitch reversing bleepers. This is necessary to protect the amenity of those living nearby, particularly along or close to the proposed haul route and access road. (Inspector’s note: see condition 34 in Annex B).

Apart from vehicles collecting MSW from residential properties in the communities in the immediate vicinity of the CERC facility, all MSW carrying vehicles will enter or leave the facility via the proposed access road and haul route. The route to be taken is specified in the Section 106 Agreement and its implementation can be controlled by a number of means, including the contractual relationship between the Council, in its capacity as WDA, and the various contractors carrying out waste collection from residential properties. A condition has been suggested by the main parties which also requires the appellant not to accept C&I waste unless it has been transported along the route set out in the Agreement. This is an important condition. It would prevent HGV traffic from using the local highway network thus safeguarding the amenity of those living in surrounding villages and along local roads. (Inspector’s note: see condition 35 in Annex B).

A number of conditions were put forward by the main parties as being necessary for the protection of the living conditions of those residing near to the CERC site. However, as these conditions related to the operation of the CERC facility the parties suggested it was more appropriate to include them in the EP. However, both parties were agreed that if the EA does not include these conditions in the EP, then the Secretary of State should attach them to the planning permission if he is minded to allow the appeal. The draft EP that was issued by the EA in August 2010 does not contain any conditions that equate to those put forward at the inquiry by the main parties. Nor does the EP as issued in its final version in December 2010. (Inspector’s note: see the suggested conditions which the main parties agree are needed but are more appropriate for
1787. This is disappointing. These conditions were put to the EA well before the draft EP was issued. No reasons have been given by the EA for these conditions not being included within the EP. I share the main parties’ view that these conditions serve a purpose; they protect the living conditions of those residing close to the CERC site from undue noise. This is as much a planning reason as a reason for including the conditions in the EP. Accordingly, I recommend that the Secretary of State should attach these conditions on the planning permission if he is minded to allow the appeal.

1788. One of the conditions in question requires the doors at the eastern end of the ash handling facility to be closed when not in use. I concur with the main parties that the condition is necessary to protect the occupants of a nearby property from noise emanating from within the ash building. If the door is kept open then noise from within the ash handling building will be heard nearby. (Inspector’s note: see condition 31 in Annex B).

1789. The other conditions also concern noise. One establishes noise limits for the operation of fixed plant at the CERC site. The noise is to be measured at the façade of any occupied property. These noise limits have been arrived at after considerable and careful work between the noise consultants employed by the two main parties. The noise limits are agreed by the main parties. In my view, the noise limits are necessary to safeguard the amenity of those living nearby. (Inspector’s note: see condition 32 in Annex B).

1790. The other seeks to establish a noise management scheme to include attended and unattended monitoring of noise levels through the construction phase of the project, the commissioning of the CERC facility and its subsequent operation. It also seeks to establish a procedure for handling noise complaints. I regard this condition as necessary to safeguard the amenity of those living along the haul and access roads and also those living near the CERC site. (Inspector’s note: see condition 33 in Annex B).

1791. At the inquiry, the main parties initially put forward a condition in respect of odours. However, a comparable condition has been included in the EP and the main parties subsequently agreed that this matter need not be taken any further. I am satisfied that the question of odours is capable of being dealt with through the controls identified in the EP. (Inspector’s note: the odour condition as originally put forward by the main parties is contained in schedule B of document CD/C10).

1792. The SOCG mentions two proposed conditions, one relating to the details being provided for the depth of fuel tanks and measures to be taken to prevent spillages and the other to the submission of an investigation of possible contamination. At the inquiry, the main parties did not pursue these conditions on the basis that they duplicate controls which are more appropriately dealt with by other regulatory regimes. (Inspector’s note: see conditions 7 and 14 in Schedule 2 of the SOCG; see CD/C2).

1793. The Council proposed two additional conditions at the inquiry. The first is that there should be a condition requiring the submission of a scheme setting out the works needed to demolish the CERC plant and the removal of the haul route and access road and the subsequent restoration of these areas. The scheme would
be implemented within six months of the de-commissioning of the CERC plant. The Council recognises that, in general, permanent buildings and structures should not be subject to restoration conditions. However, in this case the Council points out that the CERC proposal would, on the basis of evidence of the Council’s landscape witness, have a significant adverse impact upon the landscape. The Council argues that as the CERC proposal is being put forward on the basis that the need for the development outweighs the harm, then once the building is redundant then the need case no longer applies and the building should be removed. (Inspector’s note: see condition 1 in Annex C of CD/C10).

1794. In my view, restoration conditions are more appropriate to cases where planning permission has been granted for a limited period or if the building in question is of a temporary nature. Neither applies in this case. The building is clearly of substantial and permanent construction. Whilst the contract is for a limited period, there is no suggestion that its use for waste management purposes would necessarily come to an end when the contract expires. It could be that the building continues to be used for waste management purposes after the contract expires.

1795. The development plan does not afford support for the restoration of the CERC building, or indeed any other permanent buildings used for waste management. WLP Policy C1 sets out a range of criteria to be taken into account in determining planning applications for waste management facilities. I acknowledge that the policy applies to all types of waste management facilities. Nevertheless, in its reference to “.....where appropriate for the progressive restoration.....” the policy clearly relates to landfilling and land raising proposals. Progressive restoration is a term commonly used when seeking to reduce the visual impact of landfilling and land raising proposals. It is not a term used in respect of permanent waste management facilities such as EfW and AD plants. (Inspector’s note: see a copy of the WLP at CD/D5).

1796. More pertinently, confirmation of this point is provided by WLP Policies L6, L6A and L6B, which are concerned with the provision of a centrally located EfW facility in the County. None of these policies suggest that a planning permission for such a facility should be subject to a restoration condition. These policies recognise that the development of an EfW facility “could have a significant visual and landscape impact” but do not then go on to require the restoration of the site as a way of mitigating the visual and landscape harm.

1797. Accordingly, I am not persuaded that there is a need for the suggested restoration condition. Further, the imposition of the condition is likely to lead to undue costs being imposed upon those developing and operating the CERC facility. Money would have to be put aside during the life of the CERC plant to pay for demolition and subsequent site restoration.

1798. The other condition that was proposed by the Council at the inquiry was a restriction being imposed on any C&I waste being imported to the CERC site from outside of the County. I can find nothing in national policy to support such a restriction. One of the key objectives in PPS10 is to encourage competitiveness. To place a restriction on the origin of waste would be at odds with this objective. Confirmation of this point is to be found in the Inspector’s report for the EfW plant at Eastcroft. In his conclusions, the Inspector criticised suggestions that the origin of waste should be controlled. He concluded that this ran counter to PPS10. Unsurprisingly, the Secretary of State in his decision on the EfW facility
at Runcorn said that the sourcing of waste was a commercial matter. (Inspector’s note: see a copy of PPS10 at CD/E6, the Eastcroft report at CD/I1 and the decision in the Runcorn case at CD/16).

1799. I am also not convinced that such a restriction would be capable of being enforced, even if there were no other objections to a prohibition being placed on the origin of waste. It can be difficult to distinguish in bulk loads whether C&I waste has originated from within the County or elsewhere. As Circular 11/95 makes clear, conditions should be capable of being readily enforced.

1800. In addition, I am not persuaded that there is a need for such a restriction. No one has demonstrated what harm would result from C&I waste from outside of the County being imported to the CERC site. In any case, I am far from being convinced that there is a likelihood of the appellant importing C&I waste in any quantity from outside of Cornwall. The market for dealing with C&I waste is competitive. Such waste is usually taken to the nearest facility. It is unlikely that producers of C&I waste, whether a hotel, office or factory, would incur the costs of transporting their waste any considerable distance. For all these reasons, I consider that a condition restricting the CERC facility to only taking C&I waste originating from Cornwall would be unreasonable.

1801. A signed Agreement pursuant to Section 106 of the Town and Country Planning Act 1990 and also the Highways Act 1980 was submitted at the inquiry. This followed a draft Agreement that was submitted at the beginning of the inquiry and circulated for comment. The signed Agreement reflected much of the discussion, particularly in respect of placing the community fund on an open and formal basis and the implementation of noise attenuation measures at the properties, La Mount and Glen Garth. (Inspector’s note: see CD/D5 for the draft Section 106 Agreement and CD/C8 for the signed Agreement).

1802. The signed Agreement contains a number of provisions. It specifies the route to be taken by vehicles under the appellant’s control. With certain limited exceptions, which are set out in the Agreement and includes those vehicles collecting residual MSW from households in the area immediately around the CERC site, lorries bringing residual MSW to the EfW plant will leave the A30 at the Highgate Hill interchange on the A30 and then travel south on the local highway network to the private haul road and then onto the proposed access road. This is an important provision. It would ensure that most vehicles do not travel along local roads in the vicinity of the CERC site, thus safeguarding the amenity of those living along these roads.

1803. Although at the inquiry the occupiers of La Mount expressed opposition to the various noise mitigation measures proposed by the appellant for the property, the final version of the Agreement enables these measures to be implemented at the request of the owners of La Mount and Glen Garth at any stage in the construction or operation of the CERC facility. This provision recognises that future occupiers of these properties may take a different view of the noise attenuation measures than current occupiers. (Inspector’s note: see also the appellant’s document, SITA/0/32, which sets out the arrangements for the relocation of the occupiers of the two closest properties to the CERC facility, Bodella and Rostowrack Farms, should they wish to be moved).

1804. The signed Agreement also includes various community obligations. They include the establishment of a forum involving representatives from the local
community, including elected representatives of Parish Councils in the area around the CERC site, to discuss issues arising from the construction and operation of the EfW plant. They also include the establishment of a community fund to distribute payments to local community projects. The constitution of the community fund is to be agreed by the appellant and the Council.

1805. Another community obligation is to require the construction of a link between footpaths 5 and 14 and also to create an access point to enable the public open access land as part of Goss Moor between Lower Bodella and Bodella Farm to be reached by members of the public.

1806. The final version of the Agreement also requires the appellant not to construct the CERC facility until the appellant has acquired a right to use the private haul road. This is an important measure. To protect the amenity of those living along local roads, construction traffic should use the private haul route rather than use local roads.

1807. Although the Council has signed the Agreement, it questions the weight that can be given to the community fund in the overall assessment of the planning merits of the CERC proposal. I shall deal with the weight which should be accorded to the community fund later in the conclusions section of the report.

1808. National guidance on Planning Obligations is provided by Circular 05/2005 and the Community Infrastructure Levy Regulations 2010. The former sets out the Secretary of State’s policy tests in respect of the acceptability of Obligations. Regulation 122 of the latter also establishes tests for the acceptability of making financial provision for works and services. The policy tests include the Obligation being offered being necessary from a planning point of view, directly related to the proposed development, reasonably related in scale and kind to the development being proposed and reasonable in all other respects. I consider that the provisions put forward by the signed Agreement meet these policy tests. The provisions set out in the Agreement fairly and reasonably relate to the proposed CERC facility both in scale and kind. They seek to off-set or to reduce some of the impacts of the proposed development.
Conclusions

1809. From the foregoing submissions and representations, I am of the view that the main considerations in this case are:

- The relevant policies of the Development Plan and the weight to be given to emerging policy;
- The relevant national planning policy framework;
- The need for the plant and the weight to be given to alternative technologies and alternative sites;
- The relationship of the proposal to wider sustainability objectives;
- The effect of the proposal upon nature conservation interests;
- The effect of the proposed development on the County’s historic landscape and listed buildings;
- The impact of the proposal on the enjoyment of public footpaths in the locality;
- The effect of the proposed development upon landscape character and the visual impact of the development;
- The effect of the proposal on residential amenity;
- The impact of the proposal on the regeneration of China Clay communities;
- The impact of the proposed development on health;
- Implications of not proceeding with the proposed development;
- Benefits of the proposal;
- Adverse impacts of the proposal;
- Adequacy of the Environmental Statement; and
- Overall conclusion, including assessment of the proposal against the Development Plan and national policies.

1810. In the following paragraphs the figures in brackets refer to earlier paragraphs of my report which contain material on which I have based my conclusions.

Development Plan and emerging policy

1811. The Development Plan for the purpose of this appeal includes the WLP, MLP, RBLP and SP. These documents are given statutory force by Section 38 (6) of the Planning and Compulsory Purchase Act 2004, which is clear that planning decisions must be determined in accordance with the development plan unless material considerations indicate otherwise. (563, 949)

1812. MLP Policy CC4 indicates the potential suitability of land at the appeal site for minerals related development. However, parties dispute the relevance of the policy to the appeal scheme. Whilst MLP Policy CC4 would enable an industrial form of development on part of the appeal site, it is not an allocation for waste
development and is only permissive of development in certain circumstances. (41, 238, 262, 638, 639, 807, 977)

1813. The location of waste management facilities and the assessment of their impact is the subject of policies within the WLP, which is by its subject matter the most relevant part of the development plan for this appeal. Changes have been made to national waste and planning policies since the adoption of the WLP in 2002 and the studies carried out during its production. This includes work regarding BPEO, which is no longer within national waste and planning policy in relation to MSW and C&I. Nonetheless, in the absence of a Council decision to set aside the WLP, the policies and the strategy within the WLP remain extant elements of the development plan. (30, 90, 134, 136, 139, 446, 564, 565, 569, 570, 599, 950, 1371)

1814. Whilst there is dispute between the parties regarding the importance of material considerations that post-date the WLP, the WLP is nonetheless permissive of an EfW plant in the CCAS. WLP Policies L6, L6A, L6B and C1 address the broad location and possible effects of an EfW plant serving Cornwall. While other local planning policies may deal with landscape and visual impacts, the potential effect of an EfW proposal on these is specifically the focus of Policy L6A. The WLP defines EfW in its ‘Glossary of Technical terms’ as “A generic phrase that covers a range of technologies which generate energy (heat and electricity) from waste”. This the CERC would do, even though there is disagreement regarding its energy efficiency as expressed by the “R1” formula. As a proposed EfW plant within the CCAS, WLP Policies L6, L6A, L6B and C1 are of direct relevance to this appeal. (30, 31, 32, 494, 571, 585, 957, 1110, 1138, 1281, 1756)

1815. Although WLP Policy E4 is not included in the Council’s third reason for refusal, by seeking to protect nationally important historic sites from the significant adverse effects of waste developments, it is also relevant to this case. (265)

1816. PC-STIG submissions in respect of Capel Parish Council v. Surrey County Council reported at [2009] EWHC 350 (Admin) are clear that Mr Justice Collins’ comments in respect of when incineration constitutes a form of recovery were made in passing and that he did not decide on this ground. The WLP and its definition of EfW continues to have statutory force and energy would be recovered by the CERC facility. (505, 1124, 1126)

1817. Document X/3/2 includes a DEFRA letter, dated 16 February 2005, which is clear that as an “excellent” authority, the former County Council was not required to produce a Joint Municipal Waste Management Strategy. Indeed, more recent DEFRA correspondence indicates that, whilst it is the Government’s view that all local authorities should contribute to a Municipal WMS, as a unitary authority the Council does not have a statutory duty to produce one.

1818. In the absence of such a scheme, the Council’s “…Overall Strategy for Waste Management and Disposal…” is contained within Chapter 4 of the WLP. It is clear that the need to divert municipal waste from landfill is the background to the WLP strategy. This WMS is expressed by the scope of the policies in the subsequent chapters and these include WLP Policies L6 and C1. Whilst a separate WMS process would have provided the opportunity for further public consultation, all parties had an opportunity to comment on the draft WLP and its strategy prior to and during the WLP Inquiry that eventually led to its adoption.
The WLP Inspector, in his letter dated July 2002, was aware that the Councils in Cornwall were intending to produce a Municipal WMS. Nevertheless, he highlighted both the strategy within the WLP and his view that the WLP’s adoption should be done “expeditiously” to enable the issue of EfW to be addressed. (1371)

Despite its references to BPEO, the age of its waste arisings data and the more recent and ambitious recycling targets within other policy documents, WLP policies nonetheless enable proposals for waste facilities to come forward that reflect existing national planning and waste policy. (134, 136, 565, 951, 1117, 1119, 1143)

By seeking to provide sufficient sustainable waste management capacity to deal with Cornwall’s wastes, while protecting the environment and local amenity, SP Policy 6 is of direct relevance to this appeal. SP Policy 1 sets out principles for sustainable development that include reducing the need to travel, local regeneration objectives and the prudent use of resources, which is also the subject of SP Policy 3. SP Policy 2 seeks to protect and enhance the quality, character, diversity and local distinctiveness of Cornwall’s environment. As such, these are also pertinent to this case. (39, 40, 296, 335, 447, 1021)

While focused local policy in respect of proposals for waste management facilities are within the WLP, the RBLP still forms part of the development plan for the area that includes the appeal site and its policies referred to in the Council’s third reason for refusal. Policies within the RBLP provide greater detail on specific matters in relation to the historic environment. RBLP Policy R71 is not referred to by the Council’s reasons for refusal, but the policy’s proposed St Dennis ALAHV was raised in evidence to the Inquiry. EH has highlighted that geophysical survey results indicate the presence of archaeological material remains, as did evidence to the inquiry in relation to the MB/BS which is dealt with below. Consequently, it is RBLP Policies 24, 25, 26, 33, 37 and R71 that are relevant to this appeal. (33-38, 150, 263, 265, 285, 447, 607, 937, 1020)

Although a finding has yet to be made regarding the soundness of the draft WDF, it was the document the WPA intended to submit for examination. By updating capacity and targets, and the identification in draft WDF Policy 13 of the appeal site and one other location as ‘Preferred Sites’ for EfW, the draft WDF is a clear pointer to evolving waste policy and the Council’s view on the matters that development will need to address. Consequently, some limited weight can be accorded to the draft WDF. (45, 135, 147-149, 596-599, 601, 602, 971, 972, 976, 985, 1112, 1196)

RPG10 remains the RSS for the area that includes Cornwall. Thus, it remains part of the development plan. However, the WLP, SP and the draft WDF post-date it. Indeed, the WLP strategy was adopted even though RPG10 Policy RE5 gives priority to locating waste management facilities at or near ‘Principal Urban Areas’. As highlighted above, the WLP remains the most relevant element of the development plan in relation to this appeal. It is also to be noted that RPG10 was issued well before the publication of current national waste and energy planning guidance in the Climate Change Supplement to PPS1 and PPS10. It also predates national waste policy in WS2007 by some years. (42, 139, 590)
1825. The draft RSS has been prepared within the context of current policy and incorporates the Secretary of State’s proposed changes. While the Council referred to draft RSS Policy W2 in its reason for refusal dealing with the dependence upon the transport of waste by road and the distances that would be travelled, it objected to the proposed policy wording in the draft RSS. Given its stage of production the draft RSS provides a pointer to the direction of policy. However, at present there is no indication that the draft RSS is likely to proceed any further as a replacement of RPG10. Therefore, the draft RSS can only be attributed very limited weight in this case. (43, 44, 45, 69, 140, 591, 592, 597, 599-602, 976, 980, 1580, 1581)

**National policy framework**

1826. Both PPS1 and the PPS1 Climate Change Supplement are relevant to this appeal by seeking, in their respective paragraphs 13 and 9, sustainable and inclusive patterns of development, while reducing emissions in respect of climate change. (50, 51, 70, 72, 101, 1158, 1307, 1329, 1342, 1353, 1359)

1827. Further expression of this is contained within paragraph 9 of the Consultation on a PPS: “Planning for a Low Carbon Future in a Changing Climate” and as such it is also pertinent to this proposal. (55, 103, 1307)

1828. WS2007 paragraph 19 highlights the relevance of the strategy in this national waste policy to this case. It seeks to implement the waste hierarchy and increase recovery from waste through the timely provision of waste facilities that divert waste from landfill. (46, 75, 87, 95, 98, 526, 533, 565, 570, 892, 950, 1208, 1282, 1636)

1829. Paragraph 3 of PPS10 states the Key Planning Objectives for waste. These include driving waste management up the waste hierarchy and enabling sufficient and timely provision of waste management facilities to meet the needs of communities. Additionally, paragraphs 5, 27 and 30 address the relationship between the planning and pollution control regimes, including in respect to health. (47, 69, 75, 95, 98, 154, 459, 462, 515, 604, 997, 1118, 1158, 1359, 1636, 1755)

1830. PPS23 paragraph 10 also addresses the relative roles of the planning and pollution control regimes. PPS23 is germane to this case as the proposal concerns development that would be subject to environmental permitting to control potentially polluting processes. (48, 49, 189, 458)

1831. The CERC would recover energy in the form of steam and electricity for off-site customers. The objectives of national energy policy are stated on page 6 of PPS22, which includes cutting carbon dioxide emissions and maintaining reliable and competitive energy supplies. PPS22 provides national planning policy in respect of renewable energy and highlights that the principles for waste management decisions are set out in PPS10 and the national waste strategy. However, the content of PPS22 addresses the biodegradable fraction of industrial and municipal waste, which would be used as fuel in the CERC. The WLP indicates EfW to be “…A generic phrase that covers a range of technologies which generate energy (heat and electricity) from waste…”. Within the context of this definition the proposed development would be a form of EfW, even though the environmental permitting procedure is in respect of a disposal facility. (51, 107, 225)
1832. The appeal site lies in a rural location where PPS7 seeks development to be sustainable. PPS7 paragraph 3 states that away from urban areas, development should be focused in or near to local services centres. Consequently, PPS7 is relevant to this case. (52, 637, 1158)

1833. Policy EC10 of PPS4 indicates that a positive and constructive approach should be taken towards proposals for economic development. Such growth should be sustainable within environmental limits. The second part of the policy contains a number of criteria that address matters including emissions, resilience to climate change, access, design and economic impact. (53, 155, 999, 1073, 1358, 1451)

1834. PPS5 Policies HE1, HE9 and HE10 indicate the need to weigh any harm to heritage assets with the possible beneficial outcomes associated with the development proposed. Whereas PPS5 Policy HE9 deals with designated heritage assets, Policy HE8 deals with the effects of development on those that are not designated. Policy HE10 is clear that proposals that would preserve positive elements of the setting or better reveal the asset should be treated favourably. Guidance on the application of PPS5 is contained within the associated Practice Guide. Therefore, PPS5 and its Practice Guide are relevant to this case, as is PPS9 due to the proximity of the appeal site to the SACs. (54, 55, 182, 216, 258, 659, 664, 671, 673, 805, 948, 1155, 1452, 1524, 1658, 1731, 1741, 1742)

1835. The effect of the proposed development on local living conditions in relation to noise is the basis of the Council’s fifth reason for refusal. Such matters are addressed by the advice in PPG24, which is now complemented by the NPSE. The NPSE seeks to promote good health and quality of life through the effective management of noise within the context of Government policy on sustainable development. It aims to do this by avoiding significant adverse effects of noise and mitigating and minimising adverse effects. Consequently, both documents are germane to this case. (324, 329, 723, 725)

Need and weight to be given to alternative technologies and sites

1836. The starting point for examining the question of need for the CERC facility is to look at what national waste and energy policy have to say about the requirement to demonstrate need. In respect of national waste planning policy, paragraph 22 of PPS10 makes it clear that where proposals are consistent with an up-to-date development plan, there is no requirement for applicants for new or improved waste management facilities to demonstrate a quantitative or market need for the proposal. (91)

1837. Although the WLP was adopted some years ago, the majority of its policies have been saved by a direction from the Secretary of State and remain in force for the time being. Of particular relevance, the policies in the WLP in respect of a centrally located single EfW plant within the County remain in place. The WLP is consistent with national waste policy. As expressed in PPS10 and WS2007, national waste strategy seeks to divert waste away from landfill, thus breaking the United Kingdom’s dependence on landfill, and move the management of waste up the waste hierarchy. It is inconceivable that the Secretary of State would save policies within a development plan that were inconsistent or in conflict with national planning policy or other national policies. (91)

1838. Insofar as national waste policy is concerned, paragraph 18 of chapter 5 of WS2007 puts EfW into a wider background of energy policy. It indicates that against increasing energy prices and continuing instability in many of the
countries supplying fossil fuels, it is important to make maximum use of energy recovery from waste which cannot be recycled. The Energy White Paper seeks to bring forward a diverse mix of renewable energy schemes both to address the over reliance on fossil fuels and to meet the challenges of climate change by substituting energy from fossil fuels with energy from renewable sources. The Climate Change Supplement to PPS1 makes it clear that EfW is to be regarded as a source of renewable and low carbon energy. Paragraph 20 of the Supplement says that planning authorities should not require applicants to demonstrate the overall need for renewable energy projects. (91)

1839. The stance taken in national policy on need in waste and energy is reflected in a number of conclusions and decisions in EfW cases that were placed before the inquiry. In the Eastcroft case, it was concluded that the need argument raised was not relevant, whilst in the Ince Marshes case it was put in a slightly different way. In the latter case, it was concluded that national policies did not place any rigid limit on waste management capacity. (92)

1840. Notwithstanding that national waste and energy policy do not require need to be demonstrated, the existence of need is an important element in this case in the decision to be made by the Secretary of State. The existence of need has to be weighed against any harm or adverse impacts that the proposed development may give rise to.

The assessment of need

1841. In assessing need, there are two separate but inter-related matters to be taken into account: the remaining landfill capacity within the County and possible levels of future waste arisings. These set the broad need picture. They provide a picture of the degree of urgency that is required in making the switch from disposal of waste by landfilling to more sustainable means of managing waste and the likely level of need for wastes to be managed in the future.

1842. Before looking at landfill capacity in Cornwall and future levels of waste arisings, it is important to place these matters in context. First of all, it is necessary to look at the national policy initiatives which seek changes in the way that waste is managed. Second, it is also necessary to set out the existing waste management situation in Cornwall. This is the baseline situation against which to assess possible changes in waste arisings within the County.

1843. The Landfill Directive places a legal obligation on the United Kingdom to divert waste away from landfill and move the way it is managed further up the waste hierarchy. The Landfill Directive is translated into national waste policy through WS2007 and PPS10. These require the diversion of waste away from landfill at the bottom of the hierarchy to other forms of management further up the hierarchy with products being re-used or materials being recycled or composted. Where possible, energy from the remaining or residual waste should be recovered. (97)

1844. WS2007 sets a number of targets for the diversion of waste away from landfill. The target for MSW recovery (that is, recycling, composting and energy recovery) in 2010 is set at 53%, rising to 67% in 2015 and 75% in 2020. Although no comparable targets for C&I waste are set out in WS2007, the document indicates that it is expected that the amount of C&I waste being landfilled in 2010 will fall by 20% compared to 2004. To encourage the diversion of waste away from landfill, the Government has put in place a number of
financial measures. These include the landfill tax, which for the next few years is increasing year on year. They also include LATS, the system which provides a financial incentive to local authorities to reduce the amount of waste from their area that needs landilling. (97, 99)

1845. In terms of national energy policy, the broad thrust of documents that have been published in their final form and documents that are in draft and have been circulated for consultation purposes is for the United Kingdom to meet its international climate change obligations by reducing emissions of carbon dioxide. Page 6 of PPS22 indicates that it is the Government’s aim to cut such emissions by 60% by 2050 and to make real progress towards achieving this target by 2020. (105)

1846. As successive documents make clear this is to be achieved by encouraging the generation of energy from renewable and low carbon sources. Page 76 of WS2007 makes the point that recovering energy from waste which cannot be sensibly reused or recycled is an essential component of a well-balanced energy policy. The same page points out that most of this country’s European competitors already pursue this approach vigorously. The compliance of the proposal with national energy policy objectives for renewable and low carbon energy is dealt with elsewhere in these conclusions. (101)

1847. The importance of diverting waste in general, and MSW in particular, from being landfilled, and the importance of promoting the generation of energy from renewable and low carbon sources are significant factors in determining how proposals for the management of waste should be considered.

(i) Existing waste arisings

1848. In respect of the existing waste situation in Cornwall, the SoCG says that in 2008/2009 MSW arisings amounted to some 314,000 tonnes of which nearly 119,000 tonnes was recycled or composted and almost 195,000 tonnes landfilled. This represented a re-use, recycling and composting rate of approximately 36% and a landfill rate of 62%. In 2009/2010 the rate of landfilling increased to over 63%. (Inspector’s note: see the SoCG at document CD/C2)

1849. Statistics for C&I waste have always been more difficult to obtain because of the number of premises producing waste and the greater number of contracts and other arrangements that exist for recycling or disposing of C&I waste. This has produced a range of estimates. From the document prepared by the former County Council to assess future landlining requirements the Council cites the figure of about 534,000 tonnes of C&I waste arisings in Cornwall in 2008/2009. The appellant cites two different figures for C&I waste arisings depending upon the assumptions used. Using the work undertaken by ADAS for the East of England region and extrapolated to Cornwall produces an estimate of 444,000 tonnes in 2008/2009. In contrast, from data derived from the EA’s survey of waste arisings undertaken almost ten years ago and taking a growth rate in C&I waste arisings of 1% per annum produces a figure for 553,000 tonnes for 2008/2009. (1)

1850. In December 2009, DEFRA announced that it intends to change the definition of MSW to bring the United Kingdom into line with practice in Europe to satisfy the European Commission that the Landfill Directive is being properly implemented in this country. The likely outcome is that a significant proportion
of C&I waste will be brought into the definition of MSW thus increasing considerably the amount of waste that will be counted as MSW. (110)

1851. Two matters should be noted from the figures of waste arising in the County. The first is that there is a considerable challenge ahead if the County is to meet its WS2007 targets for MSW recovery for 2015 and 2020. This challenge could be made more onerous if the change in the definition of MSW goes ahead. The target for 2010 has almost certainly been missed. The other is that whilst there is a large variation in the estimates of the amount of C&I waste that are generated within the County, it is clear that the amount of C&I waste is substantially greater than the amount of MSW that is generated. (99)

(ii) Remaining landfill capacity

1852. Turning to the question of remaining landfill capacity, it is agreed between the appellant and the Council that there are three existing landfill sites in the County: United Mines near Redruth, Connon Bridge near Liskeard and Lean Quarry, also near Liskeard. The operation of the former two sites was taken over by the appellant when the contract with the Council was signed. (127)

1853. The United Mines site has been in use for a number of years. Conditions on the planning permission for the site require the site to close in 2010. Although the site has some remaining capacity, equivalent to approximately 400,000 cubic metres, the Council announced two years ago that planning permission was not going to be sought for an extension to the operational life of the site and as a consequence the site would close in late 2010. (127)

1854. There was some suggestion at the inquiry that the void space at the United Mines site could be taken into account in the assessment of the amount of landfill capacity to meet the County’s needs. The decision to close the United Mines site was taken by the Council after consultation with the local community about the possibility of applying for planning permission for the site to be given an extension to its operational life. The local community reached its view notwithstanding the offer from the Council of establishing a £1 million community trust fund to compensate for any adverse local impact. Given the Council’s decision to close the United Mines site, it is highly unlikely that a planning permission would be forthcoming to make use of the site’s remaining capacity. As such, the unused capacity at United Mines can be disregarded in looking at remaining landfill capacity within the County. (128, 917)

1855. At the time of the inquiry, landfilling operations at Connon Bridge were suspended but on the closure of the United Mines site in October 2010 landfilling operations would begin again at Connon Bridge. The Connon Bridge site currently has a remaining void capacity of about 1,200,000 cubic metres. The planning permission for the site requires landfilling operations to cease by the end of 2014. The appellant is in discussion with the Council to extend the operational life of the site as well as extending the site’s capacity by an additional 800,000 cubic metres. Although a planning application was being prepared, it had not been submitted by the close of the inquiry. (129)

1856. The Council has provided a different estimate for the additional capacity at Connon Bridge for which planning permission is to be sought. It suggested that the additional capacity could take up to 936,000 tonnes of waste. This compaction ratio may well be unduly optimistic and unlikely to be realised in day to day landfill operations. The appellant’s evidence referred to a compaction
ratio of one tonne of waste being equivalent to one cubic metre. Coming from someone who has long experience of operating landfill sites, this probably represents a more realistic estimate of the degree of compaction likely to be achieved. For the purposes of assessing remaining landfill capacity this compaction ratio has been used. (129, 918)

1857. Those responsible for managing waste, whether they are WDAs or waste management companies, require a degree of certainty so that they are able to plan well ahead. There is recognition that the appellant, as the operator of the site, is to apply for planning permission to extend the life of the site and to enlarge the site’s capacity. However, until planning permission is granted, the only certainty is that the current planning permission provides for landfilling to take place up until the end of 2014. (131, 920)

1858. It is accepted that Connon Bridge has a void capacity of some 1,200,000 cubic metres under its existing planning permission. If the County’s residual MSW continues to be landfilled at its current rate, almost 200,000 tonnes per annum, then the capacity at Connon Bridge would last no more than six years. However, this does not convey the whole picture. If much of the County’s residual C&I waste was also to be deposited at Connon Bridge then it is doubtful whether the current permitted capacity of the site would last much beyond 2014. (132, 492, 924)

1859. If planning permission is forthcoming for additional capacity then if this was to be used solely for the disposal of residual MSW then at the current rate of landfilling this would give Connon Bridge an additional four years. If the additional capacity is used for much of the County’s C&I waste then it is unlikely to give the site much more than another two years. (132)

1860. Lean Quarry is operated by Viridor Waste Management Ltd. Although it has a substantial capacity, the void space at Lean Quarry for MSW is contracted to Plymouth City Council until 2014. This arrangement was made in 2008 following the closure of the City Council’s last remaining landfill site. I understand that the City Council has an option to extend the contract until 2019. Currently, the site also takes much of Cornwall’s C&I waste. (130, 921)

1861. A bidding process for the South West Devon Partnership Waste PFI is under way to construct by 2014 an EfW plant in Plymouth. This led the Council to suggest that from 2014 Lean Quarry could be made available to take Cornwall’s residual MSW. Given the difficulties that the appellant has experienced in securing planning permission for the CERC facility, and also given the likely length of any construction and commissioning process, the timescale of 2014 for bringing an EfW facility into operation in Plymouth can be regarded as optimistic to say the least. Accordingly, there remains a strong possibility that Lean Quarry will be required by the City Council after 2014 and this is reflected in the City Council’s option to extend the contract for the site beyond this date. (130, 922, 924)

1862. Thus, the existing landfill sites in Cornwall have limited capacity for taking the County’s residual MSW and C&I waste beyond the next few years. No other potential landfill sites within the County have been identified or proposed by any party to the inquiry. If the CERC facility does not go ahead, the prospect is that Cornwall’s waste would have to be transported out of the County for disposal for some time to enable alternative ways of dealing with Cornwall’s waste to be
brought into operation. No landfill sites of any size in the adjoining part of Devon were brought to my attention during the inquiry. Accordingly, out of County disposal is likely to involve transportation over very considerable distances. To say the least, this would be very costly. It would also raise issues of sustainability involved in transporting waste over very long distances. It would also raise questions as to whether the Council was prepared to take ownership of its waste management problem. The shortage of available landfill capacity within Cornwall makes the task of bringing in alternative means of managing waste to landfill a matter of great urgency. (133)

1863. In any event, no one at the inquiry sought to suggest that it was sustainable for the County to continue to rely on landfill as the means of managing its waste. Landfill lies at the bottom of the waste hierarchy and national targets, which reflect those set out in European Union Directives, and seek to divert waste away from landfill and to be managed further up the waste hierarchy. (926)

(iii) Future waste arisings

1864. With regard to future levels of waste arisings, detailed assessments were put to the inquiry by both main parties and others. A large measure of caution needs to be employed about overly detailed forecasts of future waste arisings. Levels of waste arisings can be subject to many influences which can be difficult to model with any degree of certainty. They are subject to, amongst other things, changes in economic activity, changes in the level of population, changes in the formation of households, changes in the spending power of individuals and the success or otherwise of waste minimisation measures. It is because of the complexity of the influences upon future levels of waste arisings that paragraph 10 of PPS10 warns against spurious precision in forecasting. Accordingly, it is not proposed to look with any sort of arithmetic rigour at the estimates of future MSW and C&I waste arisings produced by the main parties. It is more important to look at the reasonableness of underlying trends. (110)

1865. Some at the inquiry made much of the fall in the level of MSW over the past two years in the County. The argument as put to the inquiry was that this fall was a harbinger of a longer term trend; of year on year reductions in the amount of MSW that was likely to be generated. I am not persuaded by this argument. Much of this recent reduction in MSW seems to me to be caused by the downturn in the economy resulting in lower expenditure by individuals and families. When the economic recovery occurs, it is likely that this will lead to a growth in the level of MSW arisings. Further factors that could lead to a growth in MSW arisings are the projected increase in the County’s population and the increased number of households. It should be noted that Cornwall’s population increased at a considerably greater rate in the past twenty years than the national average and is predicted to continue to do so in the future. (901, 1005, 1006, 1216, 1217, 1240)

1866. However, I am far from being convinced that when the economic climate improves there will be a return to historic rates of growth in MSW arisings. National and local policy initiatives taken in recent years have gone some way to decoupling economic growth from waste generation. These include waste minimisation measures which are increasingly likely to be effective. Such measures include a reduction in packaging of food and electrical goods sold in shops to an increased use by households of compost bins for kitchen waste.
1867. Based on assumptions about different rates of growth in MSW arisings, the 
appellant has provided a number of scenarios ranging from about 314,000 tonnes 
to almost 391,000 tonnes in 2020. This year is a mid point in the life of the 
contract and represents a convenient reference point for comparative purposes. 
The appellant’s central position is of MSW arisings of almost 345,000 tonnes for 
this year. Under this position, the amount of MSW residual waste requiring 
treatment would be in the order of 181,000 tonnes. This assumes a recycling 
and composting rate of nearly 48%, not far off the national target of 50% for 
recycling and composting of MSW in 2020. (111, 490, 1007)

1868. For the Council, the best guess forecast for MSW arisings in 2020 is 351,000 
tonnes with some 175,000 tonnes needing treatment. These figures are based 
on the assumption of a 1% year on year increase in arisings and the achievement 
of the 50% national target for recycling and composting. What is noticeable is 
the closeness of the Council’s best guess and the appellant’s central position in 
their MSW forecasts. (111, 900, 1008)

1869. I regard the figures provided by the appellant and the Council of residual MSW 
arisings in the middle of the contract period as being a reasonable estimate. 
They assume that MSW arisings will grow. However, because of waste 
minimisation measures, amongst other things, the growth is unlikely to be at the 
levels that have historically been seen in Cornwall. The figures are also based on 
an achievement of the national target of 50% for recycling and composting MSW 
in 2020.

1870. With regard to assessments of future C&I waste arisings, these cover a much 
wider range and involve a greater degree of uncertainty. In part, this reflects the 
difficulty that has already been mentioned of obtaining reliable figures from a 
large number of businesses of arisings and measures that they have taken for 
managing their waste. Much the same arguments in respect of the recent decline 
in MSW arisings were also made about C&I waste. Although recent economic 
difficulties are likely to have has some impact upon the level of C&I waste 
arisings, the level may well rebound when economic activity picks up. (1240 to 
1242)

1871. The appellant has provided two assessments for 2020. These range from 
444,000 tonnes to 610,000 tonnes. The former is based on the ADAS forecast 
for C&I waste arisings in the South West and assumes nil growth in waste 
production, whilst the latter is based on the EA survey of waste arisings and 
assumes a growth rate of 1% per annum. The low estimate is probably 
unrealistic. It assumes that the economy remains static. The ADAS survey also 
starts from a much lower point than the comprehensive EA survey which was 
conducted nationally and with its results published on a regional basis. (905, 
1251)

1872. The Council’s assessment is that in 2020 C&I arisings will amount to about 
553,000 tonnes. This is within the range suggested by the appellant albeit 
towards the upper end of the range which supports the view that the lower 
forecast provided by the appellant is probably unrealistic. Based on the Urban 
Mines study of C&I waste in the North West, the Council estimates that there 
could be 125,000 tonnes of residual C&I waste in 2020 which is likely to require 
treatment or disposal. Although caution should be exercised in extrapolating 
data from one region to another, it is noted that the study points to the similarity 
between Cornwall and the North West in the proportion of C&I waste arisings
being commercial waste. It is these wastes which the study says are potentially more recoverable. (112, 905, 906)

1873. However, it could well be that the amount of residual C&I waste which requires treatment or disposal is appreciably greater than that suggested by the Council. The draft RSS puts the figure at between 160,000 and 180,000 tonnes, whilst the appellant’s upper estimate of C&I waste arisings envisages 249,000 tonnes of residual C&I waste requiring treatment or disposal. The wide disparity in these figures merely underlines the difficulties in arriving at sufficiently firm figures involving C&I waste. This uncertainty over levels and trends in C&I waste arisings points to the importance of not taking an overly optimistic view of the amount of future C&I waste arisings and the amount of residual waste requiring treatment or disposal that are likely to occur. If too optimistic a view is taken then it may mean that inadequate treatment capacity is not in place in good time. This would be imprudent. (112, 491, 1240 to 1242)

1874. The figures for future residual MSW and C&I waste arisings are looked at further in connection with the sizing of the proposed CERC plant.

Need for the size of the proposed facility and its impact on recycling

1875. The Council and others argue that the CERC facility is oversized. That is, there is no justification or need for a plant of the capacity being proposed, 240,000 tpa. At the inquiry, much of the Council’s concern focused on the amount of C&I residual waste that could be dealt with by the CERC facility. The Council’s view is that the CERC plant potentially could take C&I waste that could be recycled. (121, 219, 470)

1876. In the first place, the WLP envisages that the CERC facility would not be confined to MSW but would take a proportion of C&I waste. This is in line with the strong national support given in WS2007 for greater integration in the treatment of MSW and C&I waste. (116, 117)

1877. Second, the levels of C&I residual waste that could be produced in the County comfortably exceed the amount of such waste that is likely to be accepted at the CERC facility. As already pointed out, it can be difficult to arrive at meaningful estimates of future C&I waste arisings. If the most optimistic of the forecasts of recoverable residual C&I waste presented to the inquiry, that of 125,000 tonnes, proved to be correct then this would mean just over half of Cornwall’s recoverable C&I waste would be dealt with at the CERC facility. However, in other forecasts, the proportion of recoverable C&I residual waste managed on the appeal site would be significantly lower. For example, if draft RSS figures proved to be the ones nearer to what happens in 2020 then less than a third of recoverable C&I residual waste would be managed in the CERC facility. (113, 114)

1878. These figures do not suggest that the CERC facility is oversized. In looking at the amount of residual C&I waste that could be dealt with in the CERC facility, it is important to take into account a number of considerations. First of all, the alternative to taking residual C&I waste at the CERC facility could be for the waste to be landfilled. It is established national policy that landfill is the least desirable option and that waste should be dealt with higher up the waste hierarchy, through recycling, composting or the recovery of energy. The capacity offered by the CERC facility will provide an opportunity to move the management of a proportion of the County’s recoverable C&I waste away from landfill. Moving
waste away from landfill would also assist the situation in the County where there is a serious shortage of landfill capacity. (95, 96)

1879. Second, the market in C&I waste is a competitive one. Just because the CERC facility would be able to process C&I waste does not mean that waste producers and contractors would necessarily send their waste to the CERC plant. Much will depend upon price. 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. (123, 914, 1250, 1255, 1747)

1880. Third, if there is a shortfall in the amount of C&I waste and MSW from Cornwall being taken by the CERC facility, I am far from being convinced that this would lead to the shortfall being made good by the importation of C&I waste from neighbouring Counties. As already mentioned, there is a competitive market for the management of C&I waste. Cost is an important factor in this market. The CERC facility lies a considerable distance from the boundary of the neighbouring County. The costs of transporting waste over some distance and then paying for the waste to be taken by the CERC plant is likely to act as a significant deterrent to waste producers in the neighbouring County to send their C&I waste to the proposed plant. (123, 915, 1009, 1148)

1881. It is accepted that the WLP proposed a plant with a smaller capacity, 200,000 tpa. However, subsequent work undertaken for the RSS and WDF point to higher waste arisings than were envisaged when the WLP was being prepared. The evidence given at the inquiry refines further the assessments made previously as to future waste arisings. This evidence, whether taking the assessments provided by the appellant or the Council, firmly indicates that the CERC plant is not over sized. (112, 218, 219, 891)

1882. A concern expressed particularly by third parties is that the CERC facility will act as a deterrent to recycling of MSW. The contract has been the vehicle which has seen the rate of recycling rise from 27% at the start of the contract period in November 2007 to 37% in 2009. For waste brought to HWRCs by local residents the improvement has been from 43% to 62%. In part, this improvement has been made possible through the improvement of existing waste handling facilities and the provision of new facilities, including new HWRCs. The estimates of future levels of residual MSW provided by the appellant and the Council to the inquiry are on the basis that the national 50% recycling and composting target for 2020 can be met. Whilst this represents a challenge, based on the improvement in recycling over the first few years of the contract it is realistic to expect that the 50% recycling and composting target can be achieved. (119)

1883. However, third parties argue that the CERC plant will prevent higher rates of MSW recycling being achieved. Repeated mention was made of a national 60% recycling and composting target. Current national policy in WS2007 does not set a MSW recycling and composting target beyond 50% in 2020. The government has set in train a wide ranging consultation on the national waste strategy, but this is at a very early stage and nothing has yet been published which indicates that a 60% target is to be set for MSW. (1001, 1211, 1230)
1884. Although many regard the achievement of higher recycling rates as desirable in itself; this has to be set against the investment that may be required in the provision of new or improved waste management facilities, such as MRFs and also AD plants to deal with food waste. Compared to the progress on recycling already made in the County, the level of investment needed to reach much higher recycling rates may not be justified by the amount and value of recyclable materials that are collected and managed. (120, 493, 1235)

1885. Much was made by third parties in particular of the importance of separating, collecting and then dealing with food waste generated by households. The appellant’s estimate of the amount of residual MSW in 2020 that could need further treatment assumes that much of the County’s food waste from households is collected and treated. This may happen in the future in the County, but it is important to treat this with some caution. The treatment of food waste could well involve AD in one form or another. (817, 895, 1212, 1228)

1886. Although the WDA through the contract has the ability, albeit a qualified one, to require the provision of a biowaste facility to treat food waste, it is understood that this option is not being exercised for the time being. It is not only the provision of biowaste treatment that would have to be introduced, but there would have to be changes in the waste collection regimes for households. It is noted that in many parts of the United Kingdom food waste is collected and treated separately. However, this has not been a universal success and some WDAs have stopped separately treating food waste, often on the grounds of cost. (405, 622, 1223, 1228)

1887. The point was argued that higher rates of energy recovery are incompatible with high rates of recycling. The chart on page 78 of WS2007 shows that many of our European neighbours have much higher rates of energy recovery from waste than is currently the case in the United Kingdom but still manage to achieve high recycling rates. There is no reason why the United Kingdom cannot achieve high levels of both energy recovery from waste and recycling. The recovery target set out in WS2007 of 75% of MSW by 2020 strongly suggests that energy recovery can go hand in hand with robust rates of recycling and composting. (118, 1244 to 1246, 1248)

1888. In arguing that the CERC facility would militate against higher rates of recycling, insufficient attention has been paid to the contract. This requires the appellant not to accept at the CERC site those recyclable materials which householders separate from the rest of their waste and leave at the kerbside for collection. It is noted that the DEFRA letter of February 2010 confirms that “the contract does not hinder the achievement of higher levels of recycling”. (79, 80, 126, 491)

1889. It is not considered, therefore, that the CERC plant is oversized and that it would act as a deterrent to the recycling of either MSW or C&I waste.

Alternative sites and site search

1890. EfW encompasses a number of different technologies. In this section on alternative sites and in the next on alternative technologies, I have attempted to distinguish, where this is necessary, between the type of EfW technology being proposed for the CERC facility, that is, mass burn by way of a moving grate, from other types of EfW technologies, including AD.
1891. The Council maintains that there would be advantages for EfW capacity in the County to be provided on two sites, one serving western Cornwall and the other the eastern part of the County. The sustainability implications of a two site approach in respect of vehicle movement are discussed in the next section of the conclusions to this report. However, it is to be noted that such an approach runs counter to the WLP's approach of a single, centrally located plant. This is the approach that is taken forward in the emerging WDF, albeit that little weight should be given to a document which will not proceed further. It is also the approach taken in the contract, which gives effect to the strategy set out in the WLP, and recently endorsed by the WDA in its RPP. (75, 77)

1892. No sites were formally advanced by the Council for consideration as alternative EfW locations. Reference to two sites was made during the inquiry. The one at Hallenbeagle near Redruth and Camborne is within a prospective employment area. Those seeking to develop the site and the employment area are not suggesting that it should be used by an EfW plant. Rather, the promotional material recently published by the developers refers to a 32,000 tonne processing facility. This is a long way from the large scale facility that some at the inquiry were looking to. (375, 387, 388, 614, 1399)

1893. The other site mentioned by the Council is the Moorswater Industrial Estate near Liskeard. This site was seen as part of the programme of site visits conducted during the inquiry. The estate appeared to be fully occupied and it was difficult to see any available site of sufficient size to accommodate an EfW plant. Certainly, no evidence as to site availability on the estate was placed before the inquiry. It is also understood that at least part of the estate lies within the flood plain which may place constraints on development. (387)

1894. In the light of the lack of detailed evidence to show that two alternative sites were suitable and available it is considered that little weight can be accorded to the argument for a two site approach to EfW. The strategy of one centrally located EfW plant put forward in the WLP, endorsed in the work undertaken on the draft WDF and given effect by the contract, it would require substantial and compelling evidence to suggest a deviation from this established position. No such evidence has been forthcoming. (364)

1895. Nor have third parties identified any sites for facilities using alternative waste treatment technologies to the technology proposed for the CERC plant. The nearest that the inquiry came to hearing any such evidence was the suggestion that AD plants could be located on industrial estates. The programme of site visits, which occurred during the inquiry, took in a number of industrial estates. Although these may, in principle, be suitable locations for AD plants or other facilities, there is no evidence that sites of the right size are available, whether owners of the estates are willing to support a proposal for a waste treatment facility and whether there were any physical or other constraints to such a development. This is a far cry from the evidence needed to support the argument that there are sites available for alternative waste treatment technologies. In the absence of such evidence, it is considered that little weight can be given to the arguments that alternative sites exist for alternative treatment technologies. (375)

1896. The Council and others are critical of the site search process that has been used to identify the appeal site. This stands at odds with the earlier approach of the WPA and the consistent stance of the WDA. The WPA in preparing the WLP
identified that the diversion of waste from landfill should be achieved through a single EfW plant located within the CCAS. This was taken further in the site search exercise conducted by the WPA and published in July 2006. On the basis of this document, the WDA acquired an option on the appeal site. The WDA through the contract required the appellant to deliver an EfW plant with a 240,000 tonne capacity on this site. It is to be noted that the contract was concluded in the full knowledge that the site was one of two preferred sites for a centrally located EfW plant in the draft WDF. By the time that it reached the submission stage, the WDF had been the subject of two rounds of public consultation. (379, 792)

1897. To provide confirmation that the appeal site had been properly selected, the appellant carried out its own examination of alternative sites. A report was subsequently published in March 2008. This assessment of alternatives was undertaken in the light of the scoping opinion issued by the Council in July 2007, which said that the consideration of alternatives needed to be guided by, although not wholly constrained by, the CCAS as set out in the WLP and draw upon the site assessment process previously carried out to inform the preparation of the WDF. (382, 792)

1898. The appellant's assessment of alternatives took a slightly wider boundary than the CCAS and against the requirements of WLP L6 and PPS10 short listed fifteen sites, of which the appeal site ranked equal second behind Trenower Farm at Victoria. However, against the three operational criteria of proximity to the primary road system, potential to be served by rail and potential for off-site supply of heat and power, the appeal site performed the best. (381 to 383)

1899. At the inquiry, the Council and others advanced a number of criticisms of the site selection processes. Insofar as the WPA's earlier site search is concerned, the point was made by the Council that the assessment of landscape impact did not involve a landscape architect and the visual impact and effect upon landscape character was underplayed because the stack that was eventually proposed was considerably higher than the one assessed. (803)

1900. As for the visual impact of the proposed plant being underplayed, it is accepted that the 120 metre stack of the appeal proposal is significantly higher than the stack height that was taken into account in the WPA's site search. However, those undertaking the site search would have been under no illusion as to the scale and bulk of the proposed plant. The RWMS was published in 2004 and would have been known to those carrying out the site survey as well as drawing up the draft WDF. The 2004 document refers to mass burn incinerators being characterised by stacks up to 90 metres high and buildings up to 50 metres high. Those undertaking the site survey would have thus been aware that the proposed plant would be likely to have a considerable visual impact. (390, 391, 808)

1901. The Council says that some of the other impacts have been underplayed, but the effect on designated nature conservation sites, for example, would only have been fully known once a planning application containing details of a proposed facility had been submitted and consultations carried out with the bodies responsible for the protection and management of such sites. (805)

1902. The WPA's site search sets out reasons why the appeal site is the preferred site for an EfW plant. Although it is recognised that the site is identified for
minerals related development in the MLP, the CERC proposal is of a scale and a purpose wholly different from that envisaged in the MLP. Whilst rail access is not to be provided, the site has potential for rail access and there is a customer for heat from the proposed plant adjacent to the site, although I accept that this is likely to involve only a small fraction of the plant’s heat output. Nevertheless, both reasons for selecting the site should be accorded weight. They put the site ahead of other sites where there is no potential for rail access and where there is no adjacent customer for heat from the plant. (806, 807)

1903. The other reason, that the site is potentially available, should be accorded considerable weight. One of the key planning objectives identified in PPS10 is the timely provision of waste management facilities. The likely availability of sites is thus of critical importance to the delivery of new waste related development. In view of the urgency of delivering a more sustainable means of managing waste as the County’s landfill resources dwindle, the availability of sites is of critical importance. (385, 386)

1904. Turning to the appellant’s site search, the criticism is made that the search was made only of alternative sites for an EfW plant and did not embrace sites for other waste management technologies. I would not have expected at this late stage in the project for sites for other technologies to be considered. The appellant’s site search reflected the strategy established by the WLP and which was subsequently reinforced by the work undertaken for the draft WDF. The site search also echoed the contract which had been entered into and which gives effect to the WLP’s requirement for a centrally located EfW plant. In the light of this policy context and the requirements of the contract, it would be surprising if sites for alternative technologies had been assessed. (377, 378, 380, 794)

1905. The absence of a landscape architect does not invalidate the assessment of visual and landscape character impact. Reliance could be placed on the earlier WPA’s site assessment which had involved a landscape architect. Regard could also be had to the considerable volume of published guidance on Cornwall’s landscape character areas. (795)

1906. The Council and others argue that some of the criteria or tests used in the appellant’s site search process were not applied objectively. A particular example cited by the Council was the distinction between a countryside location and one that is near to industrial development. Evaluating the merits of a site against a set of criteria is likely to involve subjective judgements. I see nothing wrong with wanting to distinguish the impact of a large EfW plant in a location where it would be surrounded by countryside from a location close or adjacent to industrial development and development associated with the mineral industry. (796, 1058)

1907. A criticism was levelled at the exclusion from the site search of sites less than four hectares in area, but a site of some size would be required to accommodate an EfW plant. Looking at smaller sites would only have been required if the strategy developed in the WLP and put into effect through the contract had required other treatment technologies to also be provided. (615, 797)

1908. The Council points out that the appellant has adopted a very limited assessment of availability in its ranking of sites identified in the site search. In effect, the appellant regards sites as being available if it owns them, they are owned by the Council or they are in the ownership of someone who has indicated
a willingness to make the site available. Given the emphasis placed by PPS10 on
the timely delivery of new waste management facilities there is little point in
pursuing sites that are unlikely to become available. This is particularly relevant
where the need to divert waste away from landfill is urgent. (385, 386, 799)

1909. Paragraph 18 of PPS10 also says that in identifying land for waste
management facilities, planning authorities should avoid unrealistic assumptions
on the prospects for developing waste management facilities by having regard to
ownership constraints which cannot be easily freed up. The CCAS contains
extensive areas of active and redundant clay workings which might be capable of
accommodating an EfW plant. Most of these workings are owned by IMERYS, the
main china clay producer in the County. IMERYS has indicated that none of its
land is available. It is unrealistic to identify and pursue sites that are unlikely to
be available. (386)

1910. Although there is much emphasis placed in planning policy at all levels for the
development of previously developed land to be explored before greenfield sites
are used, in this case there is no indication that the extensive tracts of quarries
and tips within the china clay area would be made available for an EfW plant.
Given the urgency of diverting the County’s waste away from landfill, the ready
availability of sites is a factor that should be given very substantial weight. (386)

1911. Whilst all site searches involve subjective judgements to varying degrees, the
appraisals of alternative sites undertaken by the WPA and the Council provide a
reliable appraisal of alternative EfW sites within the CCAS. As such, these site
searches should be given weight.

1912. This contrasts with the absence of any firm evidence from the Council or
others as to the existence of alternative sites, whether for EfW plants or other
waste treatment technologies. The Council’s position is essentially to ask for the
urgent need for the proposed development, in terms of moving the County’s
waste away from sparse and reducing landfill resources, to be weighed against
the possibility that there may be an alternative site. This is not sufficient. What
is needed is for alternative sites to be identified and to be backed by firm
evidence that other sites would have lower adverse impacts. This level of
evidence has not been submitted. (375)

Alternative technologies

1913. The Council and others argue that the technology chosen for the CERC plant
represents outdated technology and will discourage the development of
alternative technologies. However, it is to be noted that it forms no part of the
Council’s case to express a preference for any one particular waste management
technology over another. Others suggest that there are alternative technologies,
particularly AD, which are to be preferred. (396, 473)

1914. It is recognised that over the last ten years significant progress has been made
in many alternative treatment technologies. What was once viewed as
speculative or experimental has become an established way of managing waste.
It is also acknowledged that many alternative treatment technologies are likely to
have a lower physical impact compared to the proposed CERC plant. In large
measure this is because of the smaller physical scale of buildings and plant
associated with alternative technologies. These technologies can also give rise to
lower levels of some emissions. (405, 406, 615, 1059, 1087, 1415 to 1417,
1710, 1743)
1915. In the last resort, the choice of technology is a commercial decision by those bidding for waste management contracts offered by WDAs. In large measure, this choice is influenced by the reliability of the technology to meet the aims of any contract and thus to attract investment from banks. The choice of technology is also influenced by the strategy set out by WDAs and WPAs. In this case, a centrally located EfW facility was the principal component within the strategy set out in the WLP. This strategy was confirmed by the work on the draft WDF. The contract seeks to give effect to this strategy. (397, 400, 401)

1916. The point was made by the Council that the WLP did not specifically identify the type of EfW technology that is now being proposed for the CERC facility. However, the references in the WLP to the possible significant visual impact of an EfW facility points to the likelihood that the author(s) of the WLP had in their mind the sort of EfW plant now being proposed with its considerable scale of buildings and height of stack. This scale of building and stack is usually associated with the sort of EfW technology now being proposed for the appeal site. As already said, many alternative EfW technologies, such as AD, are likely to need much smaller plants. (396, 400, 401)

1917. The choice of technology has subsequently been endorsed by the WDA in the RPP. I note that to confirm that the right technology had been chosen, the WDA commissioned a report from the consulting engineers, Fichtner. The resulting report generated considerable debate at the inquiry. Some claimed that the WDAP had not accepted the Fichtner report. However, there is nothing in the minutes of WDAP’s meeting of March 2010 to indicate that the report had been rejected, notwithstanding that some members were dissatisfied with parts of the report. I also note that the Cabinet Member on the Council for Waste and Environment took the view that the report’s conclusions as to the suitability of the particular EfW technology chosen for the CERC proposal were robust. (404, 482)

1918. Some thought that the Fitchner report reached the conclusions that it was asked to produce, but the Fitchner report should not be viewed in isolation. In my view, the Fichtner report offers an incomplete assessment of the merits or drawbacks of alternative technologies. An example is that the digestate produced by AD plants is assessed on the basis that it would be landfilled. This obviously imposes a cost on the choice of treatment technology. However, the digestate can also be used as a soil improver or used in land reclamation schemes. This could be either revenue neutral or bring in revenue, depending upon the quality of the digestate and local demand. Given this, and other shortcomings, I have not given the Fitchner report much weight in looking at the merits of alternative technologies. (815, 1411, 1412, 1615 to 1618, 1734)

1919. Other work has been undertaken on alternative technologies on which more reliance can be placed. The work on alternative treatment technologies included in the ES also comes firmly down in favour of the sort of EfW technology proposed for the CERC facility. This part of the report was given the highest grade by IEMA, the organisation with a role, amongst others, of assessing the coverage and robustness of an ES. (474)

1920. In addition, I note that the decision making document accompanying the EP includes an assessment of the pros and cons of different thermal technologies. Citing a number of reasons, this comes down firmly in favour of the type of technology chosen for the CERC plant. Whilst this assessment was provided by
the appellant, the EA has not sought to reject the assessment or to offer any significant criticism. (Inspector’s note: see Document X/15B)

1921. I acknowledge that WS2007 does not state a preference for one technology over another. However, I note that the choice of technology has also been endorsed by DEFRA in its letter of February 2010 when it said “that the CERC development continues to be in accord with Government technology”. The DEFRA letter also confirms that the contract in identifying a single, centrally located EfW plant offers a “proven, environmentally sound and economically viable” solution. (399, 1914)

1922. The EfW technology represented by the CERC proposal is a well established technology. In the United Kingdom and a number of European countries this sort of EfW technology has been in operation for some time. In this country, it is regarded by many operators and WDAs as a tried and tested technology which is capable of delivering a substantial reduction in the amount of waste that is landfilled and also generate useful amounts of renewable energy. Contracts offered in recent years by WDAs show that many of them have been awarded to contractors offering this type of EfW technology. In some other contracts, it is envisaged that other forms of waste treatment, such as MBT, are to be used with residual waste then going onto an EfW plant. (401, 402)

1923. The frequency in which EfW technology of the type found in the CERC proposal occurs in these contracts is confirmation of the confidence placed in this technology to deliver a diversion of residual waste away from landfill and generation of renewable energy. I also note that in some cases, whilst bids for contracts initially identified a choice of technology that was for some other form of treatment technology, in a later stage of the contract bidding process the choice eventually settled on EfW. Various reasons were advanced at the inquiry for this change, including reliability of performance and the ability to attract investment. (402, 817)

1924. The type of EfW technology proposed for the CERC plant is represented in a number of the projects which have been granted planning permission by the Secretary of State. It is difficult to envisage the Secretary of State approving proposals where the technology was outdated or had become redundant because of progress made with other technologies. Confirmation that EfW is a reliable means of delivering key policy objectives, such as the diversion of waste from landfill and moving the treatment of waste up the waste hierarchy, is provided in the DEFRA letter of February 2010 in which it confirms that it has approved over twenty outline business cases put forward by WDAs which contain an element of EfW technology. (398, 473)

1925. TCN and others said that the relatively small proportion of heat from the CERC facility that would be recovered and put to use elsewhere meant that the proposed plant could not be called a recovery process but disposal, which is at the bottom of the waste hierarchy. In support of its argument, TCN points out that the EA in the EP classifies the CERC plant as being a disposal facility. However, I take the view that DEFRA would not have endorsed the contract and awarded PFI credits if the proposal did not represent a recovery process. I cannot envisage DEFRA endorsing the contract or awarding public funds to the WDA if it merely represented disposal. The purpose of the system of supporting waste treatment contracts with PFI credits is to support the move away from disposal. (494, 1110, 1111, 1295, 1301, 1305, 1638)
1926. In addition, the current state of play as far as the sale of heat is concerned is that although only one company has signed up to take heat in its china clay dryers, there is potential for other nearby dryers to take the heat from the proposed plant and also for the Eco-town to eventually be a customer for the heat. If these potential customers are turned into reality then a different view may be taken by the EA and others as to the balance between disposal and the recovery of energy and heat. (495)

1927. PC-STIG and others questioned the ability of the bottom ash to be re-used in construction and civil engineering projects. This is essentially a matter for the market. I note that the contractor chosen to operate the ash handling facility at the CERC site and to market the ash is already involved in a number of other EfW plants in the United Kingdom and, from the experience gained in these other operations, is confident of finding a market for the bottom ash. (1150, 1151, 1704)

1928. POC and others suggested that the mass burn type of incineration technology to be used in the CERC proposal does not represent BAT. This point is essentially one for the EA to consider through the EP, rather than a question to be dealt with through the planning system. Nevertheless, it is worth noting that in the EP for the CERC facility the EA confirms that all emission limits and operational controls that are being imposed are based on the use of BAT except where different conditions are required to meet the requirements of the WID or where site specific considerations require even stricter standards. Thus, where there is a departure from BAT standards, higher standards and stricter controls will be applied. (Inspector’s note: see Document X/15B for the approach by the EA to the assessment of BAT) (469, 1489 to 1492)

1929. The CERC facility does not preclude or would prevent other waste treatment technologies coming forward. The inquiry heard about the small AD plant at Penare Farm to treat food and farm waste. The inquiry also heard of food manufacturing companies in the County that have introduced facilities to treat their in-house food waste. Given the competitive nature of the market to handle C&I waste and the amount of residual C&I waste that could be generated, it is likely that other waste treatment facilities will come forward either as merchant or as in-house facilities. (406, 1402)

1930. Third parties made much of the need to adopt AD technology to deal with the County’s MSW. It is acknowledged that AD technology has been around for some time and is in wide use for the treatment of sewage and certain food and other organic wastes. It is also being introduced by some WDAs to form part of the treatment chain for MSW. It is likely that the use of AD technology to treat MSW may well require a number of plants. The adoption of AD technology for treating MSW is not the strategy encompassed by the WLP and thus no sites are allocated for such plants. Although at the inquiry suggestions were made as to the type of locations which could be suitable for accommodating AD plants, these suggestions fell far short of identifying specific sites. The adoption of AD technology to treat MSW may also require the provision of associated facilities, such as MRFs, to ensure an appropriate degree of sorting of materials so that unsuitable materials are removed from the waste stream being treated by an AD plant. Again, no sites are allocated in the WLP for the sort of facilities which may be required to support AD plants. (406, 1087)
1931. Before the inquiry, POC sketched out an idea for treating the County’s waste through a series of AD plants. Although acknowledging that the County’s reliance on landfill was unsustainable and that there was a need to tackle this urgently by bringing forward alternative waste treatment facilities, POC took its idea no further forward during the course of the inquiry. No business plan was forthcoming and no sites were identified. Without such details, there is nothing to suggest that POC’s alternative approach would be deliverable within the tight timescale needed to bring about an urgent diversion of MSW from landfill. (472, 492)

1932. The WLP seeks to divert MSW and some C&I waste from landfill through a centrally located EfW plant. This would enable the County to achieve national waste recovery targets as well as contribute to the wider sustainable energy agenda through the generation of electricity and some heat. In the light of the County’s scarce landfill capacity, it is a strategy that needs to be implemented with a considerable degree of urgency.

1933. The inquiry was told that it would take about three years to build and commission the CERC facility. By the time the plant comes into operation, landfill capacity in Cornwall could be exhausted for the disposal of the County’s MSW or coming close to exhaustion. If the CERC facility is significantly delayed or is abandoned, then the consequences are very serious. It is likely that MSW would have to be transported in bulk out of the County for disposal or treatment elsewhere. Not only is this extremely costly but it presupposes that there is capacity in neighbouring Counties to take the amount of waste that Cornwall produces. Nothing has been put to the inquiry to suggest that this capacity exists.

1934. The argument by third parties that Cornwall’s MSW in particular can be dealt with by other means misses the urgency in diverting waste away from a rapidly dwindling landfill capacity. It seems to me that the need to divert waste away from landfill as a matter of urgency was one of the drivers behind DEFRA’s decision to endorse the contract and award PFI credits to the WDA.

1935. Whereas the CERC facility is capable of becoming operational within three years, the period for bringing forward an alternative strategy with different technologies is likely to take much longer. Waste management technologies of any scale will require private sector involvement and investment. It is extremely doubtful whether such investment will be forthcoming unless and until there is certainty that there is a strategy in place and that the requisite planning permissions have been secured. (536, 539)

1936. Such a process is likely to take a considerable time. The Council would have to produce a core strategy setting out the overall strategic framework for dealing with waste and then would have to identify sites in a subsequent site specific allocations document. This process could well generate opposition, particularly at the stage when sites are being identified. Following on the policy process, planning applications would have to be prepared, submitted and determined. Given the public opposition to many waste management proposals this could lead to considerable delay. This is certainly the experience with the current appeal proposal. Other consents will also be needed. Even when all these processes have been completed, there is then the construction and commissioning of new plants. Given these timescales, I see little to disagree with the appellant’s
estimate that it could well take eight or nine years for new plants to be in place. (536 to 539)

1937. I reject the Council’s argument that proposals are likely to come forward even in the absence of an established policy framework. Whilst it is accepted that projects such as that at Penare Farm have emerged without the site being allocated, this is a small scale facility. This type of facility, whilst making a modest but valuable contribution to meeting the County’s waste needs is far from the large scale facility required to secure a significant diversion of the County’s waste away from landfill. Those putting up the money for large scale facilities, and those seeking to operate them, are likely to want the certainty of sites being allocated and all consents being granted. (541, 542, 614)

1938. A delay of eight or nine years before new facilities incorporating different types of treatment technologies are up and running would not meet the urgency of diverting MSW from the County’s dwindling landfill resources to treatment higher up the waste hierarchy.

1939. I conclude that there is a compelling need for the CERC facility to be in place in good time to address this pressing problem. The time that has lapsed since the planning application was submitted to the Council and the appeal has been processed has merely added to the urgency for the proposed plant to be developed to deal with this problem. Accordingly, great weight is accorded to the need for the CERC plant. For reasons already given, little weight is given to the arguments advanced as to alternative sites and alternative technologies.

The proposal and wider sustainability objectives

Reliance on road transport and no certainty of taking up rail

1940. Whilst WS2007 and PPS10 post-date the WLP and its associated use of BPEO, these documents along with other national and local planning policies seek to encourage the use of alternatives to road transport. The circumstances of the appeal site would enable rail access to be provided for the proposed EfW plant. The main parties to this appeal have produced an agreed statement on this matter, with further clarification supplied by the appellant following discussions with Imerys, who control land along and in the vicinity of the railway line (see documents CD/C6 and SITA/9/8). (173, 175, 565, 763, 1353, 1741)

1941. Although the implementation of rail access could be explored at a later date, no such provision is planned at this stage. In this respect, it is noted that the WDA has not sought through the contract to require rail access to be provided at the CERC facility. This is in large measure a reflection of the costs that would be involved. Nor has it been demonstrated that either existing or foreseeable waste transport infrastructure elsewhere in the county would cause rail to be a readily available option for transporting Cornwall’s waste to the CERC. In this regard, it is noted that no WTS or MRF provided under the terms of the contract have rail access. If the transport of waste by rail is to be a realistic prospect then rail access needs to be provided at major waste handling facilities as well as the CERC facility. This is recognised within paragraph 2.3.5 of the Cornwall Freight Strategy (see document CD/D8). (164, 166, 175, 178, 756, 770, 1068, 1555)

1942. Reference has been made to the judgement in R. (on the Application of Lewes District Friends of the Earth) v East Sussex County Council as reported at [2009] Env. L.R.11. The potential for rail access to the EfW plant has been investigated.
Rail will remain a transport option for the movement of materials to and from the CERC facility which could be taken up when economic conditions make it viable to do so and when the necessary infrastructural development has been made elsewhere. (506, 1123)

1943. There are no objections to the scheme from the local highway authority and the Highways Agency regarding the proposed road access to the CERC site and the capacity of the local highway network to accommodate the level of traffic likely to be associated with the EFW plant. There are significant seasonal variations in traffic flows in the County, including at nearby junctions on the A30. Whilst concerns have been raised regarding these matters, it has not been demonstrated that CERC associated vehicle movements would add to traffic flows to such an extent as to be unacceptably harmful to highway safety or to cause significantly increased congestion. (442, 762, 1168, 1170, 1683, 1687, 1731, 1752)

1944. Turning now to the sustainability implications of road transport, the waste strategy within the WLP, which identifies the CCAS as the potential location for a single EFW plant, was the subject of BPEO processes that considered the implications of transport (see documents TCN 04/1 and TCN 04/5). These studies were not considering a specific site. I note that it is the appellant’s view that an EFW plant on an alternative site within the CCAS would not materially alter the road mileages associated with the Council’s strategy of a single centrally located EFW plant. This is a reasonable conclusion to arrive at given the geography of the County and the wide distribution of the County’s population. (378, 393, 445)

1945. Evidence put to the inquiry provided further detailed analyses of potential vehicle movements associated with single and multiple EFW locations. The Council and appellant differ in their approaches to the modelling of these road mileage scenarios. The Council’s evidence included both laden and unladen vehicle journeys and also varying EFW facility sizes to reflect demand in two differing potential locations. These produced significant reductions in annual vehicle mileages over a one plant scenario. Modelling by the appellant focused on the laden vehicle movements during the life of the plant, including those that would occur during an estimated nine year period while alternative waste treatment technologies were brought forward as an alternative to the CERC proposal. The estimates of traffic in this nine year period include waste being taken to landfill for disposal while an alternative strategy was being drawn up, sites identified and facilities constructed.

1946. Existing vehicle movements are required to enable Cornwall’s waste to be managed. The Council’s evidence indicates that, in comparison to a single waste treatment facility, two EFW locations would reduce the total road mileage that would be required to manage the residual waste taken by the plants and the resource use associated with this. (Indeed, other locations for a single EFW facility may also perform better in these respects than the appeal site.) However, this would require a change in strategy with a resultant delay in developing the facilities. This has to be set against the urgent need to move the management of the County’s waste away from landfill. (166, 450, 451, 452, 774, 778, 1069, 1550, 1561, 1676)

1947. There is disagreement regarding the likely timescale for the implementation of a replacement strategy. Nonetheless, the appellant indicates the benefits of a
two location approach, delivered by another thirty year contract, are negated when this estimated delay is taken into account. Avoidance of this would be reliant on a number of favourable outcomes regarding the delivery of an alternative strategy and available landfill capacity within the County. I have already dealt with these matters in the previous section of the conclusions. (94, 454, 783)

1948. The ‘proximity principle’ is expressed by the key planning objectives identified within PPS10 as the provision of a framework in which local communities take more responsibility for their waste and enable sufficient and timely provision of waste management facilities to meet their needs. Whilst there is disagreement regarding how this is best delivered, the CERC facility would be one element of the waste management system in the County which would provide a means for managing Cornwall’s residual MSW and other wastes. It is also a PPS10 key planning objective to enable waste to be dealt with in one of the nearest appropriate installations and this, the CERC facility would do. In contrast, if there was to be a delay in bringing forward an alternative means of managing the County’s waste then waste would have to be sent out of Cornwall for disposal or treatment elsewhere. This would not be compliant with the proximity principle. (73, 96, 154, 1152, 1248, 1305, 1738, 1741, 1755, 1766, 1767)

1949. Given its scale and function, the CERC facility would provide a means for the people of Cornwall to collectively manage their residual waste. In this way the County’s communities could take responsibility for their wastes.

1950. Evidence indicates that the CERC proposal would be a significant reduction on the potential road mileages associated with continued landfilling of residual waste. It is accepted that in the absence of the CERC facility other forms of residual treatment would be expected to come forward. However, no firm evidence has been presented to the inquiry as to the nature and number of alternative waste management facilities which would be required. As already discussed elsewhere in the conclusions, the likely delay in bringing in a new strategy and alternative facilities would be considerable. (447, 450, 1420, 1560, 1568)

1951. Nor has there been convincing evidence to suggest that the importation of Cornwall’s C&I waste to the CERC facility would result in significantly increased environmental impacts over the current situation. Therefore, the proposed development would provide the reduction in travel sought by local planning policy. In this context, the CERC proposal would be more sustainable than existing ways of dealing with the County’s residual waste. (1072, 1073, 1377, 1382)

1952. For the reasons above and within the context of the geography of and distribution of population in the County and purpose of the proposed EfW plant, it has not been demonstrated that the CERC facility would be contrary to sustainable development objectives by its use of road transport. Nor has it been shown that the development of the appeal site would materially increase the distances for residual waste disposal within Cornwall.

Generation of energy from non fossil fuel sources

1953. Other EfW technologies, such as AD and gasification, have been put forward as alternatives to the technology proposed in this case. These plants could be of a smaller scale and in locations that provide a more distributed network of power
generation in the County. Provision of such distributed generation would accord with Government objectives within the ‘Meeting the Energy Challenge’ White Paper for capacity and carbon reductions associated with local energy supply. However, these alternatives are not the subject of this proposal. (605, 812, 816, 1212, 1574, 1576, 1578, 1666, 1676, 1718, 1748)

1954. The CERC proposal would divert residual waste away from landfill, which is supported by national policy. One of the key planning objectives in PPS10 is to seek to use waste as a resource. Deriving energy from residual waste is in keeping with this objective. In doing so and as sought by the 2010 document ‘Consultation on a Planning Policy Statement: Planning for a Low Carbon Future in a Changing Climate’, the CERC proposal would generate energy in a location that would be close to potential users of the supply. (46, 57, 64, 95, 100, 108, 154, 398, 399, 409, 478, 494, 495, 545, 604, 1737, 1766)

1955. The efficiency of energy production at the CERC facility has been disputed by TCN and others. Greenhouse gas inventories are included within TCN’s evidence. These seek to demonstrate comparative releases of greenhouse gases from differing waste management practices, which include the appeal scheme and a “do nothing” continuation of landfill. TCN highlights that non-readily biodegradable “fossil” carbon could be sequestered in landfill sites to prevent greenhouse gas emissions, rather than burning them and recovering energy within the CERC. However, this is manifestly a matter for the EA through the environmental permitting system. If the proposed plant did not represent BAT then the EA would not have issued a permit. (399, 1281, 1306, 1333, 1337, 1639)

1956. WS2007 is explicit on the importance given to addressing climate change within its strategy. Indeed, WS2007 begins by highlighting the dangers associated with climate change. Placing fossil carbon in a landfill, as TCN indicates, would be expected to significantly delay its release into the atmosphere in comparison with its treatment in the CERC facility. Nevertheless, the CERC plant is a form of renewable energy that is currently supported by relevant local and national waste and planning policies which specifically seek to address climate change. This weighs heavily in its favour and its development would not prevent other forms of DE/DG being developed within Cornwall. (224, 399, 496, 1061, 1334, 1351, 1361, 1453, 1547, 1669, 1699, 1748, 1768)

The production of heat to be used elsewhere

1957. Heads of terms have only been agreed in relation to one off-site user of heat from the CERC. Whilst other potential users of heat have been identified, such as the Imerys clay dryers and parts of the proposed Eco-town, there is as yet no certainty regarding the level of additional heat utilisation or when this might occur. In this respect it has not been demonstrated that the proposal currently would meet the key planning objective in the PPS1 Climate Change Supplement for the provision of infrastructure which secures the highest viable resource and energy efficiency. The appeal site is nonetheless well situated to supply heat to potential users in the wider locality and in this respect it would meet the aims of WS2007 and the 2010 document ‘Consultation on a Planning Policy Statement: Planning for a Low Carbon Future in a Changing Climate’. (57, 67, 103, 105, 108, 109, 399, 429, 470, 806, 960, 963, 966, 967, 1353, 1448, 1703, 1739, 1741, 1750, 1767)
1958. Although the current level of possible heat utilisation is very low considering the potential amount of heat that would be available from the CERC facility, the appeal scheme would recover energy from the incineration process. It would also be a source of potential supply, even if it is a large scale producer at some distance from potential users, such as the Eco-town. (1574, 1578)

1959. Accordingly, I am not persuaded that the CERC proposal is in conflict with wider sustainability objectives.

Effect upon nature conservation interests

1960. The Conservation of Habitats and Species Regulations 2010, commonly referred to as the Habitat Regs, replaced the earlier Habitat Regs of 1994, and consolidated almost all of the numerous amendments. These in turn transposed the EC Habitats Directive into United Kingdom law. The Habitat Regs provide for the designation and protection of European sites, the protection of species, including European protected species, and the adaptation of planning and other regulatory controls for the protection of European sites.

1961. Under the Habitat Regs, competent authorities, that is, Ministers, government departments, public bodies or persons holding public office, have a general duty, in exercise of their functions, to have regard to the Directive.

1962. The Habitat Regs require competent authorities, before deciding to give any consent, permission or authorisation for a plan or project which is likely to have a significant effect on a European site (either alone or in combination with other plans or projects) to undertake an assessment of the implications for that site having regard to the site’s conservation objectives.

1963. Natura 2000 consists of a network of ecologically valuable designated sites in Europe. The network is established under the terms of the Directive. The main objective of the Directive is to promote the maintenance of biodiversity through the protection of habitats and species. Annex I of the Directive lists habitats, whilst Annex II lists species for which sites are designated. The Natura 2000 network comprises SACs designated under the Directive and Special Protection Areas classified under the EU Conservation of Wild Birds Directive. Each SAC is nominated on the basis that it regularly supports one or more of the Annex I habitat types and/or more Annex II species.

1964. Within this part of Cornwall there are four European designated sites: River Camel SAC, Newlyn Downs SAC, Brenney Common and Goss and Tregoss Moors SAC and St Austell Clay Pits SAC. The Council does not consider that the CERC plant would have any significant effect on the first two of these SACs because of their distance from the appeal site. However, the Council is concerned about the possible effect of the CERC facility on the other two SACs, which are much closer to the appeal site.

1965. Brenney Common and Goss and Tregoss Moors SAC stretches in a broad arc from a narrow finger of land just to the north-west of the appeal site to a much more extensive expanse of land to the north and north-east of St Dennis. The SAC extends to some 816 hectares and is designated because of three Annex I habitat types: North Atlantic wet heath, European dry heath and transitional mires and quaking bogs. In addition, the SAC supports a population of one Annex II species, the Marsh Fritillary Butterfly. At its closest, the appeal site lies about 210 metres from the edge of the SAC.
1966. In contrast to the wide expanse of the Breney Common and Goss and Tregoss Moors SAC, the St Austell Clay Pits SAC consists of three small areas within an area of active china clay working to the south of Treviscoe. The SAC is about 0.6 hectares in area and is designated because it regularly supports a population of the Annex II species, Western Rustwort. This plant is a liverwort and the United Kingdom’s only occurring Annex II priority species. The SAC lies about 1.96 kilometres from the appeal site.

1967. In February 2009, the appellant submitted to the former County Council an in combination assessment of the effect of acid and nitrogen emissions from the CERC facility on Breney Common and Goss and Tregoss Moors SAC. After considering relevant plans and projects in the vicinity of the CERC site and the SAC, the document concludes that there is no likelihood of the CERC proposals having a significant effect on the SAC either alone or in combination with other plans or projects. It goes on to say that having regard to the Habitat Regs, there is no need to undertake an appropriate assessment of the CERC proposal. (205)

1968. Following the submission of the appeal, the Council decided to commission a 'shadow' assessment to inform the inquiry. In respect of the Breney Common and Goss and Tregoss Moors SAC, the shadow assessment came to the view that it could not be ascertained that the CERC proposals would not have an adverse effect upon the integrity of the three Annex I habitats and the Annex II species either alone or in combination with other projects because of increases in nitrogen and acid deposition. (822 to 827)

1969. With regard to the St Austell Clay Pits SAC, the shadow assessment concluded it could not be ascertained that the CERC facility would not have an adverse effect upon the integrity of the Annex II species, the Western Rustwort, either alone or in combination with other projects because of increases in nitrogen deposition. (822 to 827)

1970. The Council maintained at the inquiry that on appeal, the Secretary of State became the competent authority for the purposes of the Habitat Regs. However, I note that Regulation 65(2) of the Habitat Regs provides that where there is more than one competent authority nothing in the Habitat Regs 'requires a competent authority to assess any implications of a plan or project which would be more appropriately assessed by another competent authority'. The question arises as to who should be the competent authority when considering a particular impact, in this case the Secretary of State in determining a planning appeal or the EA in considering an application for a permit. It is recognised that there might be cases which give rise to a number of impacts. Where there are impacts which would be more appropriately assessed by the Secretary of State, then he would be the competent authority leaving other impacts to be assessed by a different competent authority. (189)

1971. Paragraph 26 of PPS10 makes the point that planning authorities should not duplicate controls that are operated by the pollution control authorities. Paragraph 27 of PPS10 draws a distinction between the different roles performed by the planning system and the pollution control regime. It indicates that the pollution control regime is concerned with preventing pollution through the use of controls to limit the release of substances to the environment. In contrast, the planning system controls the development and use of land in the public interest. It goes on to say that planning authorities should have confidence that the relevant pollution control regime will be properly applied and enforced. (189)
1972. At the inquiry, the Council’s concern in respect of the impact of the CERC proposal on the SACs was refined. The Council’s nature conservation witness made it clear that the Council was no longer concerned about the impact of the proposal on water quality, hydrology or dust. In cross examination, he accepted the appellant’s evidence as set out in its in combination assessment of February 2009 that traffic emissions were not likely to have a significant effect upon either Annex I habitats or Annex II species. In respect of traffic emissions, I note that the Council’s shadow assessment makes no mention of traffic emissions. This narrowing of the Council’s concern is important. Traffic emissions, dust (which can come from the CERC plant itself or from traffic), hydrology and water quality are all impacts that may emanate from outside the boundary of the CERC plant and are thus matters for planning control. (187, 211)

1973. The concern of the Council and others is focused on air quality, that is, the substances that would be emitted via the stack from the combustion process. Air quality in this regard is wholly a matter for the EA through the environmental permitting system. The permit controls the materials to be accepted for incineration, the incineration process and the nature and extent of processes to deal with emissions to air from the incineration process. These controls involve setting limits for the substances that are to be emitted to air and establishing a monitoring regime. As the Council’s nature conservation witness accepted, it is the EA which has the expertise to deal with air quality issues.

1974. The control of emissions to air in this case is not a matter for the planning system. The emissions arise from a process which is wholly within the control of the EA through the environmental permitting system. In addition, I am doubtful whether the Council, in its role as a planning authority, has the degree of expertise that the EA possesses in assessing air quality impacts.

1975. Accordingly, I am satisfied that, in respect of assessing the impact of the CERC proposal on the SACs in the vicinity of the site, the EA through the environmental permitting system is the competent authority. PPS10 and PPS23 stress the importance of the planning system not duplicating the controls exercised by others. In this case, the environmental permitting regime is the appropriate vehicle for making a proper and detailed assessment of the air quality impact on the SACs. (189, 190)

1976. It is to be noted that the EA issued a draft permit for the CERC facility in August 2010 for consultation purposes. The accompanying document explaining the decision making process contained an assessment of the impact of a variety of substances that would be emitted to air on nearby SACs. It should be noted that at the inquiry the Council made no comment upon the assessment made in the draft permit. (186)

1977. In December 2010, the EA issued the permit for the CERC facility. The accompanying document again contains an assessment of the effect of these substances on SACs in the locality. After comments received from Natural England following the issuing of the draft permit, further work was undertaken to assess the effect on the Annex II species in the St Austell Clay Pits SAC and further consideration of the in combination assessment taking into account the emissions from the Indian Queens Power Station. The permit includes this further work.
1978. In the permit, the EA says that it is possible to conclude that there would be no likely significant effect alone and/or in combination, within the context of prevailing environmental effects, on any interest feature of the protected sites. The additional assessments undertaken by the EA in response to the comments made by Natural England have not changed the EA’s conclusions as to the impact on protected species or areas.

1979. The EA’s decision to issue the permit was taken after consultation with Natural England, the statutory body charged with the designation and protection of sites of nature conservation interest in England. It is inconceivable that the EA, as the competent body, would have issued a permit if it could not conclude that significant effects were unlikely, in which case it would be required to undertake an appropriate assessment.

1980. Given the conclusions reached by the competent authority in the permit as to the likelihood of the development having no significant effect upon protected habitats or species, it is concluded that the proposal would not give rise to harm to acknowledged nature conservation interests.

**Effect upon the historic environment and listed buildings**

1981. The Council’s third reason for refusal concerns the effect of the CERC development on the historic landscape and listed buildings. The scale of the proposed plant has the potential to significantly alter the context in which the area’s historic assets are experienced. (266)

1982. The nature of the historic environment in this area is firstly expressed by the landscape, which includes the area of the china clay industry, the village of St Dennis and the agricultural land of the upper Fal valley. Heritage assets within these areas indicate that industrial change is a feature of this landscape. (257)

1983. PC-STIG highlights the importance of the fields that include the appeal site to the historic fabric of the Parish. Rostowrack and Bodella Farms are noted to be potentially of Early Medieval origin and the farms of Carsella and Domellick were mentioned in the Domesday Book. (1017, 1033, 1036, 1042)

**AEL and Cornish hedges**

1984. Evidence presented during the inquiry addressed whether or not the appeal site lies within AEL. The removal of field boundaries since the 1840s has altered the appearance of the land, but clarification of the historic landscape character for the area confirmed the appeal site to be classified as AEL. The working of china clay has already diminished the extent of AEL around St Dennis and the CERC proposal would add to the loss of this historic farmland. (273, 274, 668, 669, 1019, 1038, 1042)

1985. The CERC development would provide for the construction of new Cornish hedges along the proposed access road to the plant. These would visibly differ in size to the existing Cornish hedges within the appeal site. A substantial length of Cornish hedge that runs across the centre of the appeal site would be translocated to the access road, the line of which cuts across a number of other field boundaries. Due to their age, these existing Cornish hedges are expected to be of archaeological interest. However, the field boundaries that would be affected by the proposal lie within an area that has many other sections of Cornish hedge and these would remain. (1018)
1986. EH has referred to the impact of the CERC development on the setting of the area and the heritage assets within it. These include archaeological material within the fields on and around the appeal site. It is also possible that the proposed access road would run along the line of the ancient Treviscoe dyke. However, whilst EH has expressed concerns about the impact of the CERC development, it has not objected to the proposal and indeed a planning condition has been agreed by the main parties which would address the potential for archaeological remains that are affected by the proposal to be recorded. This would ensure compliance with relevant planning policy. (263, 667, 686, 706)

1987. The proposal would add to the loss of very old Cornish hedge in this locality. Even so, it has not been shown that the scale of the loss associated with the proposed relocation of the hedges and the associated loss of AEL would represent an unacceptable loss to the historic environment, which includes the appeal site. (274, 275, 670)

Manorial boundary stone

1988. The MB/BS protrudes out of made ground and is positioned on the line of an agricultural fence of apparently fairly recent construction. Exchanges of evidence during the inquiry highlighted that the significance of this heritage asset is yet to be fully understood. (687, 690)

1989. Mapping has shown the MB/BS to be in a number of locations. Whilst this slight variation in position could have been the result of the BS being moved, convincing evidence has not been produced to indicate that this is a more likely explanation than cartographical errors in the recording of the feature. (694, 1040)

1990. While the MB/BS may contribute to the understanding of the relationship between manorial and parish boundaries in this area, the MB/BS is not a designated feature and no examples were given of similar assets that are. Nor was it shown that this type of heritage asset is especially rare in Cornwall. Whilst a considerable volume of evidence was presented to the inquiry, it failed to demonstrate that the MB/BS is of anything other than potentially local importance. (268, 269, 697)

1991. PPS5 states that its objectives include conserving heritage assets in a manner appropriate to their significance. The route of the proposed access road includes the MB/BS location and would require the asset to be removed. It has not been adequately explained why the suggested planning condition in respect of archaeology would fail to deliver an appropriate level of investigation and conservation of the MB/BS. (271, 689, 700)

Listed buildings and scheduled monuments

1992. EH has not objected to the appeal scheme, but indicates that the proposal would result in significant intrusion into the setting of the area. EH draw attention to the listed structures in the locality and especially the Grade II* listed Parkandillick Engine House and St Denys Church, from which clear views could be gained of the proposed plant. The extent of green fields in these views would be reduced by the appeal scheme. (263, 666)

1993. Parkandillick Engine House stands within the immediate industrial setting of the area of the china clay industry. Aspects across the Parkandillick dryers and
the Fal Basin provide the wider setting for the listed building. Its raised positioning beyond the main dryer buildings ensures that its distinctive form is apparent from public vantage points in the basin. Nonetheless, the Engine House has a strong association with the industry around it and this provides its functional setting. (288, 682, 683)

1994. Photographic evidence presented to the inquiry reveals the extent of the additional industrial development at Parkandillick that has taken place since the 1940s. This development includes the tall silos, the stacks and many other structures forming the complex of buildings associated with the Parkandillick drier complex. These have significantly increased the scale and extent of the buildings around the Engine House.

1995. The proposed CERC buildings and stack would add to the industrial development in this location and by their scale would be important landscape elements in many of the longer views of the Engine House. However, given the extent of the changes that have already occurred to the setting of the Parkandillick Engine House, the CERC development would not have an appreciable adverse effect on its wider setting within the landscape of the upper Fal valley.

1996. In close views of the Engine House and especially on the main southern approach to the listed building, conifers planted next to the structure reduce the impact of the Parkandillick dryer buildings. These conifers would do much the same for the CERC development when seen from this approach. The setting of the Engine House has been substantially modified by the scale and extent of the industrial development that has taken place since the 1940s. The change has been so substantial that if the CERC development was to go ahead, the immediate functional setting of the listed building would remain. (289, 681, 682)

1997. Routes to St Denys Church include those through the rising land within the village and then via the lane that leads to the church’s hilltop position on the site of an earlier hilltop fort. The importance of this village setting and that provided by Carne Hill itself is recognised by the ALAHV proposed designation provided for by RBLP Policy R71. The CERC development would take place outside the proposed ALAHV, but it would form a very significant new component of views down Fore Street. These views of the plant would diminish appreciably as the village portion of the proposed ALAHV was entered. Views that would be gained from the Carne Hill element of the ALAHV would be much more distant. The church site is seen widely within the local landscape and, therefore, its setting includes not only the appeal site, but also many other locations within the wider area. (278, 674, 677, 680)

1998. The CERC development would be only one part of the church’s wide and extensive setting. The CERC buildings would be seen next to the area dominated by the china clay industry with its associated dryers and other structures. The church and its grounds would remain a key and prominent element of the historic environment in this location. In most views of the church there would be sufficient visual separation between it and the CERC development to ensure there would not be a significant adverse effect on these views. In addition, the church’s visual relationship with the hilltop fort on Castle-An-Dinas would not be materially affected by the proposal.
1999. However, in some views, such as those from public footpath no. 2, the CERC facility would be large enough to interrupt the visual connection between Carne Hill and St Dennis. This visual linkage expresses the functional relationship between the church and community in the locality as viewed from the area around Treviscoe. Consequently, the positioning of the CERC would preserve much of the setting of St Denys Church, but not all of it. (279, 281, 282, 674, 678, 679)

2000. Castle-An-Dinas is a scheduled monument with a hilltop location that also provides it with an extensive setting in the local landscape. Although the CERC development would be clearly visible in views to the south from Castle-An-Dinas, it is much further from the appeal site than St Denys Church. The CERC buildings would be viewed from Castle-An-Dinas against the backdrop of the tips and quarries of the china clay industry and the china clay works immediately behind it. An unbroken visual link to the church and former hilltop fort at Carne Hill would remain.

2001. The site at Castle-An-Dinas would continue to have panoramic views across the Cornish countryside, with the CERC development adding to the distant industrial presence in one of these views. Given the scale and form of the CERC development, no significant harm would occur either to the setting of Castle-An-Dinas, which would be preserved, or to the features and characteristics of the Castle-An-Dinas/Belowda/Goss Moor AGHV. (260, 290, 291, 666, 675)

2002. Trerice Bridge is a listed building on a busy rural highway that has agricultural land, mineral workings and vegetation along the River Fal around it. These features provide the wider context for the AGHV, which includes the bridge and a number of other historic features which are in close proximity to the C184 and the route of the proposed haul road. (708, 1039)

2003. A number of views to and from Trerice Bridge would include the haul road crossing of the River Fal and its access onto the C184. Even so, the new bridge would be distinct from Trerice Bridge and there would be a significant gap between the two structures. These parts of the haul road would be in the wider setting of the listed bridge. The access onto the C184 would use an existing junction and the tracks running from it, and the tracks that are included within the route of the haul road in and around the AGHV, have an obvious association with the china clay industry of this locality. (286)

2004. It is acknowledged that some vegetation would be lost to the creation of the new river crossing. However, a significant degree of separation would remain both between the existing and proposed river crossings and the haul road from the other heritage assets. Given the industrial heritage of the AGHV and the vegetation that would remain, it has not been demonstrated that the proposed construction and use of the haul road would cause visual or aural harm to features and characteristics of the AGHV. Nor would it cause changes so significant that it would fail to preserve the setting of Trerice Bridge. (287, 710, 1731)

2005. In relation to the Council’s third reason for refusal and for the reasons above, it is concluded that the settings of the designated features in the locality would be substantially preserved and unacceptable harm would not occur to the other heritage assets.

Impact on enjoyment of public footpaths
2006. Representations received and evidence to the inquiry highlight the value local people attribute to the public rights of way in the vicinity of St Dennis and Treviscoe. The site visits undertaken as part of the inquiry provided an opportunity to walk the network of footpaths, which provide pedestrian links between these settlements and St Denys Church as well as giving access to the surrounding countryside. Given the historic and landscape features in this locality, people from further afield would also be expected to be users of the footpath network within the basin of the upper reaches of the Fal. (295, 1044)

2007. Footpath 5 connects Treviscoe and St Dennis and crosses the site of the main CERC buildings. It has a “gold” status within the Council’s Public Path Improvement Plan, which is a classification that considers matters such as its proximity to a settlement. Footpath 2 links footpath 5 with La Mount corner and footpath 18. Construction of the EfW plant and its access road would require diversion of both footpaths 2 and 5. (302)

2008. At present both footpaths 2 and 5 enable walkers to proceed through countryside that although near to the Parkandillick works is, nonetheless, separate from the industrial activity associated with the works. The footpaths also provide routes which are clear of local roads. The diverted footpath 2 would be to the north of the proposed access road, where a footway would provide an alternative pedestrian route. The eastern edge of the CERC site would be bounded by footpath 14. Footpath 15 would cross the haul road and footpath 17 travels along the C184 on the section between the haul road and the access road junction where HGV movements would increase considerably. (303, 1045, 1046)

2009. The noise environment in the Fal basin includes the sounds of industry and traffic. HGV movements generated by the CERC development would be absent during evenings and for much of the weekend when recreational footpath usage would reasonably be expected to be greatest. Nonetheless, at other times walkers in certain locations on the footpath network would experience more sound and traffic. This would especially be so on footpaths 2, 5, 14 and 17 and in locations where HGVs going to and from the CERC facility would pass within a few metres of footpath users. Currently, such HGV movements are largely absent. The change in the noise environment in certain locations would be very significant, as indicated by the predicted operational noise levels within Table 8 of the Noise SoCG. (294, 319, 320, 719, 721, 1664)

2010. Due to its scale, the CERC development would be a substantial additional element in many of the panoramic views obtained from the public rights of way within the Fal basin. The landscape assessments provided by the appellant and the Council take in views from public rights of way. (712)

2011. Given the scale of the proposed EfW plant and its size in relative terms to existing industrial structures at Parkandillick, the CERC buildings and stack would inevitably be dominant landscape elements in many of the near views from footpaths 5 and 14. (716)

2012. For users of the footpath network within the Upper Fal valley the greatest change resulting from the CERC development would be experienced in the area from La Mount corner to footpath 14 at Rostowrack Farm. The immediate character of footpath 2 would change significantly as it would run adjacent to the proposed access road. To a certain extent the character of footpath 5 would also change as it would take a longer route around the perimeter of the appeal site.
However, sections of footpaths 5 and 14 have an industrial setting and are already affected by sights and sounds of the dryers and associated buildings at Parkanddillick. However, the appeal scheme would place very large structures much closer to these footpaths. HGV movements associated with the CERC development and activity within the CERC site would also substantially change the noise environment on parts of these public rights of way. (294, 304, 306, 715, 718, 720)

2013. The appellant points out that the existing circular footpath route, which includes footpath 5, would remain. I also acknowledge that the proposed development would result in a number of benefits for the public rights of way network, such as improving the drainage of the footpath close to Rostowrack Farm which crosses land which is poorly drained and often badly churned up by cattle. Nonetheless, it is accepted that a degree of harm will occur to the footpath network. (308, 309, 322)

2014. Increased noise and visual impact that results in the harm would, for the most part, occur in close proximity to the CERC site and to activity generated by the CERC development. It is recognised that this change of character immediately around the footpaths would be experienced by walkers for a limited period of time. When these impacts are considered within the context of the footpath network in the locality, the change that would occur would be in keeping with the wider character of the area and the noise impacts would not be so sufficiently great and prolonged to be unacceptably harmful to users of the public rights of way network. (320, 322, 722)

Effect on landscape character and visual impact of the proposal

Landscape character

2015. Cornwall includes extensive areas of land designated both nationally and locally for its landscape quality and the appeal site lies outside these areas, these designations include AONBs and AGLVs. The Countryside Agency classified the land that includes the CCA, St Dennis and the appeal site as the Hensbarrow Character Area, which contains large swathes of land affected by the winning and working of china clay. The landscape elements associated with the china clay industry include large quarries, extensive areas used for tipping and large processing plants, including silos and dryers. Many of the villages, if not of industrial origin, owe much of their existing character and appearance to the china clay industry.

2016. The Character Area also contains moorland and tracts of farmland characterised by a patchwork of small fields bounded by Cornish hedges and a scattering of farmsteads and groups of dwellings. This variety is reflected in the recent Cornwall and Isles of Scilly Landscape Assessment, which described the area in the vicinity of the appeal site as having a character that is rugged and with great variation. (225, 226, 229, 631, 632)

2017. This landscape contains a strong vertical emphasis with conical tips, dryers, silos and pylons being conspicuous features when seen from numerous vantage points within and outside of the Character Area. The study undertaken to assess the landscape acceptability of wind farm proposals identifies the Character Area as providing the greatest opportunity within the County for accommodating large scale wind farm developments. I acknowledge that wind farms are different to an EfW plant in terms of design and proportions. However, the study provides a
useful indication that large scale, tall developments are capable of being absorbed into a landscape characterised by many vertical elements and containing many large scale man made components. (226, 235, 634)

2018. The Character Area can also be described as having a dynamic quality in that it is constantly changing. Photographic evidence describes the nature and magnitude of the changes that have occurred to this landscape since the 1940s. Over the years, new complexes of china clay dryers and silos have been built, whilst new extraction areas have been opened up and extensive tipping has taken place. In other areas, tipping operations have ceased and the tips have been re-profiled and restored. The area has also seen the introduction of large scale infrastructure projects, such as the Indian Queens Power Station and the A30 dual carriageway. The CERC proposal has to be seen in the context of this dynamic and changing landscape. The changes that have taken place in the past indicate that the area is capable of accommodating large scale changes to the landscape. (226, 230, 1520)

2019. At the inquiry, the Council argued that the railway line represents a distinct change in the landscape between the Parkandillick dryers and silos on one side from the farmland of the appeal site on the other side of the railway track. The Council’s evidence on this point contrasts with the appellant’s approach to the assessment of the wider context for the plant as described by the formal character assessments referred to above. Whilst the Council’s method principally addresses a landscape area that is likely to be a focus for people taking certain aspects within and around the Fal basin, it does not give sufficient weight to the degree of variety within the wider landscape. (231, 232, 233, 630, 635)

2020. In comparison to the scale and prominence of the landscape features associated with the china clay industry and the infrastructure elsewhere, the railway at Parkandillick does not form a conspicuous dividing line in the landscape. Indeed, the line of mature conifer trees on the haul road approach to La Mount corner is a much stronger landscape feature. The presence of the railway at Parkandillick does not prevent the appeal site being dominated by the industrial character of the neighbouring silos and dryer buildings. (629)

2021. Previous decisions by the Council do not suggest that in the past it has placed an importance on safeguarding the expanse of farmland in which the appeal site sits. Much of the appeal site is designated in the MLP as an area for plant development ancillary to the extraction of china clay. Even though the site has not been developed for such a use, it indicates that the Council considers this location to be suitable for certain forms of industrial development. (238, 638, 639)

2022. In addition, I note that in the late 1990s the Council granted planning permission for a china clay tip at Gaverigan. This planning permission appears to have been implemented. Tipping in this locality has had the effect of extending the area affected by china clay operations northwards and north-eastwards. Tipping has taken place over the original route of the road from Indian Queens and the A30 to Treviscoe and a replacement road now skirts the eastern edge of the tipped area. In my assessment, the raised area of tipping operations in this location has added to the sense of enclosure of the farmland of the Upper Fal valley, including the appeal site, by higher ground mainly associated with the china clay industry. It has also had the effect of eroding the visual connection of
the basin of the Upper Fal valley with the wider tract of more open, undulating farmland along and to the north of the A30.

2023. With these matters in mind, it is apparent that the Council has not sought to safeguard this agricultural land from this type of change. The appeal scheme would reflect the degree of change that has occurred to this landscape and the existing infrastructure that is now evident within it. (227)

2024. Some argued that the proposed haul road would be out of character with the landscape. However, the route of the haul road is next to existing extensive mineral workings. One of the features of the china clay quarries and tips is the network of haul routes. The construction of the haul road would reinforce an established feature associated with the mineral workings within the locality and has to be seen in this context. (241, 246, 644, 1017, 1731, 1759)

2025. Others argued that the proposal, both on the appeal site itself and along the proposed access road, would lead to the loss of Cornish hedge, one of the characteristic features of the farmland of the Upper Fal valley. In contrast, I take the view that the proposal would reinforce this characteristic and historic feature of the landscape by translocating and increasing the length of Cornish hedge in the locality. The newness of the relocated hedges, and the height of some lengths of the hedges, would cause them to appear distinct from others immediately around them. However, there are tall Cornish hedges in the wider area that would provide points of reference for the higher sections along the access road. Over time, the new hedges would become vegetated to reflect existing field boundaries in this tract of farmland. (248, 1018)

2026. For these reasons, I do not consider that the landscape character of this area precludes the development of the proposed EfW plant.

Visual impact

2027. The proposed CERC development would include two very large main buildings. Although these would have footprints comparable in scale to those of the neighbouring Parkandillick dryer complex and the Parkandillick structures are not significantly dissimilar in height to the main CERC building, the massing of the two proposed buildings would be perceived as being considerably greater than the adjoining industrial development. (655, 657, 1009)

2028. Additionally, the height of the proposed CERC stack would be much taller than those within the Parkandillick works and it would be unusually tall for an EfW plant in the United Kingdom. The height of the stack, 120 metres, is a product of the need to limit the impact of emissions to air on nearby protected habitats. The combined breadth of the two chimneys within the stack structure would emphasise its scale. On the occasions that the plume would be visible, this would add to the visibility of the stack, although it is recognised that the plume would vary in length, position and visibility in the light of weather conditions, amongst other things. (244, 652, 876, 969, 1174)

2029. Due to its height, form and colour, the stack and its associated plume would be visible in some longer distance views. Raised ground to the east, south and west of the appeal site would mask views from these directions of the EfW buildings and much of the stack. In contrast, longer distance views from the lower lying area, which includes Goss Moor and the A30 to the north, would reveal the presence of the proposed buildings and the overall height of the stack.
This would be the view seen by many visitors to the County as they travel along the A30. However, the CERC buildings and stack would be seen against the backdrop of the area worked by the china clay industry including quarries, tips, stacks and large scale industrial buildings, including the buildings and other structures of the Parkandillick complex. These factors, along with the distance involved, would significantly reduce the visual impact of the CERC facility from the views from this direction. (658, 1166, 1167, 1519)

2030. Nearer aspects would not benefit from the mitigating effect of distance to the same degree. Such locations include views from St Dennis, Treviscoe, Trerice Terrace and Little Trerice. Some of these views would be across open farmland which would provide little in the way of screening. (242, 647, 1033, 1684, 1702, 1738)

2031. In many views, the CERC plant would be seen across hundreds of metres and would be set against a backdrop provided by the raised ground of the tips of Parkandillick Downs to the rear of the existing Parkandillick dryer complex and the long line of dryers and ancillary buildings within the Parkandillick works. Whilst in many, but not all, views these factors would lessen the visual impact of the proposed buildings, the stack would extend well above this backdrop and would constitute the main impact on near views. In these views, the stack would be conspicuous and unduly intrusive. (244, 656, 658, 1015, 1517)

2032. The conclusions above not only take into account what was presented to the inquiry, but also that seen during a programme of site visits that was undertaken during the inquiry. The site visits included a visit to the locality after dark to see existing night time illumination from industrial premises and settlements. (242, 1025, 1031)

2033. Street lights and more particularly external illumination at the Parkandillick works contribute to the levels of night time illumination near the appeal site. On the site visit undertaken at night there was a steam plume emanating from the Parkandillick dryers. This plume reflected some of the external lighting around the dryers. These factors ensure that the countryside near to the appeal site is not wholly dark at night.

2034. There would be external lighting around the CERC site. There would also be lighting within the CERC buildings. Whilst these would add to the sources of light in the locality, the effect would be limited by the imposition of planning conditions to control sources of lighting, including the installation of light baffles louvres in the main EfW building. However, the aircraft warning lights attached to the stack would highlight its presence in both near and distant views. (249, 1518)

2035. Just as steam emissions from the stacks of the Parkandillick dryers reflect night time lighting, the plume from the CERC stack would also have a similar effect. Whilst this would make the CERC facility more apparent in darkness and especially so in near views, it would be seen within the context of the existing works and, as noted previously, the appearance of the plume would vary considerably. As a result, the overall visual impact of the CERC development would be significantly less during the hours of darkness than in daylight.

2036. Construction of the haul road would require the removal of some vegetative cover, particularly in the vicinity of Trerice Bridge. This would result in a more pronounced landscape feature than currently exists. Even so, the visual impact
of the haul road would be limited. The proposed haul road would make use of existing haul routes as much as possible. This would go some way to reducing the visual impact of the haul road. (247, 644)

2037. The WLP recognises that a centrally located EfW plant would be a substantial development that could have a significant visual impact. The height and massing of the CERC buildings would be that expected for the implementation of the WLP strategy. However, it is not apparent that those preparing the WLP considered the possibility of a stack as large as that proposed, or that an ash handling facility would be located next to the EfW building, thereby increasing its scale and massing. (220, 221, 628, 1020)

2038. Consequently, despite the mitigating separation distances between the site and most residential development in the locality, it is considered that the visual impact of the stack and, to a lesser extent, the proposed buildings, would have an adverse visual impact on near views from vantage points in St Dennis and Treviscoe as well as from properties in parts of the Fal basin. (237, 649)

Design

2039. The CERC buildings would be of a distinctive high quality and innovative design. The curved form of the roofs of the buildings would reflect the rolling forms of the countryside around St Dennis. The separation of the stack from the buildings, as suggested by the South West Design Review Panel, assists the design by giving the buildings an uncluttered appearance. No one at the inquiry put forward evidence of substance to suggest that the design of the CERC facility was anything but of high quality. It would certainly contrast with the utilitarian appearance of the adjoining Parkandillick dryer complex. (244, 245, 649, 652, 653)

2040. Whilst the proposed landscaping would do little to mask or soften the shape or mass of the proposed buildings, it represents an appropriate treatment of the site. There is no evidence of substance to suggest otherwise. (1024)

2041. Notwithstanding the high quality of the design of the proposed buildings and the ability of the landscape of this part of Cornwall to absorb large scale developments, I conclude that the visual impact of the stack, and, to a lesser extent, the buildings would have an intrusive and harmful impact on some shorter distance vantage points. (252, 661, 1020)

Effect upon residential amenity

2042. The Council’s fifth reason for refusal does not refer to visual impact, which is dealt with above, but solely with the effect of noise upon residential amenity.

2043. Attention is drawn by the appellant to the factors that already contribute to the noise environment in this location, which include traffic and industrial plant associated with the china clay industry. The council’s view is that the appeal scheme would add to this during both its construction and operational phases. (326, 327, 340, 725, 1052)

2044. Places highlighted within the fifth reason for refusal include dwellings that would be in close proximity to the CERC buildings, its access and haul roads. The Noise SoCG agreed between the main parties provides agreed existing and predicted noise levels (with and without mitigation measures) for these locations. (339)
2045. Groundworks and other construction activities can be expected to generate a certain level of noise and disturbance. This is especially so where the operations involve the extent of excavations and the nature of engineering and construction activities proposed in this case. Given the scale of the CERC development, these construction works would occur over a considerable, but temporary, period of time. The appellant highlights that predicted unmitigated figures included within the Noise SoCG in respect of this matter have perhaps moved beyond a worst case scenario. Nevertheless, during these works the greatest effects of additional noise would be experienced by the occupiers of Bodella and Rostowrack Farms. Raised noise levels would also be experienced at Barton Court and the Hawthorns, but these would be considerably lower and for shorter periods of time than those experienced at the two farms. (356, 728)

2046. Following the exchange of evidence during the inquiry the main parties have agreed that construction noise limits, in accordance with those recommended in BS:5228, can be met if mitigation measures are employed. By its focus and relevance to construction activities, this is the most appropriate standard for the assessment of noise during this phase of the proposed development. Given the circumstances of the appeal site construction noise limits of 65dB(A), and 70dB(A) for temporary periods, would be appropriate. (358, 359, 727, 730, 747)

2047. It is recognised that construction activity would be experienced by local people for a considerable period of time. Whilst PC-STIG considers that it would have an unacceptable impact on residential amenity, the Council acknowledges that the effects of construction noise alone would not justify dismissal of the appeal. I share that view. (729, 1054)

2048. Operational noise from the CERC site would be that associated with the processes and activities occurring within and immediately around the main CERC buildings and the movement of materials to and from the CERC site. The Council’s objection highlights the additional levels of noise associated with these HGV movements, which would add to existing traffic noise in the area. Noise would be generated by vehicles travelling on the CERC haul road and especially when they climb the gradients along its route. Vehicles would also be required to negotiate the haul and access road junctions with the C184 at La Mount corner. A suggested planning condition would limit these HGV movements to between 07:00 and 18:00hrs Monday to Friday and 07:00 to 13:00hrs on Saturdays. This would provide a relief from the effects of traffic noise at times when local residents are likely to place a particular value on enjoying a degree of peace and quiet; that is, in the evenings, at night and also at weekends. (340, 341, 1731)

2049. The Noise SoCG includes agreed assessment methodologies, but the proportion of the application area that a BS4142 assessment should apply to is disputed. The Council has used this standard for the assessment of traffic away from the main CERC buildings on an access road that is intended to become an adopted highway. While there may be no technical reason why the assessment cannot be made, the foreword to BS4142 is clear that it is aimed at activities within industrial premises. (350, 732, 733)

2050. As an adopted highway the access road would be outside the industrial premises and the operations occurring within them, even if its principal purpose is to provide access to the industrial plant. The impacts from HGV movements would be those associated with the access road and also with the haul road.
2051. The Council's evidence indicates that it does not seek to rely on the use of BS4142. Nevertheless, a convincing case has not been made to suggest that BS4142 is sufficiently suitable for assessing the impact of CERC traffic outside of the main plant area such that it would be appropriate to ascribe significant weight to conclusions drawn from such an assessment. (351, 352, 734, 736, 737)

2052. WHO guidelines identify $L_{Aeq}$ levels of 50dB as the onset of moderate annoyance during daytime for the occupiers of an outdoor living area and a $L_{Aeq}$ level of 55dB as the threshold for serious annoyance. While these guidelines are reduced for evening periods, it has not been demonstrated that to use reduced levels during the period when HGV movements would be permitted on Saturdays would recognise that traffic not associated with the CERC facility could also reasonably be expected to be on the highway network. (345, 354, 739, 742, 743, 754)

2053. PPG24 states that it is inappropriate to use its NECs for considering the suitability of locating new development that would be a source of noise close to existing residential development. This is due to the inability of the planning system to ensure that occupiers of dwellings that are likely to be affected by noise would accept the fitting of mitigation measures. Even so, it is noted that the PPG24 NECs indicate that a daytime traffic noise level approaching a $L_{Aeq}$ of 55dB is not desirable and noise at or above this level would signal the potential need for mitigation measures. (354, 751)

2054. Bodella and Rostowrack Farms would be the closest dwellings to the operational buildings and the activity around them. These farms are already within a noise environment that includes the industry at the Parkandillick Works. The existing occupiers of Bodella and Rostowrack Farms would have the option to be relocated, but the dwellings would remain. (353)

2055. CERC operational noise levels experienced at these two properties would be significantly less than those during the construction period. The Noise SoCG indicates that of these two dwellings, mitigated CERC operations would principally add to the noise levels experienced at Bodella Farm, with an overall peak hour increase that could result in serious annoyance. Nevertheless, given the existing baseline ambient noise of 50dB $L_{Aeq,10h}$ at Bodella Farm, it has not been shown that the predicted increase would be so detrimental to the living conditions of occupiers to be unacceptably harmful. (344, 740, 747)

2056. Barton Court would contain the nearest dwellings in Treviscoe to the access road. DMRB analysis indicates that traffic noise associated with CERC operation, with the acoustic mitigation provided by the proposed 2.5m Cornish hedge in place, would result in a predicted 5dB $L_{Aeq,10h}$ noise change at these properties. This equates to a major impact. However, within the context of the WHO guidelines, the predicted 48 dB level would still be below the WHO threshold of 50dB $L_{Aeq}$ for moderate annoyance. Consequently, it is accepted that the harm to the occupiers of these properties would be limited. (347, 348, 352, 740, 741, 749)

2057. The frontage at La Mount is already above 55dB $L_{Aeq,10h}$ with HGV movements a significant contributor to the noise environment in this location. As part of the CERC proposals the carriageway at La Mount corner would be re-aligned to draw traffic further away from the dwellings. The frequency of these noise generating
events would increase as a result of CERC operation, with predicted cumulative average noise levels of 59dB $L_{Aeq,10h}$ that would be higher at peak times. While the dwellings at La Mount corner would be expected to receive the highest noise levels associated with the operation of the CERC, the degree of noise change would be 3dB $L_{Aeq,10}$ at the La Mount frontage and a 2dB $L_{Aeq,10h}$ rise to 54dB $L_{Aeq,10h}$ at the side of the dwelling. While such a level is not desirable and indeed the predicted frontage level could be potentially a SOAEL, these increases in noise level would be at the lower end of what is perceptible. (336, 344, 345, 740)

2058. Daytime users of the side and rear gardens at La Mount both now and during periods of CERC HGV movements are likely to experience moderate annoyance from noise levels above the desirable levels stated within BS8233. Internal noise levels within La Mount are already noted to be significantly above what is defined as good within BS8233, which is consistent with the external frontage noise levels. While the proposed development would add to these levels, it is clear that the appeal scheme would provide for mitigation measures which, if accepted, would substantially improve existing living conditions within the dwellings at La Mount corner. (346, 744, 745)

2059. It is regrettable that residents of La Mount corner only learnt of these proposed mitigation measures for the dwellings during the inquiry. This is especially so as shift working results in local residents sleeping with windows open during hot summer periods when CERC HGV movements would be expected to occur. The proposed use of mechanical ventilation within the mitigation measures would alter how these buildings are used. If the mitigation is not accepted, the proposals would detract further from the living conditions in these properties. (341, 1050, 1680)

2060. Despite the proposed acoustic fence between the operational haul road and the dwellings at Hawthorns, the predicted noise levels would increase by 2.5dB $L_{Aeq,10h}$ to 51.5dB $L_{Aeq,10h}$, with higher levels during peak CERC traffic flows. Some further attenuation would be likely from the existing mature conifer planting in this location. Notwithstanding this, users of the amenity space at Hawthorns would be expected to experience moderate annoyance from CERC HGV traffic. (344, 740, 1731)

2061. An assessment in accordance with IEMA guidelines confirms the nature of the impacts referred to above. (748)

2062. If the appeal scheme were to be allowed, the planning conditions agreed between the main parties would address noise generated during operations of the CERC plant and during the period of construction, including that of the haul road, and the hours when such works could occur. The times of vehicle movements for the delivery of waste to the CERC and subsequent removal of ash and recyclables would also be controlled, along with the noise levels experienced at specified dwellings referred to above. Conditions would also address the types of reversing alarms to be used on the site and the provision of a noise management scheme. These matters, together with the mitigation provided by the construction of acoustic fencing and Cornish hedges, would significantly reduce the potential for unacceptable levels of noise to be experienced in the locality. (340, 341)
2063. In conclusion, it is accepted that noise associated with the construction of the CERC facility would be temporary and is capable of being carried out in accordance with current standards. The principal additional noise impacts would result from the increase in HGV vehicle movements from the current 15 per hour on local roads to 74 at peak hour. The Council considers that weight should be given to noise burden from construction and that when the effects of the proposal on the local noise environment are taken as a whole, including the impact of additional discernable individual HGV movements, they would be significantly adverse. (729, 750, 752)

2064. The NPSE recognises that communities and the economic activity within them generate noise and additional noise from the construction and operation of the CERC facility would add to that already experienced in the locality around the appeal site. On-site management of noise within the areas that include the main CERC buildings and the haul road would be expected to minimise the emission of noise. However, at La Mount corner the resultant external noise levels would be significant and would adversely affect the amenity of those living in the properties at this location. (334, 726, 1055, 1543, 1664, 1668, 1679, 1698, 1702, 1739, 1766)

Impact upon regeneration of China Clay communities

2065. The working and processing of china clay over many years has left its mark on this part of Cornwall. The extensive clay workings and clay tips and the complexes of driers and other plant dominate the landscape of the CCA. Historically, villages have grown within the CCA to provide accommodation for those employed within the china clay industry.

2066. For some time, employment within the CCA has been dependent on the fluctuating fortunes of the china clay industry. Although employment in the CCA is still dominated by the china clay industry, it was a recurrent theme of some third parties and many local residents at the inquiry that current levels of employment in the industry are much below what they were in the hey day of the industry. (874, 1675)

2067. Although much effort has gone into reprofiling and restoring some of the china clay workings, and this work is continuing, the industry has left the CCA with an unfortunate physical legacy. There are still extensive areas of workings, tips and processing plant. In addition, the settlements dotted throughout the CCA are poorly served by services and communications via the network of narrow, sinuous local roads are far from ideal.

2068. It is recognised that the geography of Cornwall also makes it difficult to attract new investment and employment in competition with the rest of the country. The County occupies a long, narrow peninsula at the end of the main railway system and the end of the strategic road network. Nevertheless, Cornwall does have a number of advantages. Its climate, scenery and beaches mean that it remains one of the country’s main destinations for holiday makers. Its climate and soils also mean that it has a flourishing agricultural sector which, to some extent, has led to a growth in food companies. It is accepted that the food sector is trading to a greater or lesser degree on customer perceptions of the County’s clean, wholesome environment. (874, 875, 1156, 1166, 1167)

2069. The economic strengths that the County enjoys are not to be found in the CCA. Apart from the Eden project on the eastern fringe of the area worked by the
china clay industry, there are few other signs from visiting the CCA that tourism is important. The physical impact of the china clay industry is likely to deter most visitors. Also, the area taken up by clay workings and tips means that, by and large, farms within the CCA do not wear the same prosperous air as farms do in much of the rest of Cornwall. (881)

2070. Unsurprisingly, considerable effort has been made over recent years by local authorities and regional bodies to address the problems of the CCA and promote its economic and physical regeneration. These efforts have resulted in the publication of several strategies and programmes for the CCA, including SIF and CCLADP. To close the gap between Cornwall’s economy and its neighbours, the Conv Prog has also been published. Although some reliance was initially placed by the Council’s economic development witness at the inquiry on conflict between the CERC proposal and these strategies and programmes, this conflict is not evident from a reading of the documents. (417)

2071. An example of this is provided by the Conv Prog document. This identifies a number of objectives for the Conv Prog. These include increasing the range and quality of job opportunities available to the community, managing economic growth more sustainably and taking a leading role in investing in the drivers of the local carbon economy. The CERC proposal would bring job opportunities to local people. Some of these jobs would be skilled ones. The proposal would also involve environmental and renewable energy technologies and would involve substantial inward investment. Accordingly, the proposal would be in accord with Conv Prog objectives. (417, 420, 421)

2072. Another example is provided by the CIF document. The document sets out a number of the key priorities for the CCA, including the provision of new employment, improving the operation of the china clay industry and introducing renewable energy technologies. The CERC proposal would not be in conflict with these objectives. In addition to providing skilled job opportunities, the CERC project would bring in renewable energy technology to the local economy and would support the well being of the china clay industry by offering heat to be used in local china clay dryers. (417, 418)

2073. It is noted that the regional economic development organisation, SWRDA, has expressed support for the CERC facility on the grounds that it meets some of the objectives set out within the RES, namely, the promotion of renewable energy and environmental technologies and the introduction of higher paid jobs. At the inquiry, it was said that SWRDA was concerned with the regional picture and that it was possible for a development to benefit the regional economy yet harm local economic prospects. However, this ignores the fact that SWRDA had formally approved the SIF and CCLADP documents. Thus, SWRDA was fully aware of economic and other problems within the CCA and the initiatives that were being put forward to address them. If SWRDA had considered that the CERC proposal was likely to be at odds with attempts to regenerate the local economy, it would have objected. (415, 425)

2074. Another initiative aimed at the physical and economic regeneration of the CCA has been the creation of an Eco-town of new housing supported by economic development on various sites in and adjacent to the area associated with clay working. The ethos behind the Eco-town is that it would be developed along sustainable principles, including the use of renewable energy. Amongst other things, the Eco-town Prog seeks the development of a 12 hectare business park
in the Nanpean/Drinnick area, some one to two kilometres from the appeal site. 

(883)

2075. The Council suggested that more image and environmentally conscious firms would be deterred from moving to the business park, such as food processing companies. The claim was made that those on the business park would be able to see the top of the stack of the CERC facility. After looking in the direction of the CERC site from the vicinity of the proposed business park during the programme of site visits, I am dubious whether the stack would be visible although I accept that on occasions the plume arising from the stack may be seen. Even if the top of the stack could be seen, it would be viewed across an intervening scene comprising tips and clay workings. The nature of the intervening landscape is such that the stack would not be seen as obtrusive or unduly conspicuous. As for the plume, the area around the CERC facility contains a number of stacks which give rise to plumes. Within this context, the plume would not be unusual or out of place and would, in any case, be seen from some distance. (426, 427, 1066)

2076. The Council’s evidence for its view that firms would be deterred from moving to the Nanpean/Drinnick business park rests on a query that had been received from a food processing company which expressed an interest in relocating to Cornwall and also to the failure of an agent who had failed to convert two enquiries from food companies into deals in respect of a business park near the Edmonton EfW plant in North London. (431, 432)

2077. Neither of these failures to attract food companies provides evidence that this type of company would be discouraged from moving to near the CERC site. In the Edmonton case, it was unclear as to why the firms did not move to the business park. There could be many reasons, including the proximity to a nearby sewage treatment works. In the other case, the Council did not know who the company was and why it had decided not to relocate to Cornwall. It was not even known if the enquiry was made before or after the submission of the planning application for the CERC development or, in any event, if the company was looking at this part of Cornwall. (431, 432)

2078. Evidence from other parts of the country does not show that EfW plants deter economic activity. The Study commissioned by East Sussex County Council looked at the economic impacts of constructing an EfW plant at Newhaven. The Study was carried out by property specialists, DTZ Pieda, and pointed to the health of business parks which were located close to EfW plants in Portsmouth, Basingstoke, Stoke-on-Trent, near Southampton and near Maidstone. There is also evidence that food processing companies are not deterred from setting up near to EfW plants. An example is a food firm which is located about 100 metres from the Portsmouth EfW plant. Whilst the economies of these localities may be influenced by different factors than the CCA, The Study and the example of the food firm in Portsmouth demonstrate that companies do not, as a matter of principle, automatically shy away from EfW plants. (428, 433, 886)

2079. The Council’s objection in this respect is based on perception. Perception may constitute a material planning consideration but to be given weight, the perception must be supported by evidence. There is no evidence in this case. Rather, the evidence from elsewhere in the country is that the presence of an EfW facility does not discourage or deter nearby economic activity. (877, 1066)
2080. The Council’s stance fails to have regard to the benefits that the CERC plant is likely to bring to the economy of the CCA. These include the bringing in of jobs, not only the jobs associated with the operation of the plant but the temporary jobs that would be generated by the construction of the plant and its associated works, such as the access road. It would bring into the CCA a development concerned with environmental and renewable energy technology, the sort of technologies that the Council are seeking for the CCA and Cornwall. It would also provide an opportunity for nearby china clay driers to use heat produced by the incineration process and also supply heat to the Eco-town. (419, 885)

2081. The Council and others suggested that the presence of the CERC facility would have a negative impact upon Cornwall as a tourist destination. Although the CERC plant would be visible from the A30, the main route into western part of the County for tourists, the CERC plant would be seen at some distance and would be viewed against a backdrop of mineral workings, tips and associated large scale buildings associated with the china clay industry. In these circumstances, I do not consider that the CERC development is likely to deter visitors to Cornwall. (483, 876, 1721, 1740)

2082. CSWN and others have expressed concern at the potential impact of the CERC plant upon agriculture in the County and on existing food processing companies. One of the objectives of the environmental permitting regime is to ensure that processes within and emissions from the CERC facility are properly controlled and monitored so that the risk to the environment and human health is minimised. (499, 1147, 1160, 1162, 1179, 1682, 1721, 1740)

2083. The EA has issued an EP for the CERC facility which deals in detail with the specific concerns raised at the inquiry in respect of the impact upon farming and the food industry. In coming to its decision to issue the EP, the EA had regard to the views of bodies such as the FSA, HPA and the Primary Care Trust for the County. If any of these bodies had serious reservations or objections about the impact of the proposed plant on local food supplies or on local food processors they would have expressed them. They did not do so. (Inspector’s note: see the issued permit and accompanying document at X/15A and X/15B)

2084. Nor is there firm evidence from elsewhere to support these concerns. Mention was made of farmers having to give up growing food near the EfW plant in the Isle of Man, but the Isle of Man government has confirmed that it has no significant issues about the operation of this plant. If the growing of crops had ceased because of emissions from the EfW plant, I would have expected the Isle of Man government to have raised this. (499, 1187)

2085. Accordingly, I conclude that there is no evidence that the proposal would adversely affect the regeneration of the China Clay communities by deterring economic investment. Rather, the CERC facility is likely to benefit the local economy. Nor is there any evidence that the proposal would impinge upon the County’s tourist trade, agriculture or food processing industry.

Impact upon health

2086. The effect of the CERC plant on health is not a reason for refusal and it did not form part of the Council’s case at the inquiry. Nevertheless, third parties and local residents both at the inquiry and in their written representations raised concerns about the effect of the CERC facility on the health of those living in this part of Cornwall. In very large measures these concerns are focused on the
emissions to air from the proposed plant. These concerns are understandable and not unexpected. It is important to look at these concerns in the context of national policy and the response from those responsible for safeguarding health in this case. (457, 1074, 1543, 1710, 1719, 1756)

2087. The first point to note from national policy is that a clear distinction is drawn between the pollution control regime and the planning system. Paragraph 27 of PPS10 and paragraph 10 of PPS23 explain that the pollution control and planning regimes are separate but complementary. The former seeks to prevent pollution through the adoption of measures to restrict or prohibit the release of substances to the environment to the lowest practicable level. It also ensures that ambient air and water quality meets standards which guard against impacts to the environment and to human health. (458, 459)

2088. In contrast, the planning system controls the use and development of land in the public interest. In doing so, the planning system has an important role in determining the location of development which may give rise to pollution, either directly or from the traffic generated by the development, and in ensuring that other developments are not affected by existing or potential sources of pollution. (458)

2089. Another way of expressing the division of responsibility is that the pollution control regime is concerned with processes, substances and emissions which are the province of the operation of a plant or development, whereas the planning system is concerned with whether the development represents an acceptable use of land and the impact of the development on the use of land.

2090. Paragraph 26 of PPS10 makes the point that in the determination of planning applications for waste management facilities, 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”. Both PPS10 and PPS23 explain that planning authorities should work on the assumption that the relevant pollution control regime will be properly applied and enforced. (458, 459)

2091. National policy thus makes it clear that matters of health and pollution are the responsibility of the pollution control regime and not the planning process. In this case, the relevant pollution control regime is the environmental permitting regime operated by the EA under the Environmental Permitting (England and Wales) Regulations 2010. Plainly, the health concerns raised by third parties and others are primarily a matter for the EA through the environmental permitting process.

2092. Although a draft permit was issued for consultation purposes during the inquiry, there is now a permit in place for the CERC facility. This was formally issued by the EA in December 2010. The permit contains a raft of conditions, which amongst other things, limits emissions to air and requires monitoring of air borne substances. The permit is accompanied by a document recording the EA’s decision making process. The introduction explains that the document sets out the formal decision on the permit application. The introduction goes on to explain that the decision is based on information supplied by the applicant, responses to the public consultation on the application and the draft permit and the EA’s assessment of this material. (Inspector’s note: see the issued permit and accompanying document at X/15A and X/15B) (461)
2093. Given the thrust of national policy as set out in PPS10 and PPS23, the assumption must be that the EA, with its statutory responsibility for pollution control in waste management, will apply the appropriate standards and enforce them through the environmental permitting regime. Further, it can be assumed that the standards as to emissions to air from the CERC facility, as reflected in the permit conditions, will safeguard the health of the local community. After all, the safeguarding of health is one of the main functions of the permitting regime.

2094. In coming to this view, reliance can be placed on the consultation responses from the appropriate local health authority, the PCT for Cornwall and the Isles of Scilly. The PCT’s response of 13 January 2009 confirms that there were “no significant concerns regarding risk to the health of the local population”, whilst its response of 15 January 2010 says that “providing the site is well managed and complies with the requirements of the environmental permit, we are advised that there should be no adverse effect on the health of the population”. (476)

2095. The PCT’s later response cites the view of the HPA, the Government’s statutory advisor on health issues, which is that “modern, well managed incinerators make only a small contribution to local concentrations of air pollutants. It is possible that such small additions could have an impact on health but such effects, if they exist, are likely to be very small and not detectable”. (476)

2096. The PCT’s responses are in line with statements in national policy as to the effect of waste management facilities on health. Paragraph 30 of PPS10 explains that modern, appropriately located, well run and well regulated waste management facilities should pose little risk to human health. It goes on to say that the detailed consideration of a waste management process and the implications, if any, for health are matters for the pollution control regime. Paragraph 22 of WS2007 says that research carried out to date has revealed no credible evidence of adverse health outcomes for those living near incinerators. It points out that the relevant health effects, mainly cancers, have long incubation times, but the research that is available shows an absence of symptoms relating to exposures twenty or more years ago when emissions from incinerators were much greater than is now the case. (460, 463)

2097. Given the clear views of the local Primary Care Trust and the statements of national policy, it can be concluded that if the CERC facility is properly operated and the standards in the permit are properly applied and enforced then those living in this part of Cornwall should experience no discernible effect on health.

2098. Having said this, public anxieties or perceptions are capable of being material planning considerations. Mere emotion, fear or prejudice, no matter how honestly held, cannot be considered to be objective on their own. To be accorded weight, perceptions need to be justified by objective evidence. There is little such evidence in this case. (465, 466, 1075, 1702, 1751, 1756)

2099. Members of the local community point to the poor health of those living in the area surrounding the appeal site. This is said to be a product of poor air quality as a result of years of china clay working. However, the January 2010 response of the PCT to the permit says that the examination of local health statistics do not show a significant increase in the prevalence of respiratory disease or death rates from respiratory disease in local residents. (Inspector’s note: see the PCT consultation responses on the permit as set out in the decision making document accompanying the permit, X/15B) (1724)
2100. Much is made by third parties and others of emissions from the CERC facility exacerbating the low air quality of the locality, a consequence of the china clay industry. The same response of the PCT mentioned in the previous paragraph mentions that studies by the former Restormel Borough Council conclude that local air quality was not much different from the rest of the County. The response goes on to say that expert opinion was also obtained on the potential effects of the co-combination of particulate matter from the proposed plant with particulate matter emanating from the extraction and processing of china clay. It is considered that the risk assessment used in the permit is considered to be adequate. It is noted that models used to assess emissions have been validated and are in widespread use. (1081, 1082, 1183, 1534, 1535)

2101. At the inquiry, some made much of the vagaries of the local climate. However, I note that the permit is based on air dispersal modelling using local climate information. The raising of the stack from 75 metres high to 120 metres to ensure that the nearby SAC would not be adversely affected to any significant extent would also have the effect of ensuring an even more effective dispersal of emissions to air than would have been associated with a lower stack. (464, 1702)

2102. Some at the inquiry made much of the health risks of small particles and particularly nano-particles. The EA expressly refers to these in paragraphs A3.4.5 to A.3.4.7 of the decision document accompanying the EP. These point out that the HPA addresses the issue of the health effects of particulates in its September 2009 document “The Impact on Health of Emissions to Air from Municipal Incinerators”. It points out that incinerators in 2007 accounted for just 0.02% of background ground level PM$_{10}$ levels compared with a contribution of 18% from road traffic and 22% from industrial sources. In a survey in an urban area, the HPA notes that the proportion of PM$_{0.1}$, that is, nano-particles, are less than 10% of PM$_{10}$. The HPA goes on to say that PM$_{10}$ includes and excludes PM$_{2.5}$ which in turn includes and exceeds PM$_{0.1}$. The EA concludes that the assessment undertaken of the permit application bears out the comments of the HPA which show emissions of PM$_{0.1}$ to be insignificant. (Inspector’s note: see X/15B for the explanation of the EA’s decision making process in X/15B) (1079 to 1081, 1176, 1177, 1661, 1682, 1722)

2103. Third parties and some local residents suggested that the precautionary principle should be invoked. PPS23 makes it clear that the precautionary principle should apply only where there is good reason to believe that harmful effects may occur to health or to the environment and that there is a level of scientific uncertainty about the risks which would prevent a confident assessment to inform decision making. These considerations do not apply in this case. In the first place, PPS10 and WS2007 provide clear, unequivocal statements as to the absence of evidence of harm to health from incineration. The consultation responses from the PCT on the permit also provide a clear statement as to there being no good reason to suggest that the CERC facility would adversely affect human health. Second, the permit issued by the EA provides a firm, well founded framework for assessing risk and for putting into place the controls to minimise harm. (475, 476, 1083, 1161, 1544, 1704)

2104. Accordingly, it is concluded that there is nothing arising from the evidence in this case to justify taking a different view from national policy that the use of the type of incineration technology proposed for the CERC facility would affect the health of those living in the locality. In addition, there is nothing in the evidence
to warrant an intervention in a matter which is properly to be dealt with by another regulatory regime, that of the permit.

**Implications of not proceeding with the development**

2105. 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 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. The need for this diversion of waste is made more urgent by a shortage of landfill capacity in Cornwall.

2106. These conclusions also point to some of the consequences of the CERC proposal being rejected. The provision of replacement facilities of any size is likely to take a considerable time, probably eight or nine years because of the need to get new planning policies in place. These need to identify a new strategy and allocate new sites. Investment was unlikely to flow and operators were unlikely to be interested until they had certainty over strategy and sites. Further time delays are likely to result from obtaining planning permission and constructing the new facilities.

2107. The Council’s suggestions as to a much shorter timescale for bringing in new facilities are highly optimistic at best and wholly unrealistic at worse. The need for certainty before investment decisions are taken, public opposition and the difficulties of obtaining planning permission in good time and the lengthy process of building and commissioning new facilities all suggest that timescales are likely to be longer than the Council suggests.

2108. The earlier conclusions also said that the repercussion of such a delay was likely to be the bulk transport of waste out of the County for disposal elsewhere. As there was no evidence before the inquiry that there were any available large landfill sites or other large scale facilities just over the border in the adjoining County, the waste was likely to be transported over considerable distances with all this meant in terms of costs.

2109. There is a need now to look at the financial consequences of the failure of the CERC proposal to go ahead. The Council claim that the financial consequences of the appeal being dismissed should be accorded very limited weight. It is acknowledged that this appeal, as should any planning proposal, be determined having regard to the development plan and all other relevant material considerations. In my view, financial considerations may be material. (562, 1737)

2110. 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. (88)
2111. 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. (529)

2112. Of course, this does not mean that the financial implications take precedent over all the other considerations. They do not. The financial repercussions for the public purse have, in my view, to be placed in the balancing exercise alongside other considerations when coming to a decision on the appeal proposal, but in doing so the financial argument is one that should be given great weight. (611, 612)

2113. In looking at costs, regard should be had to the contract. Some gave the impression at the inquiry that this was merely a straightforward commercial document without any wider ramifications, whilst others gave the impression that the RPP would give the WDA the opportunity to change tack as to the choice of technology etc in the event that the appeal decision was unfavourable to the CERC proposal.

2114. On the first point, it is clear that the contract is not merely a commercial document, although it is that as well. The contract gives effect to the strategy set out in the WLP and the WDF if this had been taken forward. The contract requires the appellant to put the Council’s strategy in two stages. The focus in the first stage of the contract is on waste reuse and recycling. Under the contract, the appellant has to provide a range of new recycling and handling facilities, including two MRFs, six HWRCs, one WTS and three combined HWRC and WTS sites. It is the provision of some of these facilities, and the refurbishment of others, that has led to the significant improvement in the County’s rate of recycling in recent years. The emphasis in the second stage of the contract is on obtaining value from residual waste. The key element in this stage is the provision of the CERC facility. The contract confirms the use of the appeal site for the CERC facility and the capacity of the plant. (78, 609)

2115. Given that the WLP accords with national policy objectives in that it seeks to recover value from residual waste and seeks the diversion of waste away from landfill, I consider that the contract as the delivery vehicle for the strategy set out in the WLP should be accorded considerable weight. (74)

2116. In support of this view, it is to be noted that the Director in charge of the WIDP within DEFRA has confirmed that the contract continues to accord with national policy. In addition, it is noted that in the executive summary of WS2007 it is stressed that the Government is using PFI as a mechanism to encourage the provision of a variety of energy recovery technologies. (87)

2117. Turning to the second point, there was much debate about the RPP during the inquiry. It is important to see how the RPP has come about and what it is proposing. Counsel for the appellant refers to the contract having a planning long stop date of the end of March 2010. By that, I take it that the contract assumes that planning permission will have been granted by that date for the CERC facility. With the time taken to consider the planning application and the time taken in the appeal process following the refusal of planning permission, this date has clearly been passed. It is in this context that the Council has instructed
the appellant to prepare a RPP. The wish of the Council is that the RPP should be in place before the appeal is decided so that it is in a position to execute the revised documentation as soon as planning permission is granted. This would enable the CERC proposal to proceed if the elected members so wish. (83, 1089)

2118. In representations submitted to the inquiry, the appellant confirms that the RPP is for all intents and purposes the appeal proposal. The RPP will be for the same technology as the current CERC proposal; it is for the same capacity and is for the same site. A letter from the Council’s Cabinet Member for Waste Management, Climate Change and the Historic Environment confirms what the appellant has said about the RPP. The appellant says that, in reality, the main difference will be an updating of the cost basis for providing the CERC facility. (85, 86, 1090)

2119. Any reduction in the capacity of the CERC facility is likely to give rise to procurement law issues, as confirmed in the minutes of the WDAP meeting of April 2010. Any change in the choice of technology is likely to be viewed as being a material change to the Final Business Case that was approved by DEFRA. This would result in the loss of PFI credits. It is unlikely that the Council would receive PFI support for subsequent waste treatment facilities as the funding of new PFI waste projects has now ended. It is thus clear that any change of direction as to technology or capacity is likely to be costly. (87, 618, 1445)

2120. To the consequences of the CERC proposal failing which have already been mentioned at the beginning of this section should be added the financial implications. The costs of waste management would rise significantly. This is recognised in the WDA’s letter of 11 March 2010 to the inquiry. The letter talks of the Council having to face a serious waste management problem if the appeal proposal is rejected. It estimates the cost to Cornwall’s taxpayers as being “well over £200 million”. (Inspector’s note: the WDA’s letter is at X/3/2)

2121. The appellant has provided a more detailed picture of the composition of this sum. A nine year delay in bringing forward waste management capacity to replace that of the CERC facility is estimated at being £166 million. This figure is based on a maximum rate for the landfill tax of £72 per tonne in 2014, nil growth in MSW arisings and a maximum rate of LATS permits of £50 per tonne. In addition, the termination costs of the contract would have to be found by the Council. These are estimated to be between £35 million and £50 million. (543, 927)

2122. The WDA would also be unlikely to receive PFI credit support for new proposals as the PFI waste scheme has ended. Government financial support in respect of the current proposal is about £3.35 million per year over the thirty year life of the contract. This support is provided specifically in respect of the treatment of residual waste through the EfW in accordance with the WDA’s approved Final Business Case to DEFRA. Any change in residual technology is likely to be seen as being a departure from the Final Business Case, leading to a loss of PFI credits. These estimates of the costs of such a delay have not been challenged by the Council, although the Council has questioned the length of delay to bring in new facilities and the amount of landfill capacity remaining in the County. (544)

2123. The cost to the County’s taxpayers of the CERC proposal being rejected and a long delay in bringing in new facilities would thus be well in excess of £200
million. This would hit taxpayers and the Council hard at a time of straightened financial circumstances affecting both individuals and local authorities. The financial implications of rejecting the CERC proposal is a matter that should be accorded substantial weight along with the other consequences of failing to meet targets, that of not diverting waste from landfill and not managing waste in a more sustainable manner.

**Benefits of the proposal**

2124. A number of benefits are claimed for the CERC proposal. Many of these have been discussed elsewhere in these conclusions. This section of the conclusions brings the discussion of the benefits together and deals specifically with the weight that should be attached to them. In the interests of brevity, where the alleged benefits have been discussed elsewhere they are not dealt with in this section at any great length. (545, 1448)

2125. The CERC facility would divert waste away from landfill and break the County’s reliance on landfilling as the means for dealing with Cornwall’s waste arisings. This would enable the County to meet national and EU targets for reducing the proportion of MSW which goes to landfill. Accordingly, this benefit should be given very great weight. (545)

2126. The proposal would move the management of waste up the waste hierarchy. Although other waste management options, such as recycling, lie higher up the hierarchy than energy recovery, the contract that is in place in the County would ensure that the CERC proposal does not inhibit the achievement of the national 50% recycling target for MSW. As such, I give this benefit substantial weight. (545)

2127. Given the current dependence on landfill and the County’s dwindling landfill resources, the timely implementation of the CERC proposal would ensure that a serious waste management problem in Cornwall is avoided. For reasons previously set out, this would mean that the County’s taxpayers avoid a substantial cost burden. This benefit of the appeal proposal should be accorded substantial weight. (545)

2128. The CERC facility would make use of waste as a resource through, for example, the generation of electricity. This would help meet the Government’s aim of producing 15% of the United Kingdom’s energy from renewable sources. This would reduce the national reliance on fossil fuels to generate electricity. This would have two effects. It would contribute towards achieving a more secure source of energy generation and it would help to displace the greenhouse gases that are generated by the burning of fossil fuels. The energy benefits of the proposal should attract significant weight. (545, 1448)

2129. One of the advantages of the appeal site is its location adjacent to a complex of china clay dryers. The owners of the Goonvean Dryers have entered into an agreement with the appellant for the CERC plant to supply heat to these dryers. However, no agreement has yet been reached with the owners of Parkandillick Dryers, the other adjacent dryers. This means that for the time being only a limited amount of the potential heat that would be generated from the proposed plant would be used. Nevertheless, the potential is there to supply adjacent industry with heat and also supply heat to that part of the proposed Eco-town to be developed around Nanpean and Drinnick. Thus, the CERC facility is well placed to make use of the heat it produces. The export of heat to the china clay
dryers would help them reduce their energy costs. As such, the proposed plant would support the china clay industry in this locality. I accord this benefit weight. (545)

2130. The CERC facility would lead to 48 jobs being permanently created. Some contrast the limited number of jobs that would be created against the possible deterrent effect of the CERC plant on inward investment into the China Clay communities. However, as already concluded there is no evidence that an EfW plant deters economic activity within the surrounding area. The 48 jobs that would be created have to be seen in the context of falling employment in the china clay industry. The jobs that would be created would be higher paid, skilled jobs. Given these factors, I take the view that considerable weight should be given to the creation of these jobs. (545, 1448)

2131. A larger number would be employed during the construction of the CERC facility and associated development such as the access road. I recognise that construction workers would spend money in local shops and that local services would also have the opportunity to supply goods and services to the companies constructing the CERC facility. However, construction activities would be temporary and the potential boost to the local economy from these activities would be temporary. As such, limited weight should be attached to this benefit.

2132. The proposal provides for a visitor centre to be set up within the CERC centre to provide information to visitors about waste management. Whilst I accept the general point that it is important to ensure that the public gain as much knowledge as possible about the various options as to how waste can be dealt with, at a more specific level I find difficult to measure or quantify the benefits that would accrue from the visitor centre. (545)

2133. There was much debate at the inquiry about the weight that should be accorded to the community fund that is being offered through the Section 106 Agreement. The fund is to be used to support and improve the wellbeing of the communities that would be most affected by the CERC proposal. It is noted that the Health Impact Assessment included within the ES identified wellbeing as an issue of concern. It is intended that local communities would be able to direct funds to areas of need which they have identified. In doing this, I acknowledge that the fund may offset some of the harm that would be caused by the CERC proposal and also some of the negative perceptions of the development. (512, 932)

2134. The appellant accepts that without the community fund, planning permission could still be granted and thus to this extent the fund could not be said to be necessary. The Council says that this suggests that little weight should be given to the fund. I note in an appeal case involving a wind farm at Hall Farm in East Yorkshire both the Inspector and the Secretary of State attached weight to a community fund which the appellant accepted was not necessary to justify the appeal proposal. The Inspector in that case came to the view that the fund provided benefits to be set against the harm to the landscape and amenity and for this reason found it a necessary part of the provision in the event of planning permission being granted. The Secretary of State subsequently scrutinised this issue and found that the revised Unilateral Undertaking that was submitted complied with the guidance offered in Circular 05/05. (513, 934, 935)
2135. The Hall Farm case is analogous to the current case in that the community fund seeks to provide benefits to set against some of the harm that may be attributed to the CERC facility. In this respect, it is possible to view the fund as being necessary and meeting the tests of acceptability of Obligations as contained in Circular 05/05. The fund also meets the tests contained in the Community Infrastructure Levy Regulations 2010. Viewed in this light, I consider the fund should be given some weight. (514)

**Adverse impacts of the proposal**

2136. This section of the conclusions is concerned with those adverse impacts of the proposed development that have been identified in other parts of the conclusions from the consideration of the evidence.

2137. Although the appeal site sits within a landscape that is dominated by the china clay industry with its extensive mineral workings, tips and dryers, the height and scale of the buildings and, more particularly, the height of the stack of the CERC facility would dominate the immediate locality and represent an intrusive feature when seen from many short distance views. With its multiplicity of red aviation lights, the stack would be conspicuous at night. The plume that would emanate from the top of the stack on occasions would also add to the night time conspicuousness of the CERC facility. The adverse visual impact of the proposal on its immediate surroundings is a matter to which I attach significant weight.

2138. Whilst the impact of traffic related noise is limited in extent, partly as a result of mitigation measures that would be taken to protect dwellings, the effect of traffic noise on the properties at La Mount corner would adversely affect the use and enjoyment of the external space belonging to these properties. The access to the CERC facility would go close to these properties and the likely increase in HGV traffic over and above the existing use of these roads would ensure that the loss of amenity for those living in these properties would be significant. I acknowledge that this impact is localised, but nevertheless I attach some weight to this consequence of the development.

**Adequacy of the Environmental Statement**

2139. When the planning application was submitted in March 2008 it was accompanied by an ES. This comprised a non-technical summary, several volumes of the ES itself and several volumes containing technical appendices. Subsequently, the Council issued a request under Regulation 19 of the Town and Country Planning (Environmental Impact Assessment) (England & Wales) Regulations 1999 for additional information to be provided on a variety of topics. The additional information was submitted in a number of volumes in February 2009.

2140. No one has suggested that the necessary steps have not been taken with regard to the arrangements for consultation on and publicity of the ES and the additional information submitted in response to the Regulation 19 request. Judging by the number of responses received from public bodies and members of the public, the consultation and publicity process has been satisfactory.

2141. Nor has any suggestion been made by the Council or third parties in their closing submissions that the ES is inadequate. I consider that the ES, including the additional information submitted in response to the Regulation 19 request, provides comprehensive and detailed coverage of the likely main impacts of the
proposed development and the mitigation measures that may be required. As such, I take the view that the ES is adequate and meets the requirements of the relevant Regulations.

2142. At the inquiry there was a difference between the main parties as to landscape and visual impact. This is to be expected. It is essentially the difference as to how the information on landscape and visual impact is interpreted. I am satisfied that the information on landscape and visual impact was prepared in accordance with the appropriate and well tried and tested protocol, LVIA, developed by the relevant professional body. The difference in interpretation of landscape impact does not alter my view as to the adequacy of the ES.

Overall conclusion, including compliance with the Development Plan and national policies

2143. The proposal would, by reason of the height of the stack and the height and scale of the buildings, have an adverse visual impact when seen from a number of short distance views. As such, the proposal would not be compliant with WLP Policy 6A insofar as this is concerned with the visual effect of an EfW plant. This is the most pertinent of the policies cited by the Council and others in respect of visual impact. This is distinct from policies relating to the compatibility with landscape character, which I do not consider that the proposal would breach.

2144. The proposal would also adversely affect the amenity of those residing in the two properties at La Mount corner because of the effect of traffic noise on the external space around these properties. As such, the proposal would be contrary to WLP Policy C1 insofar as it seeks to protect amenity from effects of traffic, SP Policy 6 which refers to the protection of local amenity from significant adverse effects and RBLP Policy 37 which states that proposals should not cause harm from noise.

2145. The harm to these interests of acknowledged importance has to be set against the benefits of the proposal proceeding. The proposal would divert waste away from landfill. It would move the management of waste up the waste hierarchy. It would enable targets for the recovery of waste to be met. It would avoid a serious waste management problem in the County and as a consequence, would avoid substantial costs being incurred by local taxpayers. It would generate electricity from a renewable source and thus reduce the national dependence on fossil fuels. It offers the potential to make use of heat generated by the proposal. It would provide much needed jobs in an area where the main source of employment has been in decline for some years. These benefits are substantial and compelling. These benefits outweigh the harm by way of visual impact and the effect of traffic noise on two properties.

2146. The proposal represents the key component of the waste strategy put forward in the WLP. The WLP explicitly recognises that not all the optimal criteria that it identifies for a site for an EfW facility may be met. In this case, whilst the proposal does not include access to rail, the opportunity is there for rail access to be provided in the future should such an arrangement become viable. Although the WLP places a limit on the capacity of the EfW plant of 200,000 tonnes, the work on waste arisings subsequently carried out as part of the work on the draft WDF and the draft RSS points to the need for a plant with a larger capacity. In all other respects, the appeal site meets the criteria put forward by the WLP.
2147. It is important to realise that whilst the WLP was prepared and adopted some years ago, its strategy of moving the management of waste away from landfill and dealing with it higher up the waste hierarchy is compliant with national waste planning policy in PPS10, the national waste strategy in WS2007 and national energy policy in the Climate Change supplement to PPS1 and the Energy White Paper.

2148. The proposed development would deliver over a thirty year period a proven, environmentally sound and economically viable solution to avert what otherwise would be a waste management problem in Cornwall.

Recommendation

2149. I recommend that the appeal be allowed subject to the conditions set out in Annex B.

Alan D Robinson

Inspector
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who called:
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Councillor Fred Greenslade Councillor of Cornwall Council
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<tr>
<th>Name</th>
<th>Role/Residence</th>
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<td>Mr Brian Arthur</td>
<td>Local Resident - St Dennis</td>
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<td>Mr Oliver Baines OBE</td>
<td>Local Resident – Grampound Road</td>
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<td>Ms Joanna Batterby</td>
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<td>Local Resident – St Dennis</td>
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<td>Ms Lynda Bowman</td>
<td>Local Resident – St Dennis</td>
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<td>Councillor Jackie Bull</td>
<td>Local Resident – St Austell</td>
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<td>Mr John Carley</td>
<td>Interested Party - Chacewater Parish Council</td>
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<td>Councillor Armorel Carlyon</td>
<td>Local Resident – Truro</td>
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<td>Mr Chris Charnock</td>
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<td>Mr William Corbett</td>
<td>Local Resident – St Mawgan</td>
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<td>Mrs Mollie Fox</td>
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<td>Mr Stephen Gilbert</td>
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<td>Mr Charles Hall</td>
<td>Interested Party – Friends of the Earth</td>
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<td>Mr Malcolm Higginbottom</td>
<td>Interested Party - EcoPetitions</td>
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<td>Ms Hillary Hughes</td>
<td>Local Resident – St Dennis</td>
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<td>Mr David James</td>
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<td>Rev Dr John Johnson</td>
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<td>Ms Lucy Kelly</td>
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<td>Mr Gwylym Lewis</td>
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<td>Ms Lynn Lintott</td>
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<td>Mr Mike Martin</td>
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<td>Mr Paul Matthews</td>
<td>Interested Party</td>
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<td>Mr Clive Medway</td>
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<td>Ms Diana Padwick</td>
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<td>Ms Susan Richards</td>
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</tr>
<tr>
<td>Ms Caroline Righton</td>
<td>Interested Party - Prospective Conservative candidate for St Austell &amp; Newquay</td>
</tr>
<tr>
<td>Ms Lynn Sims</td>
<td>Local Resident – St Dennis</td>
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<tr>
<td>Ms Val Sterling</td>
<td>Local Resident – Mawgan Porth</td>
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<tr>
<td>Mr Matthew Taylor MP</td>
<td>Interested Party - MP for Truro &amp; St Austell</td>
</tr>
<tr>
<td>Councillor Roy Taylor</td>
<td>Cornwall Council Liberal Democrats</td>
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<tr>
<td>Mr Tim Thomson,</td>
<td>Interested Party - Green Party</td>
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<tr>
<td>Mr Alan Trethewey</td>
<td>Local Resident – St Dennis</td>
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<tr>
<td>Councillor Andrew Waters</td>
<td>Interested Party - St Enoder Parish Council</td>
</tr>
<tr>
<td>Ms Clarice Westlake</td>
<td>Local Resident – St Dennis</td>
</tr>
<tr>
<td>Mr Derek Williams</td>
<td>Local Resident – St Dennis</td>
</tr>
<tr>
<td>Mr Michael Wilson</td>
<td>Local Resident – St Dennis</td>
</tr>
<tr>
<td>Councillor Mrs Kim Wonnacott</td>
<td>Interested Party - St Stephen-in-Brannel Parish Council</td>
</tr>
<tr>
<td>Councillor John Wood</td>
<td>Local Resident – Roche</td>
</tr>
</tbody>
</table>
LIST OF DOCUMENTS

GENERAL INQUIRY DOCUMENTS

X/1  Planning Application documents provided to Inspector comprising 11 ring binders -
X/1/1  Appeal Questionnaire, Planning Application Publicity, Definitive Map extract, Extract from description of list of Buildings of Special Architectural or Historic Interest, Comments of English Heritage, Tree Preservation Order, Comments of Natural England, Details of Protected Species, Details of Sensitive Area, Adequacy of Environmental Statement, Site Notice & Local Advertisement, Appeal Notification Letter, List of those notified of appeal
X/1/2 -
X/1/10  Representations to original planning application received from interested parties
X/1/11  Report to 26 March 2009 Planning (Development Control) Committee, Update Sheets and Minutes, Development Plan Policy Extracts, 'Saved' Policies and Government Office for the South West Direction and Proposed Conditions if planning permission is granted
X/2  Letters/electronic submissions to the Planning Inspectorate of October & November 2009
X/3  Presentations to Inquiry other than by appearance -
X/3/1  Letter of 5 March 2010 from Mr. Phillip Pearce - Personal Submission
X/3/2  Letter of 11 March to the Planning Inspectorate, with five Appendices, from Mr. Dave Owens, Head of Waste Management, Cornwall Council
X/3/3  STIG pro-forma letters from 521 signatories
X/3/4  E-mail from Ms Pat Blanchard of 18 March 2010 relating to property of Mr. & Mrs Charnock
X/3/5  Letter of 18 March 2010 from Mr. Tommy Bray & reply from the Planning Inspectorate of 9 April 2010
X/3/6  Letter from Mr. Ken Rickard to the Prime Minister dated 6 March 2010, with Shadow Appropriate Assessment Scientific Report of February 2010, with reply from the Planning Inspectorate of 19 March 2010
X/3/7  E-mail from Ms Ann Truscott of 17 March 2010 to Mr. Chris Daly (Cornwall Council) and his reply of 26 March 2010
X/3/8  Letter dated 31 March 2010 from Chief Executive of Cornwall Council
X/3/9  E-mail of 1 April 2010 from Mr. Mike Martin responding to letter from Mr. Tommy Bray
X/3/10  Proof of Evidence submitted in writing by Mrs Frances Williams, 12 April 2010
X/3/11  Letter dated 9 April 2010 from Mr. Philip Ugalde on behalf of Proper Cornish Food Company
X/3/12  Letter received 23 April 2010 from Miss E Bowman, with extract from Cornish Guardian of 3 February 2010
X/3/12A  Letter dated 16 May 2010 from Miss E Bowman, with extract from The New York Times of 2 May 2010
X/3/13  Poems of Mrs Hilda Dent
X/3/13A  Letters of 15 and 27 May 2010 from Mrs Hilda Dent to the Planning Inspectorate, with extracts from the Cornish Guardian of 12 and 19 May 2010
X/3/13B  Letter received 9 June 2010 and dated 28 June 2010 from Mrs Hilda Dent to the Planning Inspectorate, with extracts from the Cornish Guardian of unknown date and 23 June 2010
<table>
<thead>
<tr>
<th>Reference</th>
<th>Description</th>
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<tr>
<td>X/3/13C</td>
<td>E-mail dated 22 September 2010 from Mrs Hilda Dent to the Planning Inspectorate about pyrolysis</td>
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<tr>
<td>X/3/13/D</td>
<td>E-mail dated 26 September 2010 from Mrs Hilda Dent to the Planning Inspectorate about the Gilly-sur-Isere Incinerator, France</td>
</tr>
<tr>
<td>X/3/14</td>
<td>Letter of 4 May 2010 from Mr. R G Gilbert</td>
</tr>
<tr>
<td>X/3/15</td>
<td>Letter of 6 May 2010 from Mr. Andrew Jessopp, with meeting minutes</td>
</tr>
<tr>
<td>X/3/16</td>
<td>Letter of 5 May 2010 from Miss R M Coon, with photographs</td>
</tr>
<tr>
<td>X/3/17</td>
<td>E-mail of 12 May 2010 from Ms Amy Woosnam to Ms Theresa May MP, with reply from the Planning Inspectorate of 21 May 2010</td>
</tr>
<tr>
<td>X/3/18</td>
<td>Letter dated 30 September 2010 from Cllr Julian German, Cabinet Member of Waste Management, Climate Change &amp; Historic Environment, Cornwall Council in response to SITA/1/7</td>
</tr>
<tr>
<td>X/4</td>
<td>Inspector's Procedural Notes -</td>
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<tr>
<td>X/4/1</td>
<td>Procedural Note 14 January 2010</td>
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<tr>
<td>X/4/2</td>
<td>Second Procedural Note 31 January 2010</td>
</tr>
<tr>
<td>X/4/3</td>
<td>Response to Procedural Query by Mr. Rod Toms, 4 February 2010</td>
</tr>
<tr>
<td>X/4/4</td>
<td>Second response to Procedural Query by Mr. Rod Toms, 4 February 2010</td>
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<tr>
<td>X/4/5</td>
<td>Response to Procedural Query by Ms Charmian Larke, 4 February 2010</td>
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<tr>
<td>X/4/6</td>
<td>Third Procedural Note 25 February 2010</td>
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<tr>
<td>X/5</td>
<td>CERC Inquiry Notification Letter - 24 February 2010</td>
</tr>
<tr>
<td>X/6</td>
<td>Exchange of correspondence between Rt Hon Matthew Taylor MP of 24 February 2010 and the Planning Inspectorate reply of 15 March 2010</td>
</tr>
<tr>
<td>X/7</td>
<td>Chief Executive, Cornwall Council, message to Members dated 19 March 2010</td>
</tr>
<tr>
<td>X/8</td>
<td>Site Inspection Itinerary and Plans</td>
</tr>
<tr>
<td>X/9</td>
<td>Environment Agency e-mail of 8 July 2010 to PINS, accompanying draft Permit ERP/GP3433GH, with introductory note</td>
</tr>
<tr>
<td>X/9A</td>
<td>Environment Agency draft Permit ERP/GP3433GH, with introductory note, issued 20 August 2010</td>
</tr>
<tr>
<td>X/9B</td>
<td>Draft decision document recording the decision making process</td>
</tr>
<tr>
<td>X/10</td>
<td>Inspector's re-worked planning conditions (Annexes A, B and C)</td>
</tr>
<tr>
<td>X/11</td>
<td>Matters which the Inspectors specifically wish to see addressed in Closing Submissions</td>
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<tr>
<td>X/12</td>
<td>Amendments to timetable of documents – Cornwall Core Strategy as approved by Planning Policy Advisory Panel 24 September 2010</td>
</tr>
<tr>
<td>X/12A</td>
<td>Note submitted on behalf of Cornwall Council updating document X/12</td>
</tr>
<tr>
<td>X/13</td>
<td>File containing attendance sheets, media notification forms and requests to receive copies of decision</td>
</tr>
<tr>
<td>X/14</td>
<td>Letter of 19 November 2010 from the Planning Inspectorate offering the parties the opportunity to make representations on the implications of the judgement of Cala Homes (South) Ltd v Secretary of State for CLG in respect of the abolition of RSSs</td>
</tr>
<tr>
<td>X/15A</td>
<td>Permit ERP/GP/3433GH issued on 6 December 2010 by the Environment Agency</td>
</tr>
<tr>
<td>X/15B</td>
<td>Decision document issued by the Environment Agency to record the decision making process that led to the issuing of the permit</td>
</tr>
<tr>
<td>X/15C</td>
<td>Note prepared by the appellant outlining changes to the finally issued permit and the draft permit issued in August 2010</td>
</tr>
</tbody>
</table>

**B: CORE DOCUMENTS**

**A**

<table>
<thead>
<tr>
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<td>CD/A1</td>
<td>Planning Application Documents –</td>
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<th>CD/A2</th>
<th>Planning Application Supporting Documents – Volume 2</th>
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<td></td>
<td>• Need Assessment (March 2008)</td>
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<td>• Assessment of Number of Facilities – Final report (March 2008)</td>
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<td></td>
<td>• Cornwall Options Appraisal – Final Report (March 2008)</td>
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<td></td>
<td>• Assessment of Alternative Sites (March 2008)</td>
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<td></td>
<td>• Sustainability Appraisal – (March 2008)</td>
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<tr>
<td>CD/A3</td>
<td>Redline and Architectural Drawings (March 2008)</td>
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<td>CD/A4</td>
<td>Landscape and Highways Drawings (March 2008)</td>
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<tr>
<td>CD/A5</td>
<td>Topography Drawings – illustrative material (March 2008)</td>
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<tr>
<td>CD/A6</td>
<td>Transport Assessment – March 2008</td>
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<tr>
<td>CD/A7</td>
<td>Environmental Statement – Volume 1 (including Non-Technical Summary)</td>
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<td>CD/A8</td>
<td>Environmental Statement – Volume 2</td>
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<tr>
<td>CD/A9</td>
<td>Environmental Statement Technical Appendices A-F (March 2008)</td>
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<tr>
<td>CD/A10</td>
<td>Environmental Statement Technical Appendices G-I (March 2008)</td>
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<tr>
<td>CD/A11</td>
<td>Response to Regulation 19 request (December 2008)</td>
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<tr>
<td>CD/A12</td>
<td>Additional Information (December 2008)</td>
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<td>CD/A13</td>
<td>Response to clarification request (December 2008)</td>
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<tr>
<td>CD/A14</td>
<td>Response to Terra Firma Final Report dated 13 February 2009 (February 2009)</td>
</tr>
<tr>
<td>CD/A15</td>
<td>Response to Regulation 19 and Clarification request. Response to further comments raised by Cornwall County Council’s Waste Planning Authority (February 2009)</td>
</tr>
<tr>
<td>CD/A16</td>
<td>The Conservation (Natural Habitats etc) Regulations 1994 (as amended 2007). In Combination Assessment (February 2009) (Terence O’Rourke on behalf of SITA Cornwall Limited)</td>
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<tr>
<td>CD/A17</td>
<td>WPA Scoping Opinion for Residual Waste Treatment Plant, Rostowrack Farm, St Dennis, July 2007</td>
</tr>
<tr>
<td>CD/A18</td>
<td>Regulation 19 Request to Terence O’Rourke, October 2008</td>
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<tr>
<td>CD/A19</td>
<td>Request for clarification to Terence O’Rourke, Oct 2008</td>
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<tr>
<td>CD/A20</td>
<td>Alternative Sites Assessment Updated Report (January 2010)</td>
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</table>

**B Planning Officer’s Report** -

**CD/B1** Officer’s Report to Planning (Development Control) Committee including:

- Appendix A – Relevant National, Regional and Local Planning Policies and Guidance
- Appendix B – Table of public representations
- Appendix C – Table of other similar energy from waste facilities in the UK

**CD/B2** Planning (Development Control) Committee Update – 26 March 2009 - Amendments to Recommendation in Officer’s report to Planning (Development Control) Committee
### C  Planning Appeal documents –
- **CD/C1** Grounds of Appeal
- **CD/C2** Statement of Common Ground
- **CD/C3** Updated Statement of Common Ground, signed 30 April 2010
- **CD/C4** Statement of Common Ground - Noise, 17 March 2010
- **CD/C5** Draft Section 106 Agreement
- **CD/C6** Statement of Common Ground - Rail Access
- **CD/C7** Draft Agreement relating to land at Rostowrack Farm, St Dennis
- **CD/C8** Final Section 106 Agreement dated 20 September 2010
- **CD/C9** Agreed response to Cornwall Council's questions on noise, 7 May 2010
- **CD/C10** Agreed Position Statement of the Appellant and Cornwall Council on the draft conditions proposed by the Inspector
- **CD/C10A** Agreed additional Conditions/Drafting

### D  Development Plan Policy Documents –
- **CD/D1** Regional Planning Guidance for the South West 2001 (RPG10)
- **CD/D2** Emerging Regional Spatial Strategy for the south west (RSS) (incorporating the Secretary of State’s proposed changes) 2008
- **CD/D3** Cornwall Structure Plan 2004
- **CD/D4** Restormel Borough Council Local Plan 2001
- **CD/D5** Cornwall Waste Local Plan 2002
- **CD/D6** The Emerging Waste Development Framework (submission stage version) 2006
- **CD/D7** The Cornwall Minerals Local Plan 1997
- **CD/D8** Cornwall County Council Local Transport Plan (LTP2) 2006-2011 plus Appendices and Annexes
- **CD/D9** RSS EiP Panel Report, Dec 2007 (Section 7, pp 219-230 only)
- **CD/D11** The Cornwall Waste Development Framework - Sustainability Appraisal

### E  National Planning Policy: Planning Policy Statements (PPS)
**Planning Policy Guides (PPG) and Companion Guides –**
- **CD/E1** Energy White Paper (May 2007)
- **CD/E2** Planning Policy Statement 1 - Delivering Sustainable Development
- **CD/E3** Planning Policy Statement 1 Supplement - Planning and Climate Change
- **CD/E4** Planning Policy Statement 7 - Sustainable Development in Rural Areas
- **CD/E5** Planning Policy Statement 9 - Biodiversity and Geological Conservation
- **CD/E6** Planning Policy Statement 10 - Planning for Sustainable Waste Management
- **CD/E7** Planning Policy Statement 10 - Companion guide
- **CD/E8** Planning Policy Statement 11 - Regional Spatial Strategies
- **CD/E9** Planning Policy Statement 12 - Local Spatial Planning
- **CD/E10** Planning Policy Guidance 13 - Transport
- **CD/E11** Planning Policy Guidance 15 - Planning and the Historic Environment
- **CD/E12** Planning Policy Guidance 16 - Archaeology and Planning
- **CD/E13** Planning Policy Statement 22 - Renewable Energy
- **CD/E14** Planning Policy Statement 22 - Companion guide
- **CD/E15** Planning Policy Statement 23 - Planning and Pollution Control
- **CD/E16** Planning Policy Guidance 24 - Planning and Noise
- **CD/E17** Draft Overarching National Policy Statement for Energy (EN-1)

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<tr>
<td>CD/E19</td>
<td>Planning Policy Guidance 17 – Planning for Open Space, Sport and Recreation</td>
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<tr>
<td>CD/E20</td>
<td>Planning Policy Statement 4 – Planning for Sustainable Economic Growth</td>
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<td>Waste Strategy Documents -</td>
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<tr>
<td>CD/F1</td>
<td>Waste Strategy for England 2007 (May 2007) and Supporting Annexes</td>
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<td>CD/F2</td>
<td>The Regional Waste Strategy for the South West 2004</td>
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<td>CD/F3</td>
<td>Planning for Waste Management Facilities (ODPM August 2004)</td>
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<td>G</td>
<td>Integrated Waste Management Contract and Cornwall Waste Planning Documents -</td>
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<tr>
<td>CD/G1</td>
<td>Cornwall Integrated Waste Management Contract (redacted Version), with full version of Schedule 6 Parts A and B</td>
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<tr>
<td>CD/G3</td>
<td>Cornwall Centralised Energy from Waste Facility: Site Search Report: Published July 2006 Cornwall CC</td>
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<td>Waste Legislation -</td>
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<td>The Landfill (England and Wales) Regulations 2002</td>
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<td>The Hazardous Waste (England and Wales) Regulations 2005</td>
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<td>CD/H10</td>
<td>Landfill Allowance Trading Scheme (LATS)</td>
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<td>I</td>
<td>Relevant Planning Appeals -</td>
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<tr>
<td>CD/I2</td>
<td>Ince Marshes Inspector’s report dated 3 October 2008 and Secretary of State’s Decision Letter dated 11 August 2009. (PINS Ref: APP/20645/A/07/2059609)</td>
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</table>
Belvedere, Bexley Inspector’s report dated 16 December 2005 and Secretary of State’s Decision letter dated 15 June 2006 (PINS ref: GDBC/C/003/00001)

Appeal Decision into proposal by County Environmental Services for the development of land at the Blackman’s site, United Downs, St Day (PINS ref: T/APP/B0800/A/95/258523/P2 dated 17 July 1996)

Appeal Decision into proposal by South West Water for the development of a STW on Back Lane, Bossiney (PINS ref: APP/B0800/A/05/1176233 dated 22 January 2007)

Secretary of State’s Decision Letter, dated 16 September 2008, for the application for consent to construct and operate an Energy from Waste CHP generating station at Runcorn, Cheshire

Appeal Decision into proposal by Ecotricity for the development of one wind turbine and a 40m wind mast at Land at Shooters Bottom Farm, Townsend Lane, Chewton Mendip (PINS Ref: APP/Q3305/A/05/1181087)

Appeal Decision into proposal by RES Developments Ltd for the development of 9 wind turbines plus associated infrastructure at land to the south east of North Tawton and south west of Bow (PINS Ref: APP/Q1153/A/08/2017162)

Inspector’s Report and Decision Letter into the application by Devon Wind Power Limited for consent to construct and operate a 66MW wind turbine generating station at Fullabrook Down in North Devon

Enertage (UK) Limited and Secretary of State for Communities and Local Government and (1) Broadland District Council (2) Guestwick Parish Council [2009] EWHC 679 (Admin)

Inspector's Report and Decision Letters of 11 November 2008, 19 December 2008 and 17 February 2009 into the application by Ridgewind Limited for consent to construct and operate a wind farm at Hall Farm in East Yorkshire

Landscape and Visual Documents -

Cornwall Landscape Assessment 2007
Cornwall Landscape Assessment 1994
Landscape Institute and Institute of Environmental Management and Assessment, 2002, Guidelines for Landscape and Visual Assessment (2nd edition)
The Cornish Landscape - An assessment of the Areas of Outstanding Natural beauty in Cornwall, Countryside Commission 1997
Countryside Character, Volume 8: South West (Countryside Agency, 1999)
The Cornwall and Isles of Scilly Landscape Assessment 2008
Cornwall Landscape Character Best Practice Guide Consultation Draft (August 2009)
Cornwall’s Historic Landscape, Presenting a method of historic landscape character assessment December 1998. Cornwall Archaeological Unit
By Design – DETR and CABE (2000)
MAFF Agricultural Land Classification of England and Wales 1988 (Section 2; pp9-10)
### CD/J13
Impact on Soils and Agriculture: Reading Agricultural Consultants (March 2008)

### CD/J14
Letter from South West Design Review Panel (18 September 2007)

### CD/J15
Response to Terra Firma initial Report by Terence O’Rourke (November 2008)

### CD/J16
Gaveriggan Tip Planning Committee Report dated 24 January 1996

### CD/J17
Gaveriggan Tip Planning Committee Report dated 2 April 1997

### CD/J18
Meeting Note, dated 8 December 2009, between Terra Firma and Terence O’Rourke

### CD/J19
Building Hedges in Cornwall (Draft Version September 2009) (page 17 only)

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### CD/K1

### CD/K2

### CD/K3

### CD/K4

### CD/K4A
The Conservation of Habitats and Species Regulations 2010. Statutory Instruments 2010 No 490

### CD/K5

### CD/K6

### CD/K7
Goss Moor National Nature Reserve Management Plan 2000-05 Parts I and II (Extended until December 2007 to incorporate A30 re-alignment into revision). Natural England

### CD/K8

### CD/K9

### CD/K10
Environment Agency 2007, Work Instructions (Appendix 7) Stage 1 and 2 Assessment of new PIR permissions under the Habitats Regulations

### CD/K11
[Not used]

### CD/K12
The Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999

### CD/K13
WPA Shadow Appropriate Assessment Screening Opinion, Letter, Matrix and accompanying Report from Bureau Veritas, December 2009

### CD/K14
WPA Shadow Appropriate Assessment, Letter and accompanying Report from Bureau Veritas (TBC)

### CD/K15
CEC (Cornwall Environmental Consultants Limited) 2007, Energy from Waste Plant, St Dennis: Bryophyte Survey and Assessment. A Report to SITA UK

### CD/K16
Environment Agency 2009, Appendix 11, Form HR01 – Proforma for New Application within Stage 2 Criteria
CD/K18 [Not used]
CD/K19 Natura 2000 Standard Data Form UK0030098 - Breney Common and Goss and Tregoss Moors
CD/K20 Natura 2000 Standard Data Form UK0030056 - River Camel
CD/K21 Natura 2000 Standard Data Form UK0030282 - St Austell Clay Pits
CD/K22 Natura 2000 Standard Data Form UK0030065 - Newlyn Downs SAC
CD/K23 [Not used]
CD/K24 [Not used]
CD/K25 Natural England 2008. Conservation Objectives and Definitions of favourable condition for designated features of interest – St Austell Clay Pits
CD/K26 [Not used]
CD/K27 [Not used]
CD/K28 A Compendium of Dispersion Modelling Results Quantifying the Effects of the CERC Emissions on Natura 2000 Sites

L Noise -
CD/L1 BS 4142:1997 Method for Rating Industrial Noise Affecting Mixed Residential and Industrial Use
CD/L4 Minerals Planning Guidance 11: The Control of Noise of Surface Mineral Workings 1993
CD/L5 Pollution Prevention and Control (England and Wales) Regulations 2000
CD/L7 Sector Guidance Note IPPC S5.01: Guidance for the incineration of Waste and Fuel Manufactured from or including waste, 2004
CD/L8 World Health Organisation, Community Noise Guidelines 2000
CD/L9 World Health Organisation, Environmental Health Criteria 12, 1980
CD/L10 World Health Organisation, Night Noise Guidelines for Europe, 2009
CD/L11 Environmental Protection Act 1990
CD/L12 Control of Pollution Act 1974
CD/L14 Design Manual for Roads and Bridges, Volume 11 – Environmental Assessment, Section 3, Environmental Assessment Techniques, Part 7 HA 213/08 “Noise and Vibration”

M Air Quality -
CD/M1 Environment Permit Application: Supporting documents, Non-technical Summary (vol 1), Application (vol 2), Site Condition Report (vol 3) and Annexes (vol 4)
CD/M2 Schedule 5 response correspondence between SITA and the Environment Agency
CD/M3 Bureau Veritas Review of Environmental Statement and Response from SITA
CD/M4 Health Protection Agency Statement on Waste Incineration (2009)
CD/M5 Air Quality Standards Regulations 2007 (SI 2007/64)
CD/M6 EU Directive 2008/50/EC on ambient air quality and cleaner air for Europe

N Cultural Heritage -
CD/N2 English Heritage 2005 Wind Energy and the Historic Environment
CD/N4 Lambrick, G. 2008 ‘Setting Standards: A review’ - IFA working group on the setting of cultural heritage features
CD/N5 Xi’an declaration on the conservation of the setting of heritage structures, sites and areas Adopted in Xi’an, China by the 15th general assembly of ICOMOS on 21 October 2005 http://www.international.icomos.org/xian2005/xian-declaration.pdf
CD/N6 The Planning (Listed Buildings and Conservation Areas) Act 1990
CD/N7 [Not used]
CD/N8 English Heritage and CABE, July 2007. Guidance on Tall Buildings
CD/N10 English Heritage, July 2009. Understanding Place – Historic Characterisation for Planning and Development, draft document
CD/N11 DCMA, November 2009. Scheduled Monuments – Identifying, protecting, conserving and investigating nationally important archaeological sites under the Ancient Monuments and Archaeological Areas Act 1979
CD/N12 Bridget Gillard, Historic Environment Service & The Cahill Partnership, 2004. Cornwall Industrial Settlements Initiative St Dennis (Hensbarrow Area)
CD/N13 Cornwall Archaeological Unit, 1998. Cornwall’s Historic Landscape – Presenting a method of Historic Landscape Character Assessment
CD/N14 Planning Policy Statement 5: Planning for the Historic Environment

O Alternative Technologies -
CD/O1 Fichtner Consulting Engineers 2010 ‘Cornwall Council Residual Waste Treatment Options Report’

P Traffic, Transport and Public Rights of Way -
CD/P1 [Not used]
CD/P2 DEFRA Rights of Way Circular (1/09)
CD/P3 Capita Symonds. Waste by Rail Feasibility Report. December 2004
CD/P4 Intermodality – Moving Cornwall’s Waste by Rail. June 2007
CD/P5 NHS Cornwall & Isles of Scilly brochure - Mobilise!, October - December 2009, with covering letter dated 30 September 2009
Q  Economic Policy Documents -
CD/Q1  Cornwall and Isles of Scilly Convergence Operational Programme 2007 -13
CD/Q2  St Austell, St Blazey & Clay Area Strategic Investment Framework & Economic Strategy (Restormel Borough Council, September 2008) (see Core Document CD/G6)
CD/Q3  Clay County Eco-Town Programme of Development (PoD) (Cornwall Council, October 2009)
CD/Q4  Clay County Local Action Delivery Plan 2010
CD/Q5  Skills and Vacancies Analysis Paper 2009
CD/Q6  Index of Multiple Deprivation 2007 Briefing Paper (Cornwall Children and Young People’s Partnership, 20 December 2007) (see Appendix 1 of CC/3/3)
CD/Q7  Eco-Towns – A Supplement to Planning Policy Statement 1 (DCLG, July 2009)

C: APPELLANT (SITA CORNWALL LIMITED)

General -
SITA/0/1  Opening Statement
SITA/0/2  Letter dated 16 December 2005 from Primary System Design re Feasibility Report of November 2005
SITA/0/3  Connection Feasibility Study for 21MW Export Capacity Generation Scheme at St Dennis, November 2005
SITA/0/4  Planning Policy Statement: Consultation, March 2010
SITA/0/5  Report to the Planning (Development Control) Committee - 30 March 2009
SITA/0/6  Drawing - Acid deposition, March 2010
SITA/0/7  Minutes of Meeting of the Cabinet - Waste Development Advisory Panel, 9 February 2010
SITA/0/8  List of Appearances
SITA/0/10  Environmental Risk Assessment extract
SITA/0/11  Update of GC055 - View to southwest from Footpath 5 beside Parkandillick Dryers
SITA/0/12  Aerial map - Existing Footpaths 17 with Application Boundary with alternative route
SITA/0/13  Aerial map - Existing Footpaths 17 with Application Boundary
SITA/0/14  Map showing Character Areas 17 and 20 and application site
SITA/0/15  Map showing HLC Zones
SITA/0/16  Minutes of Cornwall Council Cabinet meeting of 15 July 2009
SITA/0/17  Minutes of Cornwall Council Cabinet - Waste Development Advisory Panel of 5 August 2009
SITA/0/18  Minutes of Cornwall Council Cabinet - Waste Development Advisory Panel of 12 January 2010
SITA/0/19  Isle of Man letter of 22 March 2010 concerning dioxin levels
SITA/0/20  CERC planning application - list of agreed plans and drawings
SITA/0/21  Extract from St Dennis on-line petition website
SITA/0/22  Letter of 17 March 2010 to Sita Cornwall Limited from Cornwall Council relating to the Integrated Waste Management Contract
SITA/0/23  Note of Meeting of 26 November 2007
SITA/0/24  Minutes of Meeting of 15 October 2008
<table>
<thead>
<tr>
<th>Document Reference</th>
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<tr>
<td>SITA/0/25</td>
<td>Scoping Opinion of Cornwall County, 14 December 2009</td>
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<td>SITA/0/26</td>
<td>Cornwall Council letter to Parish Councils dated 21 May 2010 concerning United Mines Landfill Site</td>
</tr>
<tr>
<td>SITA/0/27</td>
<td>Cornwall Council News Release concerning closure of United Mines Landfill Site</td>
</tr>
<tr>
<td>SITA/0/28</td>
<td>Background to CERC Community Fund</td>
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<tr>
<td>SITA/0/29</td>
<td>Hallenbeagle Framework - Consultation Draft Addendum Report</td>
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<tr>
<td>SITA/0/30</td>
<td>Minutes of Waste Development Advisory Panel of 26 January 2010</td>
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<tr>
<td>SITA/0/31</td>
<td>Minutes of Waste Development Advisory Panel of 22 March 2010</td>
</tr>
<tr>
<td>SITA/0/32</td>
<td>Summary of relocation documentation in respect of Bodella &amp; Rostowrack Farms</td>
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<td>SITA/0/33</td>
<td>Letter dated 20 September 2007 from the Government Office for the South West concerning an application for a direction under the Town &amp; Country Planning Act 2004</td>
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<td>SITA/0/34</td>
<td>Closing Statement</td>
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<td>SITA/0/35</td>
<td>Folder of legal authorities submitted with Closing Statement</td>
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<td>SITA/0/36</td>
<td>Response to CSWN’s comments on draft Environmental Permit</td>
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<td>SITA/0/37</td>
<td>Response to PC-STIG’s comments on draft Environmental Permit</td>
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<td>SITA/0/38</td>
<td>Response to POC’s comments on draft Environmental Permit</td>
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<td>SITA/0/39</td>
<td>Response to Cornwall Council’s comments on draft Environmental Permit</td>
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<td>SITA/0/40</td>
<td>Response to TCN’s comments on draft Environmental Permit</td>
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<td>SITA/0/41</td>
<td>Response to Planning Inspectorate’s letter of 19 November 2010 (X/14) inviting comments on the implications of the judgement in Cala Homes (South) Ltd v Secretary of State for CLG in respect of the abolition of RSSs.</td>
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<td>SITA/0/42</td>
<td>Response to CSWN’s, PC-STIG’s and POC’s comments on the Environmental Permit</td>
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<td>SITA/0/43</td>
<td>Response to the Council’s, TCN’s and Mr Matthews’s comments on the Environmental Permit</td>
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**Witness 1: Mr John Scanlon (Company Witness) -**

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<tr>
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<td>SITA/1/1</td>
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<td>SITA/1/3</td>
<td>Appendices to Proof of Evidence</td>
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<tr>
<td>SITA/1/4</td>
<td>Rebuttal Proof</td>
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<td>SITA/1/5</td>
<td>Appendices to Rebuttal Proof</td>
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<td>SITA/1/6</td>
<td>Note on Schedule 10, Part 2, Appendix 4, Clause 4 of the Integrated Waste Management Contract (CD.G1)</td>
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<td>SITA/1/7</td>
<td>Letter dated 29 July 2010 concerning the Revised Project Plan</td>
</tr>
<tr>
<td>SITA/1/8</td>
<td>Letter dated 23 September 2010 in clarification of SITA/1/7</td>
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**Witness 2: Mr Simon Aumônier (Technology Choice) -**

<table>
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<tr>
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<tr>
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<td>SITA/2/5</td>
<td>Appendices to Rebuttal Proof</td>
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<td>SITA/2/6</td>
<td>Rebuttal Proof to evidence of Transition Network Cornwall</td>
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<td>SITA/2/7</td>
<td>Appendices to Rebuttal Proof to evidence of Transition Network Cornwall</td>
</tr>
<tr>
<td>SITA/2/8</td>
<td>Tables of summary of current waste PFI projects in operation, construction/commissioning phase and in procurement process</td>
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</table>

**Witness 3: Mr Roger Barrowcliffe (Air Quality) -**
Witness 4: Professor James Bridges (Health Effects from Emissions to Atmosphere) -
SITA/4/1 Summary Proof of Evidence
SITA/4/2 Proof of Evidence
SITA/4/3 Appendices to Proof of Evidence
SITA/4/4 Rebuttal Proof

Witness 5: Mr Jeff Picksley (Ecology) -
SITA/5/1 Summary Proof of Evidence
SITA/5/2 Proof of Evidence
SITA/5/3 Appendices to Proof of Evidence (Volume 1)
SITA/5/4 Appendices to Proof of Evidence (Volume 2)
SITA/5/5 Exchange of e-mails with Natural England relating to the management of Goss Moor
SITA/5/6 Summary of Detecting and Attributing Air Pollution Impacts during SSSI Condition Assessment - Joint Nature Conservation Committee Report No. 426, January 2009
SITA/5/7 Extract from Habitats Directive, Chapter 4 - Taking a new permission, plan or project through the Habitats Regulations (version 6) - Environment Agency

Witness 6: Mr Gary Coulson (Landscape & Visual Impact) -
SITA/6/1 Summary Proof of Evidence
SITA/6/2 Proof of Evidence
SITA/6/3 Appendices to Proof of Evidence
SITA/6/4 Photomontages
SITA/6/5 Rebuttal Proof
SITA/6/6 Appendices to Rebuttal Proof
SITA/6/7 Presentational drawing - Image shown on Figure GC072, 10 September 2005
SITA/6/8 Presentational drawing - Image shown on Figure GC071, 1 December 2004

Witness 7: Mr John Trehy (Cultural Heritage) -
SITA/7/1 Summary Proof of Evidence
SITA/7/2 Proof of Evidence
SITA/7/3 Appendices to Proof of Evidence
SITA/7/4 Rebuttal Proof
SITA/7/5 Appendices to Rebuttal Proof
SITA/7/6 Further Rebuttal Proof
SITA/7/7 Extract of Definitive Map Orders: Consistency Guidelines - Section 8 Tithe Commutation Documentation, Planning Inspectorate - June 2005
SITA/7/8 E-mail of 5 May 2010 and extract plan
SITA/7/9 E-mail correspondence relating to clarification on the Historic Landscape Characterisation

Witness 8: Mr Brian Dennis (Noise) -
SITA/8/1 Summary Proof of Evidence
SITA/8/2 Proof of Evidence
Appendices to Proof of Evidence
Rebuttal Proof
Noise change impact for operational traffic using DMRB (also refer to Table 2, SITA/8/1)

Witness 9: Mr Jeremy Penfold (Traffic & Highways) -
Summary Proof of Evidence
Proof of Evidence
Appendices to Proof of Evidence
Rebuttal Proof
Appendices to Rebuttal Proof
Note in clarification on the traffic analysis carried out on the Highgate Hill Junction
Highgate Hill Junction Analysis – updated
Rail Access update with plan
E-mail of 1 October 2010 responding to CSWN/0/3 relating to Highgate Hill Junction

Witness 10: Mr Tim Greenwood (Planning Policy & Alternatives) -
Summary Proof of Evidence
Proof of Evidence
Appendices to Proof of Evidence
Rebuttal Proof
Appendices to Rebuttal Proof

D: LOCAL PLANNING AUTHORITY (CORNWALL COUNCIL) -
Opening Statement
List of Appearances
Waste Planning Authority Position re: Community Fund
Position Statement on the Regional Spatial Strategies, with Communities & Local Government letter of 6 July 2010 and guidance
Extract of Minutes of the Waste Development Advisory Panel meeting of 14 June 2010 (pages 1 and 15 -18 inc)
Agreed note on Inspector’s site visit queries
Agreed note on Haul Road
Extract from draft statutory instrument - Community Infrastructure Levy Regulations 2010
Position Statement on S106
Extract of Minutes of Agenda item no 5 of the Waste Development Advisory Panel meeting of 27 April 2010 (pages 1 to 4 inc)
Extract of Report of Agenda item no 8 of the Waste Development Advisory Panel meeting of 14 September 2010 (pages 48 to 51 inc)
Closing Statement
Council’s comments on draft Environmental Permit
Response to Planning Inspectorate’s letter of 19 November 2010 (X/14) inviting comments on the implications of the judgement in Cala Homes (South) Ltd v Secretary of State for CLG in respect of the abolition of RSSs.
Council’s comments on Environmental Permit
<table>
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<tr>
<th>Witness 1: Mr Roger Miles (Waste Planning Policy &amp; Alternatives)</th>
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<td>CC/1/2 Proof of Evidence</td>
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<td>CC/1/3 Appendices to Proof of Evidence</td>
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<td>CC/1/4 Errata sheet to Proof of Evidence</td>
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<td>CC/1/5 Rebuttal Proof</td>
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<td>CC/1/6 Schedule of Acronyms used in Evidence</td>
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<td>CC/1/7 Extract from 'Study to fill the Evidence Gaps for C&amp;I Waste Streams in NW England for North West RTAB' Urban Mines May 2007</td>
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<td>CC/1/8 Extract of Waste Local Plan - inset map, Central Cornwall Area of Search</td>
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<tr>
<td>CC/1/9 Extract of Mineral Local Plan - inset 1a St Austell China Clay</td>
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<tr>
<td>CC/1/10 PFI Contracts - Adopting Residual Treatment other than Mass Burn Incineration (as of 6 April 2010)</td>
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<td>CC/1/11 SITA press release 9 September 2009</td>
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<tr>
<td>CC1/12 South West Devon Waste Partnership Waste Private Finance Initiative (PFI) - DEFRA, November 2008</td>
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<td>CC/1/13 Note in Response to Inspector's Questions</td>
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<td>CC/1/14 Press item - Waste not: recession leads to big drop in amount of rubbish we are throwing away, 10 May 2009</td>
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<td>CC/1/15 Press Release: Somerset weathers the downturn in waste market - May Gurney Integrated Services plc</td>
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<tr>
<th>Witness 2: Mr Simon Stephenson (Noise Impacts) -</th>
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<td>CC/2/3 Appendices to Proof of Evidence</td>
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<td>CC/2/4 Rebuttal Proof</td>
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<tr>
<td>CC/2/5 Supplementary Proof of Evidence</td>
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<tr>
<td>CC/2/6 Note regarding Agreed Noise Levels</td>
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<tr>
<th>Witness 3: Mr Stephen Vinson (Impact on Economic &amp; Regeneration Strategies) -</th>
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<td>CC/3/3 Appendices to Proof of Evidence</td>
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<tr>
<td>CC/3/4 Rebuttal Proof</td>
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<tr>
<th>Witness 4: Mr Kevin Webb (Ecological Impacts) -</th>
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<td>CC/4/4 Rebuttal Proof</td>
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<td>CC/4/5 Consultation responses - Exchange of letters/e-mails between the Environment Agency and Natural England, 28 January 2010 to 2 March 2010</td>
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<tr>
<td>CC/4/6 Exchange of e-mails between Cornwall Council, Natural England and Witness, 10 to 18 March 2010</td>
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<tr>
<td>CC/4/7 APIS information on acid deposition on raised bog and blanket bog</td>
</tr>
<tr>
<td>CC/4/9 Minutes of meeting between Cornwall Council and Natural England of 12 March 2010</td>
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</table>
CC/4/10  E-mail of 22 March 2010 on behalf of Natural England in relation to minutes of 12 March 2010
CC/4/11  Agreed Minutes Cornwall Council/Natural England meeting of 12 March 2010
CC/4/12  E-mail correspondence since Cornwall Council/Natural England meeting of 12 March 2010
CC/4/13  JNCC Report No 426 - Extract
CC/4/14  E-mail from Natural England of 13 April 2010
CC/4/15  Habitats Directive - Chapter 4: Taking a new permission, plan or project through the Habitats Regulations

Witness 5: Ms Robyn Butcher (Landscape & Visual Impacts) -
CC/5/1  Summary Proof of Evidence
CC/5/2  Proof of Evidence
CC/5/3  Appendices to Proof of Evidence
CC/5/4  Rebuttal Proof
CC/5/5  Second Rebuttal Proof
CC/5/6  Letter dated 19 March 2010 from Mr Gary Coulson in relation to vegetation lost for the Haul Road
CC/5/7  Letter dated 10 March 2010 to Mr Gary Coulson in relation to extent of vegetation lost for the Haul Road
CC/5/8  Table of Visual Impact Comparisons

Witness 6: Mr Nick Cahill (Historic Landscape & Listed Building Impacts) -
CC/6/1  Summary Proof of Evidence
CC/6/2  Proof of Evidence
CC/6/3  Appendices to Proof of Evidence
CC/6/4  Rebuttal Proof
CC/6/5  Map - 1841 landholdings
CC/6/6  Response to Further Rebuttal Proof of Mr John Trehy (SITA/7/6)

Witness 7: Mr Nigel Millington (Transportation Impacts) -
CC/7/1  Summary Proof of Evidence
CC/7/2  Proof of Evidence
CC/7/3  Appendices to Proof of Evidence
CC/7/4  Rebuttal Proof with Appendix

Witness 8: Mr Chris Daly (Rights of Way Impacts & Planning Assessment) -
CC/8/1  Summary Proof of Evidence
CC/8/2  Proof of Evidence
CC/8/3  Appendices to Proof of Evidence
CC/8/4  CERC AA Timeline re 1%

E: RULE 6(6) PARTIES' DOCUMENTS

CORNWALL SUSTAINABLE WASTE NETWORK

General -
CSWN/0/1  Opening Statement
CSWN/0/2  Note on Goss Moor
CSWN/0/3  Response to Highgate Hill Junction Analysis – updated (SITA/9/7)
CSWN/0/4 Closing Statement
CSWN/0/5 Comments by Ms Hawken on draft Environmental Permit
CSWN/0/6 Comments by Ms Hawken on Environmental Permit

Witness 1: Ms Elizabeth Hawken (General Issues on Incineration & Planning) -
CSWN/1/1 Summary Proof of Evidence
CSWN/1/2 Proof of Evidence
CSWN/1/3 Appendices to Proof of Evidence
CSWN/1/4 Rebuttal Proof
CSWN/1/5 European Food Safety Authority Report - Results of the Monitoring of Dioxin Levels in Food and Feed, 31 March 2010
CSWN/1/6 Isle of Man letter of 1 August 2008 with Minutes of Meeting of Richmond Hill Consultative Committee of 10 April 2008
CSWN/1/7 Extract from West Country Farming of 5 December 2007
CSWN/1/8 E-mail of 1 April 2006 relating to dioxin contamination

Witness 2: Dr Damien Downing (Incineration & Health) -
CSWN/2/1 Proof of Evidence
CSWN/2/2 Appendices
CSWN/2/3 PowerPoint Presentation
CSWN/2/4 Response to Professor James Bridges & Mr John Scanlon

Witness 3: Mr Ian Doble (Impacts on Cornish Food Industry) -
CSWN/3/1 Proof of Evidence
CSWN/3/2 Appendices to Proof of Evidence

ST DENNIS PARISH COUNCIL & ST DENNIS AGAINST INCINERATION GROUP (STIG)

General -
PC-STIG/0/1 Proofs of Evidence of five Witnesses:
1: Cllr Dick Cole (Planning Background, Issues with Waste Plan & Historic Environment)
2: Cllr Fred Greenslade (Visual Impact & Community Issues)
3: Cllr Jackie Salmon (Footpaths)
4: Ms Amanda Routledge (Health Issues)
5: Cllr Ginny Edwards (Environmental Issues)
6: Professor Vyvyan Howard (Particulate Emissions and Health)
PC-STIG/0/2 Appendices to Proofs of Evidence
PC-STIG/0/3 St Dennis Parish Council Response to Planning Application - June/July 2008
PC-STIG/0/4 St Dennis Parish Council Response to SITA Environmental Permit Application - October 2008
PC-STIG/0/5 St Dennis Parish Council Second Response to Planning Application - January 2009
PC-STIG/0/6 Opening Statement
PC-STIG/0/7 Note on China Clay Industry
PC-STIG/0/8 House of Commons Environmental Audit Committee - Air Quality, Fifth Report of Session 2009 - 10
PC-STIG/0/9 Further Note on China Clay Industry
PC-STIG/0/10 Photographs presented electronically by Cllr Fred Greenslade
PC-STIG/0/11 Rebuttal Proof
PC-STIG/0/12 St Dennis Parish Plan 2009
PC-STIG/0/13  Note dated 30 March 2010 on evidence of Mr Nigel Millington
PC-STIG/0/14  PowerPoint presentation of Professor Vyvyan Howard
PC-STIG/0/15  E-mail from Mr Ken Rickard to PINS of 8 July 2010, with enclosure e-mail of 20 September 2005 on behalf of Cornwall County Council
PC-STIG/0/16  Closing Statement – Mr Dick Cole
PC-STIG/0/17  Closing Statement – Mr John Lloyd of Counsel
PC-STIG/0/18  Comments on draft Environmental Permit
PC-STIG/0/19  Response to Planning Inspectorate’s letter of 19 November 2010 (X/14) inviting comments on the implications of the judgement in Cala Homes (South) Ltd v Secretary of State for CLG in respect of the abolition of RSSs.
PC-STIG/0/20  Comments on Environmental Permit

POWER OF CORNWALL

General -
POC/0/1  Proof of Evidence
POC/0/2  Summary of Proof of Evidence
POC/0/3  Appendices to Proof of Evidence
POC/0/4  Opening Statement
POC/0/5  Closing Statement
POC/0/6  Comments by Power of Cornwall on draft Environmental Permit
POC/0/7  Response to Planning Inspectorate’s letter of 19 November 2010 (X/14) inviting comments on the implications of the judgement in Cala Homes (South) Ltd v Secretary of State for CLG in respect of the abolition of RSSs.
POC/0/8  Comments by Power of Cornwall on Environmental Permit

Witness 1: Dr Jean Venables and Professor Roger Venables (Technology Options Appraisal) -
POC/1/1  Proof of Evidence

Witness 2: Dr Colin Trier (Anaerobic Digestion) -
POC/2/1  Proof of Evidence

Witness 3: Mr Peter Jones (Multi/single Site Options Appraisal & Carbon Balance) -
POC/3/1  Proof of Evidence

Witness 4: Dr Mark Scibor-Rylski (Viability & Bankability of Alternative Technologies) -
POC/4/1  Proof of Evidence

Witness 5: Mr Mark Broadhurst (The Power of Cornwall Project as an Option) -
POC/5/1  Proof of Evidence

TRANSITION CORNWALL NETWORK

General -
TCN/0/1  Opening Statement
TCN/0/2  Closing Statement
TCN/0/3  Comments by Transition Cornwall Network on draft Environmental Permit
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<th>Comments by Transition Cornwall Network on Environmental Permit</th>
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<td><strong>Witness 2: Mr Stephen Gilbert (Waste Strategy (part 1))</strong> -</td>
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<td><strong>Witness 3: Mr John Stocker (Waste Strategy (part 2))</strong> -</td>
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<td>TCN/3/1</td>
<td>Proof of Evidence with Appendices</td>
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<td><strong>Witness 4: Mr Russell Dodge (Alternatives (part 1))</strong> -</td>
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<td>Letter of 29 March 2010 relating to Hallenbeagle site and Cornwall Council letter of 28 July 2010 updating the planning position</td>
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<tr>
<td><strong>Witness 5: Mr Tom Petty (Alternatives (part 2))</strong> -</td>
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<td><strong>Additional Issues</strong> -</td>
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<td>TCN/6/1</td>
<td>Letter of 19 April 2010 from Mr N G Hodgetts, Conservation Officer, British Bryological Society</td>
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<tr>
<td>TCN/6/2</td>
<td>Letter of 21 April 2010 from Mr Phil Harris, Chairman, Butterfly Conservation</td>
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<tr>
<td>TCN/6/3</td>
<td>Mid Cornwall Moors LIFE Project Information Sheet Number 3, Conservation Grazing</td>
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<tr>
<td>TCN/6/4</td>
<td>Mid Cornwall Moors LIFE Project - EU funded LIFE Nature Project has restored the Mid Cornwall Moors to a wildlife super highway</td>
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**F: DOCUMENTS OF OTHER INTERESTED PARTIES/LOCAL RESIDENTS APPEARING AT INQUIRY**

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<tr>
<th>AC/1</th>
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<td>AT/1</td>
<td>Mr Alan Trethewey</td>
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<td>Mr Brian Arthur</td>
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<td>CC2/1</td>
<td>Mr Chris Charnock</td>
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<td>Proof of Evidence (and on behalf of Mrs Carol Charnock)</td>
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<td>CPC/1</td>
<td>Chacewater Parish Council - represented by Mr John Carley</td>
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<td>CW/1</td>
<td>Ms Clarice Westlake</td>
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</tbody>
</table>
| DJ/1 | Mr David James  
Summary of Proof of Evidence (also on behalf of Lalita James and Luke James) |
| DJ/2 | Proof of Evidence (also on behalf of Lalita James and Luke James) |
| DP/1 | Ms Diana Padwick  
Proof of Evidence |
| DW/1 | Mr Derek Williams  
DVD entitled "A Journey along the Proposed Haul Road" with Presentational Notes (also on behalf of Mrs Frances Williams) |
| DW/2 | Appendices to Presentational Notes |
| ECO/1 | EcoPetitions - represented by Mr Malcolm Higginbottom  
Proof of Evidence |
| FG/1 | Cllr Fred Greenslade  
Proof of Evidence |
| FOE/1 | Friends of the Earth (Cornwall) - represented by Mr Charles Hall  
Proof of Evidence |
| GL/1 | Mr Gwylym Lewis  
Proof of Evidence with Appendices and CD - BBC Radio 4, Powering the Nation Using Food |
| GP/1 | The Green Party - represented by Mr Tim Thomson  
Proof of Evidence |
| HH/1 | Mrs Hillary Hughes  
Proof of Evidence |
| HH/2 | Appendices |
| JB/1 | Cllr Jackie Bull  
Proof of Evidence |
| JB2/1 | Ms Joanna Batterby  
Proof of Evidence |
| JJ/1 | Revd Dr John Johnson  
Proof of Evidence |
| JW/1 | Cllr John Wood  
Proof of Evidence |
| KR/1 | Mr Kenneth Rickard  
Proof of Evidence with Appendices |
| LB/1 | Ms Lynda Bowman  
Proof of Evidence |
Liberal Democrats - represented by Mr Stephen Gilbert
LD/1 Proof of Evidence

Ms Lucy Kelly
LK/1 Proof of Evidence

Ms Lynn Lintott
LL/1 Proof of Evidence

Ms Lynn Sims
LS/1 Proof of Evidence

Mrs Mollie Fox
MF/1 Proof of Evidence

Mr Mike Martin
MM/1 Proof of Evidence with photographs

Mr Matthew Taylor MP
MT/1 Appendices to oral statement

Mr Michael Wilson
MW/1 Proof of Evidence with photographs

Mr Oliver Baines
OB/1 Proof of Evidence with photographs

Ms Patricia Blanchard
PB/1 Proof of Evidence

Mr Paul Matthews
PM/1 Proof of Evidence with Appendices including Rebuttal and Summary
PM/2 Opening Statement
PM/3 Additional graphs to Section XII of Proof of Evidence
PM/4 E-mail of 17 April 2010 relating to Inquiry procedure
PM/5 E-mail of 18 April 2010 enclosing extract of Waste Development Advisory Panel Agenda for meeting on 19 October 2009
PM/6 E-mail of 19 April 2010 incorporating item entitled 'Composting green waste saves as much CO2 as energy recovery’
PM/7 E-mail of 19 April 2010 incorporating item entitled 'An Epidemic of Sick Babies in the USA'
PM/8 Comments on the Environmental Permit

Cllr Roy Taylor
RT/1 Proof of Evidence with Appendices

St Stephen-in-Brannel Parish Council - represented by Mrs Kim Wonnacott
SBPC/1 Proof of Evidence

St Enoder Parish Council - represented by Mr Andrew Waters
SEPC/1 Proof of Evidence with Appendices
SR/1  Ms Sue Richards  Proof of Evidence

UKIP/1  UKIP - represented by Mr Clive Medway  Proof of Evidence

VS/1  Ms Val Sterling  Proof of Evidence

WC/1  William Corbett  Proof of Evidence
ANNEX A

LIST OF AGREED PLANS AND DRAWINGS

Key to documents (right hand column)
1. Planning application drawing submitted in March 2008
2. Drawing contained in Transport Assessment submitted in March 2008
4. Drawing in Additional Information folder submitted in December 2008
5. Drawing in Regulation 19 response submitted in December 2008
7. Drawing in Landscape Proof of Evidence by Gary Coulson, February 2010
8. Drawing submitted to the Planning Inspectorate

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ANNEX B

LIST OF AGREED PLANNING CONDITIONS

Commencement of development
1 The development hereby permitted shall be begun before the expiration of three years from the date of this permission. Written notification of the date of the commencement of the development shall be sent to the local planning authority within 7 days of such commencement.

Development in accordance with plans
2 The development hereby permitted shall be carried out and completed in accordance with the submitted documents and plans as set out in Annex A of the Inspector’s report (the “Approved Plans”).

Phasing of development
3 Prior to the commencement of development a phasing schedule shall be submitted to and approved in writing by the local planning authority. The phasing schedule shall divide the construction of the development hereby permitted into the following phases:

   (i) Phase 1 to include the haul road (including the bridge provided in accordance with condition 9) and the access road; and

   (ii) Phase 2 to include the CERC development.

4 No development shall commence on Phase 2, with the exception of the diversion of utility services and the stripping of top and sub soil and earthworks, until Phase 1 has been completed in accordance with the scheme approved in Condition 3. The completion of Phase 1 shall be taken as the provision of the haul road and the access road to a minimum standard that has previously been agreed in writing by the local planning authority.

Removal of permitted development rights for buildings not shown on the Approved Plans
5 Notwithstanding the provisions of Part (4) of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995 (as amended), no buildings, fixed plant or machinery shall be located on site without the prior approval in writing by the local planning authority of details of their siting, design and external appearance.

External finish of buildings
6 Notwithstanding the details shown on the Approved Plans, the erection of buildings or structures hereby permitted shall not commence until details or samples of the external materials to be used in their construction, including details of finishes, colours and treatment, have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details or samples.
Highways and associated works

7 No development hereby permitted shall commence until a scheme detailing the preparation works, design and construction of the haul road and access road has been submitted to and approved in writing by the local planning authority. The haul road and access road shall be constructed in accordance with the approved scheme.

8 No development hereby permitted shall commence until details of the highway works shown on the following drawings have been submitted to and approved in writing by the local planning authority:

(i) 30707-GA-203 Rev C;
(ii) 30707-GA-204 Rev A;
(iii) 30707-GA-102 Rev F;
(iv) 30727-GA-103 Rev D; and
(v) 30727-GA-104 Rev B

The highway works shall be completed in accordance with the approved details before any waste is brought to the CERC.

9 No development hereby permitted shall commence until a scheme detailing the preparation works, design and construction of the bridge over the River Fal has been submitted to and approved in writing by the local planning authority. The submitted scheme shall include the following details:

(i) The bridge deck with soffit levels set 600mm above the 1 in 100 year flood level;
(ii) Abutment and pier designs (to provide allowance for the potential future meandering of the channel);
(iii) The approach embankments and associated culverts;
(iv) A construction method statement including details for the prevention of pollution of the watercourse; and
(v) Measures for the protection and reinstatement of the floodplain during and following construction.

With the exception of bridge piers no part of the bridge shall be constructed within the area determined as flooding in a 1 in 20 year flood event.

The bridge shall be built in accordance with the approved scheme.

10 No development hereby permitted shall commence until a scheme detailing traffic management measures on the haul road and the access road and within the CERC site has been submitted to and approved in writing by the local planning authority in respect of each phase of the development. The submitted scheme shall include details of all signage, road markings and street
furniture and other traffic management measures including details of measures to maximize segregation and minimize conflict between operational and non-operational vehicles, cyclists and pedestrians and measures to restrict the use of the haul road by non-CERC traffic. The scheme for each phase shall be implemented in accordance with the approved scheme.

**Water, drainage and associated works**

11 No development hereby permitted shall commence until surveys of existing and proposed finished ground levels which demonstrate that there will be no land raising within Flood Zone 3 (as defined in Schedule 2) have been submitted to and approved in writing by the local planning authority. The area of Flood Zone 3 around the haul road and beneath the bridge shall be maintained at or below the approved ground levels during the operation of the development.

12 No development of the access road or the CERC hereby permitted shall commence until details of the culverting of the Bodella Stream have been submitted to and approved in writing by the local planning authority. The submitted details shall include:

   (i) Provision for a self maintaining natural bed to form within the culvert;

   (ii) Sufficient headroom above the natural bed to allow safe access for maintenance and inspection;

   (iii) Approach embankments and associated headwall; and

   (iv) Construction method statement including details for the prevention of pollution of the watercourse.

The culverting of the Bodella Stream shall be carried out in accordance with the approved details before the access road is brought into use and, within 2 months of the completion of these approved works, a report and “as built” drawings demonstrating that the culvert has been constructed in accordance with the approved details shall be submitted to the local planning authority.

13 No development hereby permitted shall commence until a scheme for the provision of surface water management has been submitted to and approved in writing by the local planning authority in respect of each phase of the development. The approved scheme for each phase shall be implemented in accordance with the approved details and retained thereafter.

**Construction works**

14 No development of each phase of the development hereby permitted shall take place until details of the following matters in connection with the construction of each phase of the development have been submitted to and approved in writing by the local planning authority;

   (i) A construction travel plan, including: the number of daily and peak hour construction vehicle movements, construction operation hours, construction vehicular routes to and from the
site, construction delivery hours, car parking for contractors, methods to encourage public transport use, and methods to restrict large construction related vehicles using the strategic road network and its associated junctions during weekday peak periods;

(ii) A plan showing the location of the contractor’s site storage area/compound;

(iii) The number, size (including height) and location of any contractors’ temporary buildings;

(iv) Temporary means of enclosure and demarcation of the site operational boundaries, to be erected prior to the commencement of construction operations in any part of the site and retained for the duration of construction operations;

(v) The means of moving, storing and stacking all building materials, plant and equipment around the site;

(vi) Measures to ensure that dust emissions are minimized;

(vii) Details of external floodlighting installed during the construction period including hours of operation;

(viii) Details of any wheel wash facility, use of water bowsers or other measures necessary to ensure that mud and other materials are not deposited on the public highway; and

(ix) A detailed strategy and method statement for minimizing the amount of construction waste resulting from the development. The statement shall include details of the extent to which waste materials arising from the demolition and construction activities will be reused on site and measures for their reuse. If such reuse on site is not practicable, then details shall be given of the extent to which the waste material will be removed from the site for reuse, recycling, composting or disposal.

The approved details for each phase shall be implemented during the construction of that phase of the development.

15 No development of each phase of the development hereby permitted shall commence until the following details in respect of protecting controlled waters during construction of each phase of the development have been submitted to and approved in writing by the local planning authority:

(i) The method of construction associated with all site excavations and foundation works;

(ii) Details of demolition;

(iii) The method of piling foundations;
(iv) The method of controlling groundwater and controlling the discharge to groundwater during construction to avoid pollution of surface water and the underlying groundwater; and

(v) Details of the risk assessments to be undertaken in respect of groundwater and surface waters associated on and off the site that may be affected by the above.

The development shall be implemented in accordance with the approved details for each phase of the development.

**Landscaping and associated works**

16 No development of each phase of the development hereby permitted shall commence until details of both hard and soft landscape works, including a programme for implementation, have been submitted to and approved in writing by the local planning authority and these works shall be carried out as approved. These details shall include:

(i) Hard Landscaping

- Proposed finished levels or contours;
- Means of fencing and other means of enclosure;
- Trespass resident fencing to be erected parallel to the railway fence;
- Car parking surfacing;
- Other vehicle and pedestrian access and circulation areas surfacing; and
- Other structures including bridges and culverts.

(ii) Soft Landscaping

- Site clearance/preparation operations;
- Land moulding including earth mounding and bunding;
- Cornish hedges and surface water features including watercourses and ponds;
- Planting proposals which are sensitive to the habitat of adjoining sites;
- Protection of existing trees;
- Written specifications (including cultivation and other operations associated with plant and grass establishment); and
- Schedules of plants, noting species, plant sizes and proposed numbers/densities where appropriate;

(iii) Implementation programme

- To include timetable of landscaping/planting and arrangements for a 5 year period of aftercare/post planting management;

- The replacement of any trees or shrubs that, within a period of five years after the initial planting, die, are removed, become seriously damaged or diseased, with similar specimens to those originally approved.

All hard and soft landscaping works shall be carried in accordance with the approved details for each phase of the development.

Nature conservation

17  No development shall take place until an environmental management plan has been submitted to and approved in writing by the local planning authority in respect of each phase of the development. The plan shall include the following:

(i) Species specific mitigation plans for all legally protected species with the potential to be impacted upon by the development;

(ii) Removal of translocation of hedges method statement; and

(iii) Control of Japanese Knotweed and Ragwort method statement.

The development shall be carried out in accordance with the approved details for each phase of the development.

Archaeology

18  No development hereby permitted shall commence until the applicant has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted to and approved in writing by the local planning authority.

Control of lighting

19  Prior to the commencement of development of Phase 2, details of the red aviation warning lights to be placed on the stack shall be submitted to and approved in writing by the local planning authority. The development shall be implemented in accordance with the approved details.

20  Prior to the commencement of development of Phase 2, details of external lighting and internal lighting which will be seen outside the boundaries of the CERC site shall be submitted to and approved in writing by the local planning authority. The details shall include the position, height, type and power of each external lighting, the need for the external lights for security and safety, the circumstances in which external lighting is to be activated, the positioning
and operation of internal louvres and the measures to be taken to minimize light pollution. The approved lighting scheme shall be implemented in accord with the approved details. Thereafter, the lighting and the louvres shall be retained in accordance with the approved details.

21 There shall be no lighting on the haul road.

Rights of Way

22 No development hereby permitted shall take place until a scheme detailing the rights of way diversions including measures to ensure the safety, security and convenience of those using the rights of way has been submitted to and approved in writing by the local planning authority in respect of the requisite phase. The development shall be implemented in accordance with the details shown in the approved scheme.

Travel Plan

23 No waste shall be imported to the CERC until a travel plan to reduce reliance on the use of private cars as a means of staff and visitors getting to and from the CERC has been submitted to and approved in writing by the local planning authority. The approved travel plan shall be implemented and thereafter, the approved travel plan shall be retained.

Protection of visual amenity

24 Following the initial receipt of any waste, no storage container, skip, sorted or unsorted waste material or residue of recycled materials or any other items shall be stored outside the building, other than within the designated bays or on operational vehicles.

Protection of residential amenity

25 No loaded lorries transporting recyclable materials or ash shall leave the site unsheeted or otherwise uncovered.

26 No vehicles either delivering waste or other materials or removing waste, recyclables or ash from the facility shall enter or leave the site, including the haul road or access road, except between the hours of:

- Monday to Friday 07:00 to 18:00 hours
- Saturdays 07:00 to 13:00 hours

There shall be no deliveries or removal of waste, recyclables or ash, or any other materials on Sundays, Public or National Holidays.

27 Site construction works, haul route and access road preparation and haul route and access road surfacing shall be restricted to 07.30 to 18.00 hours on Mondays to Fridays and 07.30 to 13.00 hours on Saturdays. Piling and soil moving operations shall be limited to 9:00 to 17:00 hours on Mondays to Fridays. There shall be no site construction or restoration activity at any time on a Sunday, Public or National Holiday.
During access and haul route preparation, access route surfacing and earthworks associated with the construction of the CERC, noise levels shall not exceed 70 $\text{dB } L_{A_{eq},1h}$ (free-field) at the boundary of any occupied residential premises measured at 3.5m from the dwelling façade and 1.2-1.5 m above local ground level, between the hours of 09.00 – 17.00, Monday to Friday and 65 $\text{dB } L_{A_{eq},1h}$ (free-field) at any other time. The higher noise limit of 70 $\text{dB } L_{A_{eq},1h}$ (free-field) shall apply for a maximum period of 8 weeks in any calendar year\(^{(1)}\) and the lower noise limit of 65 $\text{dB } L_{A_{eq},1h}$ (free-field) shall apply at all times outside of this period.

(Note: the operator shall notify the local planning authority in writing in advance of the commencement of temporary operations which are to take place within the 8 weeks period)

Noise levels arising from construction works at the CERC site shall not exceed 65 $\text{dB } L_{A_{eq},1h}$ (free-field) at any occupied residential premises, measured at 3.5m from the dwelling façade and 1.2-1.5m above local ground level.

During the operation of the CERC, the following conditions shall apply to HGV movements.

(a) Between the hours of 07.00-18.00, on the weekday and between 07.00-13.00 hrs on Saturday morning the average ($L_{A_{eq},T}$) shall not exceed the following. Where $T= 11$ hours during the weekday and 6 hours during Saturday morning.

<table>
<thead>
<tr>
<th>Location</th>
<th>HGV Noise Levels ($L_{A_{eq},T}$) at 3.5m from dwelling façade and 1.5m above the local ground level</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bodella</td>
<td>53.0</td>
</tr>
<tr>
<td>Rostowrack</td>
<td>46.0</td>
</tr>
<tr>
<td>Front façade of La Mount and Glengarth</td>
<td>59.0</td>
</tr>
<tr>
<td>Rear façades at Barton Court</td>
<td>48.0</td>
</tr>
<tr>
<td>Rear façades at Barton Road</td>
<td>45.0</td>
</tr>
<tr>
<td>Rear façade at Hawthorns</td>
<td>51.5</td>
</tr>
</tbody>
</table>

All doors on the eastern elevation of the ash handling facility shall remain closed when not in use.

During the operation of the CERC, the following conditions shall apply to fixed plant installations at the proposed CERC site (not the haul and access roads):

(a) Between the hours of 07.00 – 22.00, on any day, noise levels arising from the operations at the site shall not
exceed 50 dB LAeq, 1h (free-field) at 3.5m from the façade of any occupied residential premises, and 1.2m – 1.5m above local ground level, as measured in accordance with BS4142:1997.

(b) Between the hours of 22.00 – 07.00 on any day, noise levels arising from the operations at the site shall not exceed 45 dB LAeq, 5min at the façade of any occupied residential premises as measured in accordance with BS 4142: 1997.

(c) Noise from the operations at the site shall be free from any discernable characteristics, such as low frequency, tonal or impulsive noise at any occupied residential premises. In the event that these characteristics do occur, an assessment in accordance with BS 7445 Part 2 must be undertaken to determine the prominence of these characteristics.

33 Prior to commencement of work in accordance with this permission, a noise management scheme including a complaints response procedure shall be submitted to the Council for approval in writing. The scheme shall provide for regular attended and unattended monitoring of noise levels through all phases of construction of the development hereby permitted and also for the duration of operations of the development. The scheme shall be implemented as approved.

34 No site based vehicles or other methods of motorised machinery deployed in any operational or landscaping works shall use single pitch reversing bleepers

(Note: this condition does not preclude the use of alternative warning devices needed to secure compliance with Health and Safety legislation).

Routing of Commercial and Industrial Waste

35 Commercial and industrial waste shall not be accepted at the CERC site unless such waste has been transported along the route set out in the Lorry Routing Scheme submitted in accordance with the accompanying Section 106 Agreement (save for the exception of paragraphs 3.1 and 3.3 of Schedule 1 to the Agreement).
## ANNEX C

### ABBREVIATIONS USED IN REPORT

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>AD</td>
<td>Anaerobic Digestion</td>
</tr>
<tr>
<td>ADAS</td>
<td>Environmental consultancy formerly known as Agricultural Development Advisory Service</td>
</tr>
<tr>
<td>AEL</td>
<td>Anciently Enclosed Land</td>
</tr>
<tr>
<td>AGHV</td>
<td>Area of Great Historic Value</td>
</tr>
<tr>
<td>AGLV</td>
<td>Areas of Great Landscape Value</td>
</tr>
<tr>
<td>ALAHV</td>
<td>Areas of Local Architectural and Historic Value</td>
</tr>
<tr>
<td>AONB</td>
<td>Areas of Outstanding National Beauty</td>
</tr>
<tr>
<td>Appellant</td>
<td>SITA Cornwall Ltd</td>
</tr>
<tr>
<td>BAT</td>
<td>Best Available Technique</td>
</tr>
<tr>
<td>BPEO</td>
<td>Best Practicable Environmental Option</td>
</tr>
<tr>
<td>BS</td>
<td>Boundary Stone</td>
</tr>
<tr>
<td>BS 4142</td>
<td>British Standard for rating industrial noise affecting mixed residential and industrial areas</td>
</tr>
<tr>
<td>BS 8233</td>
<td>British Standard for sound insulation and noise reduction for buildings</td>
</tr>
<tr>
<td>CABE</td>
<td>Commission for Architecture &amp; the Built Environment</td>
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<tr>
<td>C&amp;I</td>
<td>Commercial and Industrial Waste</td>
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<tr>
<td>CCA</td>
<td>China Clay Area</td>
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<tr>
<td>CCAS</td>
<td>Central Cornwall Area of Search</td>
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<tr>
<td>CCLADP</td>
<td>Clay County Local Action Delivery Plan</td>
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<td>CERC</td>
<td>Cornwall Energy Recovery Centre (the proposed EfW plant)</td>
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<td>CHP</td>
<td>Combined Heat and Power</td>
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<td>CISI</td>
<td>Cornwall Industrial Settlements Initiative</td>
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<td>CL</td>
<td>Critical Load</td>
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<td>CLG</td>
<td>(Department of) Communities and Local Government Contract</td>
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<td>Contract</td>
<td>Integrated Waste Management Contract between SITA Cornwall Ltd and the Council</td>
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<td>Council</td>
<td>Cornwall Council</td>
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<td>Conv Prog</td>
<td>Cornwall and Isles of Scilly Convergence Fund Operational Programme 2007-2013</td>
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<td>CPR</td>
<td>Camborne-Pool-Redruth area in RPG10</td>
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<td>CSM</td>
<td>Common Standards Monitoring</td>
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<td>CSWN</td>
<td>Cornwall Sustainable Waste Network</td>
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<td>DECC</td>
<td>Department of Energy and Climate Change</td>
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<td>DE/DG</td>
<td>Distributive Energy/Distributive Generation</td>
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<td>DEFRA</td>
<td>Department of the Environment, Food and Rural Affairs</td>
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<td>DMRB</td>
<td>Design Manual for Roads and Bridges</td>
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<td>EA</td>
<td>Environment Agency</td>
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<td>Eco-town Prog</td>
<td>Clay County Eco-town Programme of Development 2009</td>
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<td>EFW</td>
<td>Energy from Waste</td>
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<td>EH</td>
<td>English Heritage</td>
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<tr>
<td>EIA</td>
<td>Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999</td>
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<td>EiP</td>
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<td>EP</td>
<td>Environmental Permit</td>
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<td>ES</td>
<td>Environmental Statement</td>
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<td>FSA</td>
<td>Food Standards Agency</td>
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<td>H⁺</td>
<td>Hydrogen Ions</td>
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<td>Habitats Regs</td>
<td>Conservation of Habitats and Species Regulations 2010</td>
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<tr>
<td>HCl</td>
<td>Hydrochloric Acid</td>
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<td>HER</td>
<td>Historic Environment Record of Cornwall and the Isle of Scilly</td>
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<td>Health Protection Agency</td>
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<td>HWRC</td>
<td>Household Waste Recycling Centre</td>
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<td>IEMA</td>
<td>Institute of Environmental Management &amp; Assessment</td>
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<td>IPCC</td>
<td>Intergovernmental Panel on Climate Change</td>
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<td>IVC</td>
<td>In Vessel Composting</td>
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<td>IWM</td>
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<td>LVIA</td>
<td>Landscape and Visual Impact Assessment Guidelines</td>
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<td>Landfill Allowance Trading Scheme</td>
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<td>MB</td>
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<td>Mechanical Biological Treatment</td>
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<td>Minerals Local Plan</td>
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<td>N</td>
<td>Nitrogen (in the report applies to all forms of nitrogen)</td>
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<td>NEC</td>
<td>Noise Exposure Category (as used in PPG24)</td>
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<td>NNR</td>
<td>National Nature Reserve</td>
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<td>Noise Policy Statement for England</td>
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<td>NPSs</td>
<td>National Policy Statements</td>
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<td>PC</td>
<td>Process Contribution</td>
</tr>
<tr>
<td>PC-STIG</td>
<td>St Dennis Parish Council and St Dennis against Incineration Group</td>
</tr>
<tr>
<td>PCT</td>
<td>Primary Care Trust</td>
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<tr>
<td>PEC</td>
<td>Predicted Environmental Contribution</td>
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<tr>
<td>PFI</td>
<td>Private Finance Initiative</td>
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<tr>
<td>PM</td>
<td>Particulate Matter (the figure after the letters represents particle size)</td>
</tr>
<tr>
<td>PPAP</td>
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<td>POC</td>
<td>Power of Cornwall</td>
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<td>POPs</td>
<td>Persistent Organic Pollutants</td>
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<tr>
<td>Abbreviation</td>
<td>Definition</td>
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<tr>
<td>PPS</td>
<td>Planning Policy Statement</td>
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<tr>
<td>PR</td>
<td>Planning Officer’s Report to the County Council’s Planning (Development Control) Committee of 26 March 2009</td>
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<td>RBLP</td>
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<td>RDF</td>
<td>Refuse Derived Fuel</td>
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<td>Regional Planning Guidance</td>
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<td>RSS</td>
<td>Regional Spatial Strategy</td>
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<td>RWMS</td>
<td>Regional Waste Strategy for the South West</td>
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<td>S</td>
<td>Sulphur (in the report applies to all forms of sulphur)</td>
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<td>SAC</td>
<td>Special Area of Conservation</td>
</tr>
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<td>SIF</td>
<td>St Austell, St Blazey &amp; China Clay Strategic Investment Framework &amp; Economic Strategy</td>
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<td>SOAEL</td>
<td>Significant Observed Adverse Effect Level (from NPSE)</td>
</tr>
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<td>SoCG</td>
<td>Statement of Common Ground</td>
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<td>SP</td>
<td>Structure Plan</td>
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<td>SPG</td>
<td>Supplementary Planning Guidance</td>
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<td>SSCTs</td>
<td>Strategically Significant Cities and Towns</td>
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<td>SWRDA</td>
<td>South West Regional Development Agency</td>
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<td>TCN</td>
<td>Transition Cornwall Network</td>
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<tr>
<td>The Study</td>
<td>DTZ Pieda Study</td>
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<tr>
<td>tpa</td>
<td>Tonnes per annum</td>
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<td>WDA</td>
<td>Waste Disposal Authority</td>
</tr>
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<td>WDAP</td>
<td>The Council’s Waste Development Advisory Panel</td>
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<td>WDF</td>
<td>Waste Development Framework</td>
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<td>WHO</td>
<td>World Health Organisation</td>
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<tr>
<td>WHS</td>
<td>World Heritage Site</td>
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<td>WID</td>
<td>Waste Incineration Directive</td>
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<td>WIDP</td>
<td>Waste Infrastructure Delivery Programme</td>
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<td>WISARD</td>
<td>Computer programme developed by the Environment Agency to show different environmental outputs and inputs produced by different collection and disposal methods</td>
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<td>Waste Local Plan</td>
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<td>Waste Management Strategy (for Cornwall)</td>
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<td>Waste Planning Authority</td>
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<td>WRAP</td>
<td>Waste &amp; Resources Action Programme</td>
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<td>WRATE</td>
<td>Waste &amp; Resources Assessment Tool for the Environment</td>
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<td>Waste Transfer Stations</td>
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