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# Appeal Decision

Inquiry held between 7 September and 1 October 2010

Site visit (accompanied) made on 30 September 2010

**by Ruth V MacKenzie BA(Hons) MRTPI**

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

**Decision date: 16 November 2010**

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**Appeal Ref: APP/C1055/A/10/2124772**

**Disused land adjacent to 1-5 Railway Cottages, Sinfin Lane, Sinfin, Derby**

- 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 Resource Recovery Solutions (Derbyshire) Limited against the decision of Derby City Council.
  - The application (Ref No DER/05/09/00571/PRI, dated 18 May 2009) was refused by notice dated 5 January 2010.
  - The development proposed is a waste treatment facility comprising reception and recycling hall, a Mechanical Biological Treatment facility, an Advanced Conversion Technology Facility, a power generation and export facility, education and office accommodation, landscaping and access.
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## DECISION

1. I dismiss the appeal.

## BACKGROUND INFORMATION

2. The Inquiry sat for 12 days between 7 September and 1 October 2010. A daytime public "drop in" session was held on 15 September 2010 and an evening public "drop in" session was held on 16 September 2010. Both sessions were well attended, and about 85 people expressed their objections and concerns about the proposed waste treatment facility (WTF). Nobody spoke in its favour.
3. On 4 separate occasions I carried out unaccompanied site visits in the residential and industrial areas to the south of Derby city centre, particularly the wards of Sinfin, Normanton and Osmaston which surround the appeal site. On 30 September 2010 I carried out an accompanied visit to the site itself.
4. At the Inquiry there were 2 main parties: the appellant, Resource Recovery Solutions (Derbyshire) Limited, and Derby City Council. There were also four Rule 6 parties, all of whom object to the proposed WTF: Sinfin, Spondon and all Against Incineration (SSAIN); Derby Friends of the Earth (FOE); Councillors Turner and Shanker; and Derbyshire County Council. SSAIN, FOE and Councillors Turner and Shanker took an active part in the Inquiry. The County Council did not attend.
5. The 3.4ha appeal site is owned by Derby City Council. It is about 3.3km south of Derby city centre. The site is currently vacant but has previously

been used as a brick works and, more recently, a tannery. It is known to be contaminated.

6. Policy EP9 of the City of Derby Local Plan Review (LP) adopted in 2006 identifies the site as being suitable for a combination of community, business, industrial, storage and distribution uses.
7. The proposed WTF would comprise a large building housing a waste reception hall, a recycling hall, a mechanical biological treatment (MBT) facility and an advanced conversion technology (ACT) facility using Energos equipment. A stack 55m high would protrude from the building. Near the Sinfin Lane frontage of the site there would be a separate education centre.
8. The WTF would be designed to process 190,000 tonnes of municipal solid waste every year in a 3-line process, but it could operate effectively on 149,000 tonnes. The waste (household waste, street cleaning waste and street litter) would come from the 8 districts and boroughs of Derbyshire and from Derby itself, and would be delivered during daytime hours.
9. In order to fuel the ACT facility, one third of the waste would be fed through the MBT facility, producing a high calorific refuse derived fuel. This would then be mixed with raw municipal solid waste (which had previously been screened and had its recyclates removed) to produce a mixed waste fuel. The ACT facility would use the mixed waste fuel to produce electricity, heat and power. The appellant describes these processes as "gasification"; the objectors prefer to call them "incineration".
10. About 11MW of electricity would be generated each hour, of which 3MW would be used by the WTF itself and the rest exported to the national grid. Condensed exhaust steam would be converted to hot water and used in the MBT bio-drying operation. If it could be arranged, some of the hot water would be supplied to adjacent land users.
11. In accordance with advice in paragraph 28 of *Planning Policy Statement 10: Planning for Sustainable Waste Management*, the appellant submitted its pollution control application to the Environment Agency (EA) in parallel with its planning application. During the course of the Inquiry, the EA released a Draft Permit and a Draft Decision Document.
12. Derby City Council and Derbyshire County Council have entered into a commercial agreement with the appellant for the delivery of the proposed WTF, subject to planning permission being granted.

## **MAIN ISSUES**

13. In the light of the Statement of Common Ground between the appellant and the City Council, and taking into account the views of the Rule 6 parties, I consider that the main issues in this appeal are:
  - The visual effect of the proposed buildings on the character and appearance of the surrounding area.
  - The impact of the proposed development on highway conditions in the surrounding road network.

- The effect of the proposed WTF on living conditions in the surrounding area, with particular reference to air quality.

## **REASONS**

### **The first issue – character and appearance**

14. The appeal site is a flat area of rough ground which has become naturalised with low-lying vegetation. Much of the site is secluded from public view because there are trees and shrubs around its boundaries.
15. The site's north western boundary adjoins a railway line. Industrial sites, the inner ring road (A5111) and the residential areas of Osmaston lie further to the north. The eastern boundary adjoins another railway line and, further to the east, there is a large B & Q and Sainsbury's with a nearby residential area centred on Victory Road. The site's western boundary wraps around the rear gardens of the terraced houses at Nos 1-5 Railway Cottages and then adjoins Sinfin Lane. On the far side of Sinfin Lane are some allotments with the residential areas of Sunny Hill and Normanton beyond. The southern boundary adjoins an industrial site occupied by Rolls Royce. The residential areas of Sinfin lie further to the south.
16. Thus, although the site has industrial or retail uses on 3 sides, a terrace of houses adjoins its fourth side and extensive residential areas lie to the north, south, east and west of the site within about 500m.
17. I have no specific criticism of the design of the proposed WTF building, or the much smaller education centre that would lie in front of it. Neither of the buildings would look out of place in this part of Derby. The large functional form of the main building and its 55m stack would be no more obtrusive than the other nearby large industrial buildings and their stacks. Indeed, in my view, the set-back position of the main building would make it less obtrusive than some of the other industrial buildings in the vicinity. I noted at least 8 stacks within about 1km of the appeal site. The domestic scale of the education centre would sit comfortably with the nearby terrace of Railway Cottages. Overall, I consider that the buildings on the site would neither enhance the character of this part of Derby nor harm it. There would be a low magnitude of change, and a slight visual impact.
18. So far as landscaping is concerned, the appellant proposes to reinforce the boundary vegetation with new planting. The existing trees to the rear of the Railway Cottages would be retained and more trees would be planted on a 4m high bund further into the site. The bund, together with the existing and proposed trees, would largely screen views of the main building from the rear windows of the Railway Cottages about 65m away. The effectiveness of the screening is bound to increase as the new trees become established but, even from the outset, I consider that the existing trees and the height of the bund would provide adequate screening. I accept that the 55m stack could never be screened but, overall, I consider that the setting of Railway Cottages and the outlook from their rear-facing windows and gardens would not be unacceptably dominated by the proposed WTF.

*Interim conclusion on the first issue – character and appearance*

19. Policy GD4 of the City of Derby Local Plan Review (LP) requires amongst other things that proposed development should respect the urban grain of the surrounding area in terms of such things as scale, height and architectural style. Policy W7 of the Derby and Derbyshire Waste Local Plan (WLP) shares much the same objective. In my opinion, the proposed WTF would satisfy this objective. It would not have a harmful visual effect on the character and appearance of the surrounding area, nor would it have a materially adverse impact on the setting and outlook of Railway Cottages. Thus, on this issue, I have found in favour of the proposed development. The absence of a harmful visual effect is something to which I give moderate weight.

**The second issue – highway conditions**

*The access to the site*

20. Access to the appeal site would be from Sinfin Lane, a road that runs north/south between Derby's inner ring road and the southern outskirts of the city. In the vicinity of the appeal site, Sinfin Lane becomes a dual carriageway as it crosses a railway bridge. The appellant proposes to close the site's existing access and create a new access to the south of the railway bridge at a point where Sinfin Lane reverts to a single carriageway road and where visibility is better.
21. At the entrance to the site there would be a wide bellmouth with a central refuge for pedestrians. Bearing in mind the limited number of pedestrians along this stretch of Sinfin Lane and the fact that there is an uninterrupted footway on the other side of the road, the break in the footway is not something that causes me undue concern.
22. There would be about 200m of on-site queuing capacity for refuse lorries waiting to pass over the site's weighbridge. I am therefore satisfied that a back-up of lorries on Sinfin Lane would be unlikely.
23. Overall, I consider that the proposed access arrangements would be satisfactory and, in that respect, I note that the Highway Authority has not raised any objection.

*Impact on the highway network*

24. Sinfin Lane serves many industrial sites and extensive residential areas. Looking ahead, planning permission has recently been granted for 2,750 dwellings on the southern edge of Derby. Furthermore, a new Chellaston Business Park is proposed in LP policy EP1. It would be served by a new road (LP policy T12) which would link northwards to Sinfin Lane and southwards to the A50. All of these developments are likely to bring additional traffic onto Sinfin Lane. The appellant has subsumed their likely traffic generation into the normal year-on-year traffic growth forecasts.
25. Baseline conditions along Sinfin Lane and at its signalised junction with the inner ring road have been measured and analysed in accordance with a methodology agreed by the City Council. The City Council also agrees that the number of daily vehicle movements generated by the proposed

WTF would be between 368 and 542, a significant proportion of which would be HGV movements. I have no reason to dispute these figures. The appellant has used them to make traffic predictions for 2012, the year when it was originally hoped that the WTF would become fully operational.

26. According to the baseline survey, Sinfin Lane operates at about 63% of its theoretical capacity. I therefore share the appellant's view that the traffic generated by the proposed WTF would not have a materially adverse impact on highway conditions in Sinfin Lane itself.
27. However, at Sinfin Lane's signalised junction with the inner ring road (about 500m to the north of the appeal site) the impact would be more critical. It is a busy 4-way junction which already suffers from congestion. Indeed, the appellant accepts that the junction is operating towards capacity with a maximum percentage saturation level (%SAT) of 85.5% during the morning peak in a westward direction and 89.3% during the evening peak in an eastward direction. This level of congestion was borne out by evidence from many local residents, and by my own site visits.
28. The appellant states that it is often preferable to keep the %SAT below approximately 90% to allow drivers a level of confidence that the junction will operate within capacity, even if day-to-day traffic flows vary.
29. Using LINSIG modelling, the appellant's "worst case" predictions show that the traffic generated by the proposed WTF would exceed this 90%SAT level on 5 turning or straight ahead options at the junction during peak hours. The 5 exceedences would range from 91.6% to 96%. In reality, such high saturation levels would mean queues of about 50 vehicles waiting at the traffic lights to go eastbound or westbound along the inner ring road at peak hours.
30. I accept that the proposed WTF would not cause 100%SAT levels but, in my view, it would take only a minor accident or breakdown at or near the junction to bring this important part of the Derby road network to a standstill. WLP policy W8 seeks to limit the impact of the transport of waste by, amongst other things, ensuring that the road network is adequate to accommodate it. In view of the high %SAT levels, I have serious concerns about the adequacy of this part of the network to accommodate the additional traffic generated by the proposed WTF.
31. The appellant argues that, for about 80% of the time, the day-to-day variation in traffic flows would exceed the traffic generated by the WTF and, for that reason, the WTF would not have any material impact. I do not share that view. During the peaks of congestion, the WTF traffic would make matters worse. During the troughs, the WTF would increase the likelihood of congestion. I consider that the additional congestion would be noticeable to those who use the junction on a regular basis. In that regard, I also note that the appellant describes the preferred 90%SAT as the level at which drivers have confidence that the junction will operate within capacity *even if day-to-day flows vary*.
32. LP policy EP9 indicates that community, business, industrial, storage and distribution uses would be acceptable for the appeal site. Some of these uses could generate the same amount, or more, traffic than the proposed WTF. I cannot be certain that another use will come forward. Potential

developers might be deterred by the contamination of the site and its inadequate access, and there are many other vacant employment sites in Derby to choose from. In any event, planning permission would have to be sought, and the impact on highway conditions would no doubt be a material consideration. Nevertheless, if the proposed WTF does not go ahead, I cannot ignore the possibility that the site could be put to another use, one that would cause just as much congestion, or more, than the proposed WTF.

*Interim conclusion on the second issue – highway conditions*

33. I have found the proposed access arrangements to be satisfactory, but I am concerned that the traffic generated by the proposed WTF would, at times, cause the congested junction of Sinfin Lane and the inner ring road to become even more congested. My concerns about this are tempered by the possibility that an alternative use of the appeal site could have the same, or worse, impact on congestion.
34. On balance, I have reached the view that the proposed WTF would have a materially adverse impact on highway conditions in the surrounding road network. This is a matter to which I give substantial weight.

**The third issue – living conditions and air quality**

35. According to the Primary Care Trust, Sinfin is the third most deprived ward in the city. The life expectancy of its residents is lower than the Derby average, and the premature death rates from circulatory diseases and cancer are higher than the Derby average. The day-to-day reality of these statistics was repeatedly described by many of the residents who spoke at the Inquiry.
36. It is in the context of this deprivation that I have considered the effects of the proposed WTF on living conditions. In my view, there would be 3 principal effects: the nitrogen dioxide emissions, principally from traffic; the emissions of other gases from the stack; and local residents' fear of harm to their health. I will discuss each of these in turn.

*Nitrogen dioxide (NO<sub>2</sub>) emissions*

37. There are elevated levels of nitrogen dioxide (NO<sub>2</sub>) along Derby's inner ring road, largely due to the high levels of traffic. As a result, the City Council has declared an Air Quality Management Area (AQMA) which includes stretches of the inner ring road within about 500m of the appeal site. There are some dwellings fronting the inner ring road within the boundary of the AQMA.
38. The Council's *Supplementary Planning Guidance: Air Quality and New Development* (SPG) lists the instances when significant concerns about the air quality impact of a proposed development would arise. One of these instances is when a proposed development is predicted to exceed by 1µg/m<sup>3</sup> the objective for the annual mean concentration of NO<sub>2</sub> (40µg/m<sup>3</sup>). The appellant has produced maps (Figure 4.2 of Mr Smyth's proof) which show where this would happen. About 13 dwellings alongside the inner ring road would be affected: 10 between Balaclava Road and Village Street, close to the junction of Sinfin Lane and the inner ring road; and 3 near the Sainsbury's roundabout, some 800m further to

the east. According to the SPG, this should give rise to “significant concerns”.

39. To refine its predictions, the appellant undertook façade modelling at various receptors in the AQMA. Data for the modelling came from 2 WTFs in Norway (Alverøy and Forus) which operate with emission levels lower than the 40% NO<sub>2</sub> Waste Incineration Directive (WID) limits that the appellant is predicting for the proposed WTF. In my view, differences between the Norwegian WTFs and the proposed WTF cast doubt on the accuracy of the modelling. In any event, the margins are small. In some cases about 0.05µg/m<sup>3</sup> is all that lies between triggering the SPG’s “significant concerns” and not triggering them. For that reason I consider that the appellant’s “negligible to moderate adverse” description of the effects of the additional NO<sub>2</sub> could be understated.
40. The SPG advises that the seriousness of the exceedences in AQMAs depends upon the circumstances of each particular case. The residential areas of this part of Derby are intermingled with large-scale industries and bisected by a busy ring road. During my site visits I experienced the poor air quality described by local residents. To my mind, *any* exceedence of the air quality objectives would be unwelcome in an area where residents already have to contend with the smells of traffic fumes and industrial processes on a regular basis. For that reason I consider any exceedence to be serious.
41. I accept that, nationwide, the amount of NO<sub>2</sub> in vehicle exhausts is slowly decreasing. I also note that an Air Quality Action Plan for the reduction of NO<sub>2</sub> levels is incorporated into the Derby Joint Local Transport Plan. However, the Action Plan identifies that many of the medium- to long-term measures are unsuitable at the present time. For that reason I take the view that noticeable improvements in NO<sub>2</sub> levels in the AQMA are unlikely to be achieved quickly enough to off-set the increases in NO<sub>2</sub> caused by the proposed WTF.
42. WLP policy W6 states that waste development will be permitted only if the development would not result in material harm caused by, amongst other things, pollution or other adverse environmental effects to people, communities or the wider environment. Furthermore, I am mindful of LP policy E12 which makes it clear that the City Council will take a cautious approach to development proposals that might affect the air quality within AQMAs. Adopting the same cautious approach, I have reached the view that the exceedence of the AQMA’s NO<sub>2</sub> air quality objective caused by the proposed WTF, and the significant non-compliance with the SPG, combine to form a material consideration which, although not enough in itself to warrant dismissal of this appeal, is nevertheless something to which I attach significant weight.

*The emission of gases from the stack*

43. The appellant concedes that local residents would have an increased risk of mortality and morbidity due to an elevated exposure to harmful particulate matter (such as PM<sub>10</sub>) emitted from the stack. The life expectancy of those whose health is already seriously compromised is predicted to be shortened by a fraction of a second. The shortening of a life, by however small an amount of time, is something that goes against

the grain of normal human aspirations. However, common sense suggests that a fraction of a second's reduction in the length of somebody's life would, in reality, be undetectable.

44. In accordance with the advice in paragraph 31 of *Planning Policy Statement 10: Planning for Sustainable Waste Management (PPS10)*, I have not done my own assessment of epidemiological and other health studies. Instead, decision-makers are advised to have regard to the advice of relevant health authorities and agencies. With that in mind, I have carefully considered the views of the City Council's Environmental Health Officer, the Health Protection Agency, the Primary Care Trust and the Environment Agency. None of them has recommended that planning permission be refused. Furthermore, so far as I am aware, a direct link between poor health and PM<sub>10</sub> emissions in the vicinity of any UK or European WTF has never been proven beyond doubt.
45. I have therefore reached the view that the harm to health from the emissions from the stack is something to which I can attach only negligible weight.

*Local residents' fears about harm to their health*

46. The Derby residents who signed petitions, wrote letters or spoke at the Inquiry left me in no doubt that there is a genuine and deep-seated fear about the health implications of the proposed WTF. Indeed, the City Council's first reason for refusal is partially based upon the public's perception of the health risks.
47. The internet gives the residents of Derby easy access to information about the relationship between human health and the emissions from WTFs. The information is of varying quality but it has understandably aroused concerns. Concerns have been further heightened by the recent closure of a similar (but not identical) WTF on the Isle of Wight. It was found to be emitting 800% more dioxins than it should.
48. So far as I am aware there are no operational WTFs in the UK that are identical to the one that the appellant is proposing to build. This means that Derby residents cannot be comforted by the knowledge that the proposed MBT and ACT processes have been tried and tested and have a flawless track record in the UK.
49. In the absence of UK comparators, the appellant has placed much reliance on data from 3 WTFs in Norway (Averøy, Forus and Sarpsborg). However, I share residents' concerns that these are not ideal comparators. All 3 Norwegian WTFs operate at lower WID limits than that of the proposed WTF. In some cases the Norwegian data used by the appellant is at least 5 years old. Furthermore, the appellant's air quality witness was unable to confirm whether the Norwegian WTFs are located within heavily populated built-up urban areas, similar to that of the appeal site, or indeed whether they handle the same sort of waste that the proposed WTF would handle.
50. Bearing in mind the unfortunate occurrences at the Isle of Wight WTF, the lack of a UK comparator, and the differences between the proposed WTF

and the Norwegian WTFs, I have some sympathy with residents' lack of confidence in the appellant's safety predictions.

51. I also note the residents' frustrations that neither the Health Protection Agency (HPA) nor the Primary Care Trust (PCT) nor the Environment Agency (EA) has offered an unqualified assurance that the proposed WTF would be safe. For example, in a letter to the City Council on 23 November 2009, the HPA stated "*While it is not possible to rule out adverse health effects from modern, well regulated municipal waste incinerators with complete certainty, any potential damage to the health of those living close by is likely to be small, if detectable*". This does not inspire confidence and, in such circumstances, it is human nature to be fearful.
52. Paragraph 10 of *Planning Policy Statement 23: Planning and Pollution Control* (PPS 23) and paragraph 27 of PPS 10 establish that the pollution control regimes are separate but complementary to the planning control regimes. The PPSs further advise that the planning system should not focus on pollution control, and that it should be assumed that the relevant pollution control regime will be properly applied and enforced by the EA through the Environmental Permitting Regulations.
53. Local residents who object to the proposed WTF find this hard to accept. They provided anecdotal evidence about incidents where, in their view, the EA's pollution control was less than effective. They had no firm evidence to back this up, but I cannot ignore the fact that if the proposed WTF were to go ahead many local residents would be fearful about the EA's ability to protect them from harm, particularly in the event of a technical malfunction or an accident at the site.
54. In the case of Newport BC v the Secretary of State for Wales and Browning Ferris Environmental Services Ltd the Court of Appeal held that the fear of harmful effects on the health of people living close to a chemical waste transfer station was capable of being a material consideration, even when there was no objective evidence to support such a fear. The Court added, however, that by itself such unfounded fear would rarely (if ever) be a reason to justify the withholding of planning permission.
55. I have already made it clear that paragraph 31 of PPS10 provides guidance in respect of health issues; namely that decision-makers should not carry out their own health studies but rely on guidance from the relevant health authorities and agencies. In the High Court case of Pam Jean Harris -v-The First Secretary of State, Peterborough City Council and Hutchison 3G UK Limited, it was established that a departure from national policy guidance in respect of health issues should occur only in exceptional circumstances. In this particular appeal I cannot find any exceptional circumstances that justify a departure from national policy guidance in respect of health issues.
56. In the light of the above, I have reached the view that local residents' fear about harmful health effects is not something that in itself warrants a dismissal of this appeal. It is nevertheless a material consideration of some weight.

*Interim conclusions on the third issue - living conditions and air quality*

57. To summarise, I have reached the view that:

- NO<sub>2</sub> levels would increase, and there would be significant non-compliance with the SPG
- harm to health by emissions from the stack would be undetectable
- local residents' fears about harm to their health is a material consideration of some weight.

58. The residents of Sinfin and surrounding areas live in an environment in which the unpleasant effects of industrial processes and traffic congestion are part of day-to-day life. Many residents feel as though this part of Derby is used as a "dumping ground"; a view with which I have some sympathy. I consider that the proposed WTF has the potential to make a bad situation worse.

59. WLP policy W10 establishes that waste development should not be permitted if it would result in significant and detrimental cumulative impact on the environment of local communities, even though the damage caused by each individual development would not be so significant as to warrant refusal of permission. I also note that paragraph 6 of PPS 23 makes it clear that where scientific advice cannot assess the risk to human health with sufficient confidence to inform decision-making, the precautionary principle should be invoked.

60. With these matters in mind, my 3 interim conclusions in the bullet points above have led me to the view that the living conditions of local residents in this deprived part of Derby would not only be adversely affected but would also be unacceptably worsened, contrary to LP policy GD5. This is a matter to which I give substantial weight.

## **OTHER MATTERS**

*Is the proposed WTF needed?*

61. Derbyshire County Council, Derby City Council and the 8 constituent Borough and District Councils have prepared a *Joint Municipal Waste Management Strategy: Looking after Derbyshire's Waste* (2006). The strategy gives an indication of the number of facilities needed over the next 20 years. These include 11 residual waste treatment plants (the proposed WTF would fall into this category), 27 materials recycling facilities and 15 composting facilities, all of various sizes.

62. The preferred waste strategy (summarised at paragraph 9.9) has 3 elements:

- Expansion of recycling and composting schemes to achieve up to 55% recycling level by 2020.
- All residual waste to be treated at treatment facilities within Derbyshire.
- Landfill Directive targets for each of the key years to be met and exceeded.

I will discuss each of these 3 elements in turn.

63. Firstly, the rate of recycling in Derbyshire has been increasing continually since 1999 and shows no signs of slowing down. In 2009 the rate was about 42%, having nearly doubled since 2004/2005. The County Council (in its Rebuttal Statement) expresses confidence that things will continue to improve and, in paragraph 13.6, concedes that 70% is theoretically possible. Indeed, in view of successes elsewhere in the UK, I consider SSAIN's and FOE's long-term aspiration of a 70% recycling rate to be realistic. Basing a waste strategy on a 55% recycling level when, within the life-span of the proposed WTF, much higher recycling levels could be achieved gives me some cause for concern. I accept that the proposed WTF would incorporate some recycling, but there is no evidence to show that the MBT/ACT processes are the only means by which higher rates of recycling/composting could be achieved.
64. Secondly, whilst it makes sense that all of Derbyshire's residual waste is treated within Derbyshire, the strategy does not specify the *type* of WTFs that are needed in order to achieve this. Indeed, the strategy is technology neutral.
65. Finally, it appears that Derbyshire's landfill allowances in the key years of 2010 and 2013 (the target years when banking and borrowing of allowances is not permitted) are unlikely to be met. The amount of Derbyshire's waste going to landfill is decreasing, due to achievements in waste minimisation, recycling and composting, but it is not decreasing fast enough. The proposed WTF would divert a considerable amount of biodegradable waste from landfill, thus enabling future targets to be met.
66. I therefore accept that WTFs are needed to meet Derbyshire's landfill targets, but I am not convinced that the proposed WTF, with its MBT and ACT facilities, is the only type of WTF that could achieve this. I note that the waste strategy is not rigidly prescriptive. It makes it clear that the numbers of facilities needed are all estimates. Furthermore, in paragraph 7.1.5 it concedes that the options to be adopted will depend on a number of factors, some of which are difficult to define, such as the capability of newer technologies and the volatility of markets for recycled materials. At paragraph 7.2 it acknowledges that there are various ways of meeting the targets relating to landfill diversion, recycling and recovery.
67. Indeed it could be argued that a dismissal of this appeal would give the Councils an opportunity to reconsider alternative types of WTFs in the light of up-to-date recycling trends and the new and emerging technologies for treating residual waste. It is timely that a consultation exercise on the *Big Choices Report for the Derby and Derbyshire Waste Core Strategy Development Plan Document* is currently underway. The results of this exercise could give the Councils a useful steer.

*If the proposed WTF is needed, is Sinfin Lane the right place for it?*

68. Before opting for the Sinfin Lane site, the appellant considered other alternative sites using a methodology prescribed in paragraph 21 and Annex E of PPS10 and agreed by the City Council. Over 400 possible sites were whittled down to 12 and these were then scored against various criteria. The appeal site scored 11, the highest mark. Three other sites

scored 10 and the remaining 8 sites scored between 9 and 6. Thus, although there is only a marginal difference between the score of the appeal site and that of 3 other sites I am prepared to accept that, using the prescribed methodology for assessing alternative sites, there is no better site than Sinfin Lane. That is not to say that it is the only possible site; merely that it scored the highest against the criteria.

69. I share the appellant's view that the choice of site is consistent with the proximity principle. It is in the southern half of Derbyshire where the major concentrations of population can be found and where the majority of waste is generated. WRATE (Waste and Resources Assessment Tool for the Environment) shows that there would be a 12% reduction in tCO<sub>2</sub>e (tonnes of CO<sub>2</sub> equivalent) by having the WTF at Sinfin Lane. I do not dispute this, but I am not convinced that Sinfin Lane is the only site where similar reductions in tCO<sub>2</sub>e could be made.

*Would the proposed WTF be consistent with the waste hierarchy?*

70. The proposed WTF would be designed to process 190,000 tonnes of municipal solid waste, although it could operate on a minimum tonnage of 149,000 (the amount that the Councils have contracted to supply). The appellant is confident that, even with higher recycling levels and a smaller waste stream, there would always be enough waste to justify the proposed WTF. On the other hand, the objectors to the scheme fear that waste that could be re-used, recycled or composted would, instead, be used to keep the MBT and ACT processes going.
71. The quantity of waste nationwide is reducing, largely because of decreases in excess packaging and increases in re-use, recycling and composting; a trend that is replicated in Derbyshire. In that regard, I note that the *Waste Strategy for England 2007* states that the government is going to review its targets for 2015 and 2020 to see if they can be made more ambitious. I accept that there is a limit to the extent of waste minimisation that can be achieved; for example, some packaging will always be necessary. Nevertheless, there is no reason to suppose that the downwards trend in the amount of municipal waste in Derbyshire will come to a halt in the foreseeable future. Much will depend upon the amount of effort the Councils decide to put into the promotion and encouragement of waste prevention and minimisation.
72. I am therefore not convinced that within the 25-year life of the proposed WTF there would always be sufficient waste within Derbyshire to justify its capacity. Furthermore, I am concerned that the Councils' commitment to the WTF, and the WTF's appetite for waste, could divert efforts and resources away from the promotion and encouragement of waste reduction, re-use, and recycling/composting; the first three stages of the waste hierarchy. In that regard, I am mindful of the recent speech by Caroline Spelman, the Secretary of State for Environment, Food and Rural Affairs, in which she emphasised the government's objective of a zero waste economy, gave a positive message about anaerobic digestion, and stated that, although recycling levels have been moving in the right direction, "it's the pace that's the problem".

### *Wildlife*

73. A small breeding population of Common Lizard has been found on the site. The Common Lizard is a Biodiversity Action Plan priority species, and sightings of it are rare in Derby. The appellant is proposing to provide refuges and a wildlife corridor for the lizards. The appellant is also willing to accept a condition requiring a mitigation strategy and a method statement for the lizards' protection. These matters, together with the involvement of the Derbyshire Wildlife Trust, suggest to me that, if the proposed WTF were to go ahead, the long-term survival of the lizards need not be jeopardised.

### *Other benefits of the proposed WTF*

74. I discuss below some of the other benefits of the proposed WTF identified by various parties in this appeal but not covered in earlier sections of my decision.

75. The proposed WTF is predicted to export about 8MW of electricity per hour to the national grid. Although beneficial, the amount of electricity produced is not guaranteed, and, so far as I am aware, will not form part of the Environment Agency's permit and decision.

76. It is true that the proposed development would result in the decontamination of a contaminated site. However, other uses of the site could bring the same benefit and, in the meantime, the site could be made secure so that there is no risk of contamination to trespassers.

77. I accept that the proposed development would bring a vacant site back into economic use. The appellant sees this as a form of regeneration; a long-established objective for Sinfin and Osmaston. But many local residents feel that having a WTF in their midst would put this part of Derby further down the list of desirable places in which to invest or live. I am unable to predict how potential developers would feel about investing in the area once the WTF was in place and, for that reason, I cannot come to a firm view about this.

78. About 31 jobs would be created. This is desirable, although there is no certainty that the jobs would go to those living in the deprived areas of Derby nearest to the appeal site.

79. The purpose-built education centre and its full-time education officer would be beneficial. However, in my view it is not essential. There are other ways of spreading the message about waste minimisation, re-use, and recycling/composting. Indeed, much work is already being done in Derbyshire, for example home composting projects, waste awareness campaigns and a Schools Theatre Project.

## **CONCLUSIONS**

80. My conclusions on the 3 main issues, and my views on the other matters discussed above, pull in different directions. I have therefore had to carry out a balancing exercise, weighing the points in favour and the points against the proposed WTF.

*81. Points relating to the 2 main issues that weigh in favour of the proposed WTF:*

- The proposed WTF would not have a harmful visual effect on the character and appearance of the surrounding area, nor on the setting and outlook of Railway Cottages. There is therefore compliance with LP policy GD4 and WLP policy W7.
- The proposed access arrangements to the site would be satisfactory.
- There would be no materially adverse impact on highway conditions in Sinfin Lane.
- Other uses of the site could generate the same amount, or more, traffic than the proposed WTF.
- The harm to health caused by the emissions from the stack would be undetectable.

*82. Points relating to the 2 main issues that weigh against the proposed WTF:*

- Traffic congestion at the junction of Sinfin Lane and the inner ring road would become worse, and this would have a materially adverse impact on highway conditions in the surrounding road network.
- The NO<sub>2</sub> emissions, principally from traffic generated by the proposed WTF, would cause exceedences of the AQMA's NO<sub>2</sub> air quality objective. In terms of the Council's SPG: *Air Quality and New Development*, the exceedences would be significant.
- Local residents' fears about harm to their health is a material consideration of some weight.
- Living conditions of local residents would be adversely affected, contrary to LP policy GD5. The proposed WTF would make a bad situation worse.

*83. On the matters that are not directly related to the 2 main issues, I have found the following:*

- The proposed WTF complies with LP policy EP9 because it falls into one of the uses favoured for this site.
- WTFs are part of the *Joint Municipal Waste Management Strategy: Looking after Derbyshire's Waste*, although the type of WTF is not specified and there may be other ways of treating the County's residual waste.
- The presence of the WTF could divert the Council's efforts and resources away from promoting the first 3 stages of the waste hierarchy: reduction, re-use and recycling/composting.
- A considerable amount of biodegradable waste would be diverted from landfill, thus enabling future LATS targets to be met.

- Applying the prescribed methodology for assessing alternative sites, Sinfyn Lane comes out best, but only by a narrow margin.
- The site's location in the southern part of the County is consistent with the proximity principle. There would be a 12% reduction in the amount of tCO<sub>2</sub>e, although other sites might achieve similar reductions.
- The long-term survival of the Common Lizards on the site need not be jeopardised.
- About 8MW of electricity per hour is likely to be exported to the national grid, although this cannot be guaranteed.
- The development would bring a vacant site back into economic use, although the regeneration benefits of this are uncertain.
- About 31 jobs would be created, although there is no guarantee that local residents would get the jobs.
- The education centre would be beneficial, but not essential.

84. I have decided that the points in favour of the proposed WTF do not outweigh the points against it. This is largely because of the substantial weight that I have given to the likely increase in traffic congestion, the significant weight I have given to the adverse effect on the AQMA, and the substantial weight that I have given to the adverse effect on the living conditions of local residents.

85. WLP policy W4 establishes that, where there is reasonable cause for concern that a proposed waste development would present a threat of serious or irreversible damage to the environment, or to the use or enjoyment of land, it should not be granted planning permission unless conditions could ensure that the damage would be minimised. I have therefore considered whether planning conditions could overcome my concerns. I have decided that, although some of the details of the development could be controlled, the harms to highway conditions, to the AQMA and to living conditions that I have identified could not be controlled.

86. In reaching my decision I have taken into account all other matters raised, including the government's emphasis on the importance of localism and local decision-making. For the avoidance of doubt, I can confirm that the weight of local objection has not dictated my decision but it has had a bearing on it.

87. Some Derby residents have made representations to the effect that their right to life under Article 2 of the Human Rights Act 1998 would be violated if the appeal were allowed. As I have decided to dismiss the appeal I do not need to deal with the question of whether the decision would result in a violation of their human rights.

88. There are no other matters sufficient to outweigh my conclusion that the proposed WTF is unacceptable and that the appeal should be dismissed.

*Ruth V MacKenzie*

INSPECTOR

## **APPEARANCES**

### FOR THE LOCAL PLANNING AUTHORITY:

Hugh Richards, of Counsel                      Instructed by the Head of Legal and Democratic  
Services  
Derby City Council

He called:

Michael Kay    Head of Environmental Health and Licensing  
BSc Env Health    Derby City Council  
MSc Env Pollution Control

Cllor Philip Hickson                                      Member of Derby City Council's Planning Control  
Committee

### FOR THE APPELLANT:

Martin Kingston QC                                      Instructed by Grant Anderson  
Addleshaw Goddard LLP  
100 Barbirolli Square  
Manchester M2 3AB

He called:

Daniel Smyth    Senior Director  
BSc(Hons) MSc/Dipl Env Tech                              RPS Planning & Development

David Archibald    Associate of RPS Transport  
MSc BSc(Hons) MCIHT

Jonathan Standen    Technical Director  
BSc(Hons) DipWM FRICS MRTPI                              RPS Planning & Development  
MCIWM CEnv

### FOR SINFIN SPONDON AND ALL AGAINST INCINERATION (SSAIN) (Rule 6 party)

Simon Bacon    Chairman of SSAIN

Professor Paul Connett

Keith Kondakor  
BEng(Hons) in Electronics and  
Communications Engineering

Tim Hill BSc CEng MIME

FOR DERBY FRIENDS OF THE EARTH (FOE) (Rule 6 Party)

Dorothy Skrytek Co-ordinator of Derby FOE

FOR CLLORS TURNER AND SHANKER (Rule 6 Party)

Cllor Robin Turner City Councillor for Sinfin Ward

INTERESTED PERSONS WHO SPOKE AT THE DROP-IN SESSION ON 15 SEPTEMBER 2010

(all are residents of Derby except where stated)

Cllor David Shepherd	Paranjit Kaur
Cllor Peter Berry	Ander Kaur
Mr Sweeny	Avtar Kaurwagi
Ken Lewis	Charan Kaur
Barbara Farmer of Gloucestershire	Jito Kaur
Chris Skrytek	Baldeu Kaur
Stephen Peat	Piara Kaur
Fasal Hussain	Avtar Kaur
Kiran Dhanda	Ajit Kaur
John Heavey	Girdar Kaur Dasarijh
Donna Chambers	Kashmir Kaur
Harbans Chauhan	David Gale
Joginda Bains	Graham Lewis
Balraj Dhanda	Mrs G Sandhu
S K Chauhan	Alastair Kay
Baksesh Dhanda	Josephine Radford
Daljit Kaur	S R Shemar
Gian Kaur	Debbie Grafton
Mr Baraj	Brian Sullivan

INTERESTED PERSONS WHO SPOKE AT THE DROP-IN SESSION ON 16 SEPTEMBER 2010

(all are residents of Derby)

Cllor Alan Graves	Lynne Martin
Cllor Prem Chera	Debbie Grafton
Cllor Baggy Shanker	Beryl Dyson
Gary Woolley	Stuart Williamson
Michael Whithurst	Mr Sweeny
M Philpott	Sue Shore
Narinda Dhiensa	Eirlys Smith
Jean Mildren	Tom Fulep
Joginder Bola	Mr & Mrs Walton
Mark Staley	John Harrison

Colin Underhill

Mr Singh

Christine Spearey  
Penny De Abreu  
David Kirkwood  
Graham Lewis  
Jon Eccarius  
Karen Smith  
Neil Joyce  
Tony Richardson  
Sonia Siczakarenko  
David Gale  
Colin Allenborough

Mr Staley  
Mike Harris  
Glyn Williamson  
Sally Chisholm  
Jenny Spencer  
Susan Boon  
Alan Johnson  
G Bancroft  
Hannah Nathan  
Janet Turner  
David Kirkwood  
Penny De Abreu

INTERESTED PERSONS WHO SPOKE AT OTHER TIMES DURING THE INQUIRY  
(all are residents of Derby)

Mike Harris  
Debbie Wigley  
Hugh Ulliyatt  
Peter Ambler

#### **DOCUMENTS HANDED IN AT THE INQUIRY**

- 1 Opening statement on behalf of Derby City Council
- 2 Opening statement by Cllor Robin Turner
- 3 Opening statement by FOE
- 4 Opening statement on behalf of the appellant
- 5 FOE's list of suggested site visits
- 6 Cllor Turner's list of suggested site visits
- 7 Planning permission for a timber resource recovery centre and fume extraction stack at Unit 1, Victory Road, Derby (Ref DER/02/08/00261/PRI)
- 8 Parliamentary statement by Robert Neill about the Coalition's proposed shift of power away from Westminster to Councils and communities, 13 September 2010 extract from Hansard, submitted by the City Council
- 9 Letter from the Environment Agency dated 6 September 2010 regarding the draft Environmental Permit for the proposed waste treatment facility, together with copies of the Draft Permit and the Draft Decision Document
- 10 Appellant's response to the questions raised by SSAIN and FOE about the Environment Agency's draft Permit and draft Decision Document
- 11 Copies of fliers about the drop-in sessions distributed by objectors, submitted by the appellant
- 12 Comments on Air Pollution Control residue disposal, submitted by the appellant
- 13 Full version of the LATS Newsletter, a portion of which formed Annex 1 of Mr Kondakor's proof, submitted by the appellant
- 14 Statement of Hugh Ulliyat, together with pie chart appendices
- 15 The appellant's comments on the above pie charts
- 16 Statement and appendices of Debbie Wigley
- 17 Photographs of Wingmoor Farm Hazardous Waste Site submitted by Barbara

- Farmer
- 18 Statement of Cllor Prem Chera
- 19 Bundle of 36 letters of objection handed in during the Inquiry
- 20 Bundle of photographs handed in during the evening drop-in session on 16 September 2010
- 21 Appellant's response to the issues raised at the public drop-in sessions
- 21a Appellant's rebuttals to Ms Skrytek's evidence about public engagement and the proposed education centre
- 22 Email from Luke Hargreaves of Ofgem dated 17 September 2010 confirming the Isle of Wight RDF power plant's accreditation under the Renewables Obligation Order 2009, submitted by the appellant
- 23 Bundle of 3 legal references submitted by Derby City Council
- 24 Closing submissions of SSAIN
- 25 Closing submissions of FOE
- 26 Closing submissions of Cllor Turner
- 27 Closing submissions of Derby City Council
- 28 Closing submissions of the appellant

#### **PLANS HANDED IN AT THE INQUIRY**

- A Street plan of Derby showing the locations of schools, community centres and stacks, submitted by the FOE
- B Map showing road network between A50 and A5111, and the proposed road T12, submitted by Cllor Turner
- C Cross Sections between the Railway Cottages and the proposed building, submitted by the appellant