



Appeal Decision

Inquiry opened on 23 April 2025

by **Paul Griffiths BSc(Hons) BArch IHBC**

an Inspector appointed by the Secretary of State

Decision date: 4th August 2025

Appeal Ref: APP/U1050/W/24/3354670

Land adjacent to Willshees Depot 3, Keith Willshee Way, Swadlincote DE11 9EN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 as amended against a refusal to grant planning permission.
 - The appeal is made by R&P Clean Power Ltd against the decision of Derbyshire County Council.
 - The application ref.CW9/1022/22 dated 27 October 2022 was refused by notice dated 6 September 2024.
 - The development proposed is the construction and operation of the Swadlincote Resource Recovery Park (SRRP) comprising an Energy Recovery Facility (ERF) and Aggregate Recovery Facility (ARF) together with ancillary infrastructure including grid connection cable and works, private electrical wire provision, substation, CHP off-take provision, internal vehicle circulation and yard areas, weighbridges, car parking, new access road, temporary construction compound and laydown areas, security fencing and gates, drainage, landscaping and off-site habitat compensation and biodiversity net gain.
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Decision

1. The appeal is allowed and planning permission is granted for the construction and operation of the Swadlincote Resource Recovery Park (SRRP) comprising an Energy Recovery Facility (ERF) and Aggregate Recovery Facility (ARF) together with ancillary infrastructure including grid connection cable and works, private electrical wire provision, substation, CHP off-take provision, internal vehicle circulation and yard areas, weighbridges, car parking, new access road, temporary construction compound and laydown areas, security fencing and gates, drainage, landscaping and off-site habitat compensation and biodiversity net gain in accordance with the terms of the application, ref.CW9/1022/22 dated 27 October 2022, subject to the conditions set out in Annex B to this decision.

Preliminary Matters

2. The Inquiry opened on 23 April 2025 and closed on 8 May 2025 after 8 sitting days. I made a brief unaccompanied visit to the area around the site on 22 April 2025, before the Inquiry opened. I also carried out a much more comprehensive, accompanied visit to the site itself, and the surrounding area, in accordance with an itinerary agreed by the main parties, on 7 May 2025. After the accompanied element of the visit was completed, I stayed in the area to take in other viewpoints, notably those in and around Coronation Park.
3. The Inquiry itself was held at County Hall in Matlock, which is some distance from the appeal site. Conscious of that, and the difficulties this might present for public participation in proceedings, a public session of the Inquiry was arranged, and this took place on the afternoon and early evening of 24 April 2025, at the Town Hall, in Swadlincote. Many local residents, and other interested parties, were able to address the Inquiry in this way.

4. Helpfully, the Council catalogued and stored the documentation relating to the Inquiry as Core Documents and added to those, documents received during the Inquiry. I was able to gain access to them electronically before, during, and after the Inquiry. They can be found via: <https://planning.derbyshire.gov.uk/Disclaimer?returnUrl=%2FPlanning%2FDisplay%2FCW9%2F1022%2F22>. On that basis, there is no purpose served by my listing them all an Annex to my decision.
5. At the Inquiry, the appellant gave notice of their intention to make an application for an award of costs against the Council. I allowed time after the Inquiry closed for the application to be made in writing, for the Council to respond in writing, and for the appellant to make some final comments. This application for costs is the subject of a separate decision.
6. Discussions about planning obligations relating in the main to Biodiversity Net Gain took place during the Inquiry and I allowed time after the Inquiry closed for an Agreement under s.106 to be completed. This Agreement, dated 13 May 2025, was received on the same date. I deal with the contents below.
7. The proposed development constitutes EIA development pursuant to the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (as amended) (the EIA Regulations) and the original application was accompanied by an Environmental Statement (ES). In the course of the application, the Council requested and received three tranches of additional information, pursuant to Regulation 25 of the EIA Regulations. The first tranche related to landscape and visual impact assessment, flood risk and drainage, highways, and heritage matters; the second highways; and the third clarification of the interaction between the proposed development and the adjacent Willshees Depot, a response on 'the need for the proposed ERF in a Derby and Derbyshire context and regionally in the East Midlands, as well as nationally', and a revised Non-Technical Summary.
8. There has been no suggestion that the ES as it stood when the Inquiry closed was deficient in any way and I am content that it complies with the EIA Regulations. I have of course taken it into account in arriving at my conclusions on the proposal.

Main Issues

9. In its decision notice, the Council cited a single reason for refusal maintaining that the scale and height of the development would result in significant harm to the visual amenity and landscape character of the area, and that there would be no material considerations that would outweigh the harm. In the lead up to the Inquiry, the Council made clear that it would also be contesting the question of the need for the installation, and at the Inquiry tended evidence relating to that, as well as the reason for refusal.
10. On that basis, in opening the Inquiry, I identified the main issues as (1) the effect of the proposal on the character and appearance of the area, encompassing any impact on the setting and thereby the significance of affected heritage assets, and the design of the proposals; and (2) whether there is a need for the proposal, in waste terms, so that any benefits the scheme might bring forward can be balanced against any adverse impacts it might have. There are 'other matters' that need to be addressed too.

11. That analysis needs to take place in the light of the development plan, and any other material considerations, including the National Planning Policy Framework (the Framework), and the National Planning Policy for Waste (the NPPW), amongst other things.

Reasons

The Background

12. As set out in the Statement of Common Ground (SoCG) helpfully agreed between the main parties, the development plan includes the saved policies of the Derby and Derbyshire Waste Local Plan of 2005 (the DDWLP), and the South Derbyshire Local Plan Part 1 of 2016 (SDLP Part 1), and Part 2 of 2017 (SDLP Part 2). The SoCG lists those policies relevant to the proposal but goes on to identify the development plan policies that are most important in the determination of the appeal. I agree with the list the main parties have arrived at.
13. DDWLP Policy W1b deals with what it terms the 'need for the development'. I note that the Council considers that the DDWLP is out of date in respect of the underlying analysis of the need for waste management facilities. The appellant, however, does not agree with that position. I deal with the matter below but what DDWLP Policy W1b says is that waste development will be permitted if the development would help to cater for the needs of the local area, in terms of quantity, variety and quality, as part of an integrated approach to waste management. It goes on to explain that waste development catering primarily for the needs of other areas will be permitted only if: the development would satisfy a need which could not realistically be met closer to the source of the waste; and the development would contribute to an integrated system of waste management.
14. Landscape and other visual impacts are the subject of DDWLP Policy W7. It says that waste development will only be permitted if: the appearance of the development would not materially harm the local landscape or townscape and would respect the character and local distinctiveness of the area; and the development would be located and designed to be no larger than necessary and to minimise its visual impact on or to improve the appearance of the townscape or landscape.
15. SDLP Part 1 Policy BNE1 deals with what it terms as design excellence. All new development will be expected to be well designed, embrace the principles of sustainable development, encourage healthy lifestyles and enhance people's quality of life by adhering to a range of 'Design Principles' that the policy sets out.
16. Amongst these, e) requires new development to create places with a locally inspired character that respond to their context and have regard to valued landscape, townscape and heritage characteristics; f) says that within the National Forest, new development should be encouraged to follow the National Forest Design Charter and Guide for Developers & Planners and fully reflect the forest context; g) maintains that new development should be visually attractive, appropriate, respect important landscape, townscape and historic views and vistas, and possess a high standard of architectural and landscaping quality; while h) sets out that new development should not have an undue adverse effect on the privacy and amenity of existing nearby occupiers.

17. Policy BNE4 of SDLP Part 1 is concerned with landscape character and local distinctiveness. Part A requires the character local distinctiveness, and quality of South Derbyshire's landscape and soilscape to be protected and enhanced through the careful design and sensitive implementation of new development. Under Part B, developers are expected to retain key valued landscape components such as mature trees, established hedgerows and topographical features and development that will have an unacceptable impact on landscape character (including historic character), visual amenity and sensitivity that cannot be satisfactorily mitigated will not be permitted. Part C says that in bringing forward proposals, developers will be expected to demonstrate that close regard has been paid to the landscape types and landscape character areas identified in 'The Landscape Character of Derbyshire'. Part D takes a similar approach with reference to the National Forest Landscape Character Assessment.
18. Following on from that, SDLP Part 1 Policy INF8 deals with various aspects of the National Forest and development proposals within it. Parts A, B and C deal with landscaping requirements, and woodland cover, but Part D states that within the National Forest, new development should ensure that: (i) the siting and scale of the proposed development is appropriately related to its setting within the Forest; and the proposed development respects and does not adversely affect the character and appearance of the wider countryside.
19. Finally, Policy BNE5 of SDLP Part 2 is concerned with development in rural areas. Outside settlement boundaries, development will be permitted where, amongst other things, it is unavoidable outside settlement boundaries; and will not unduly impact on landscape character and quality, and heritage assets.
20. As indicated above, the Framework and the NPPW are important material considerations, and I refer to them where necessary below. Further, on 30 December 2024, Defra published its Residual Waste Capacity Note (DCN) and an accompanying Ministerial Press Release and Statement (DMS)¹. These up-to-date statements of the Government's approach to residual waste capacity are also important material considerations.

Landscape and Heritage Impacts

21. There is little between the main parties in terms of the effects of the proposal on landscape character and its visual effects. All the receptors analysed in the ES would suffer significant adverse residual effects as a result of the appeal scheme and neither main party departed in any significant way from that analysis. My site visit, which took in many of the viewpoints assessed in the ES, and the additional viewpoints in the Council's evidence, bore those conclusions out.
22. From some closer viewpoints, for example those at Cadley Lane and near Breach Farm², the facility would be a massive presence in the landscape. That impact would lessen with distance but from points more than 1 km away, it would still be a significant feature³. Even at a distance approaching 3 km⁴, the ERF building would figure prominently and catch the eye.

¹ CD6.08 and 6.08a

² Viewpoints 3, 4 and 11

³ As demonstrated by the photomontages from Viewpoints 1, 2, 5, 6, 8, 9, 10 and 11

⁴ Viewpoint 7

23. I appreciate that there is a danger in relying too much on individual viewpoints, even where they are agreed to be representative, but from what I saw from those viewpoints, and in moving between them, the conclusions of the ES, and the main parties, are correct. While correct, those conclusions are hardly surprising. The ERF building would be one of significant size, and its stack relatively tall. Both would be widely visible from points all around the site, whether that is Swadlincote itself, or the more rural areas to the west.
24. That said, as I heard, the ERF building and its stack have been designed with care. The building is no bigger than it needs to be to carry out its primary function, and the same is true of the height of the stack. The proposal does not, like some facilities of this type, include any design devices or flourishes, that would make the building bigger, or the stack taller, than they need to be. While there is something pleasing in an architectural sense about a building where form follows function in this way, that does not serve to lessen its visual presence, or its consequent impact on landscape character and visual amenity. However, it can be said that the ERF is not unduly large, and its impact on the surrounding area would be no greater than it needs to be for its function to be properly fulfilled.
25. Efforts have been made to design a cladding pattern for the main building that seeks to reduce its visual impact. The result is something that would blend into its surroundings better than a building of similar size with a plainer cladding treatment. The mitigation offered would go a little way towards reducing its visual prominence, but nevertheless, the building and the stack, would still be a massive presence in the landscape. Much the same is the case in relation to the potential for landscaping. A facility of the height and size proposed cannot be screened by trees or shrubs and what is proposed as part of the scheme would, at best, allow the building and associated stack to rise out of the planting around their base. This would offer some limited benefit, as would the visual screening the planting would provide for the activities and features at ground level.
26. There are some associated points that need to be made. The Council highlighted the effect of the A444 as the settlement boundary between of Swadlincote with the built-up part of the town on one side, and the countryside to the other. There can be no doubt that Swadlincote has spread westwards, beyond the A444, and I would highlight the sewage works to the north-west of the appeal site, and the existing Willshees Depot in this regard. However, both are well screened by planting, and the sewage works especially so. As a result, notwithstanding other features in the landscape to the west of the A444, such as electricity pylons, the A444 does act as a strong marker for the westward extent of the settlement. As such, the prominence of the proposals would be highlighted further by appearing somewhat isolated from the settlement of Swadlincote, on the other side of that marker.
27. That 'effect' would have an impact on the way the proposals are perceived in the landscape. In views from north, west and south, the proposal would be seen beyond a rural foreground. This is where the impact of the proposals would be most acute, because, by contrast, in views from the east, and from Coronation Park in particular, the proposals would be seen rising up beyond a built-up foreground that would include buildings of significant scale, notably the substantial Warehouses to the east of the existing Willshees Depot. Nevertheless, the proposal would still give the impression that the settlement is stretching westwards into the countryside.

28. Overall, I am of the view that the scale, massing and appearance of the proposals would result in significant and wide-ranging adverse impacts on the relatively sensitive, rural landscape to the north, west and south of the site, in particular, that would, and indeed could, not be fully mitigated. The proposal cannot be considered to respect or protect landscape character or visual amenity, and it would have a significantly detrimental impact on the character and appearance of the area.
29. Alongside that, the main parties agree that the proposal lies within the setting of Castle Gresley, the remains of a Norman Motte and Bailey Castle and Scheduled Monument, that lies 1.35 km to the south-east of the appeal site. Having visited the site, it is evident that as has been set out on behalf of the appellant, the castle was constructed to command views and exert control over the surrounding area, but in particular, the valley to the south-west. Intervisibility with the historically associated Parish Church (which incorporates remains of the Augustinian Priory that was a contemporary of the castle) may also have been important.
30. These views out, and the way they inform an understanding of the purpose of the fortification, and why it was built where it is, make an important contribution to the significance of the Scheduled Monument. This contribution has been undermined, to a significant degree, by the way in which development has grown up in close proximity to the site of the castle. The proposal would appear as a significant presence in views to the north-west from the mound that remains. This strong visual presence would further reduce the contribution setting makes to the overall significance of the Scheduled Monument but given that the view to the north-west is already interrupted by the roof-tops of houses that have been built very close to the site of the castle, the harmful impact so caused would not be particularly great.
31. The main parties agree that the harm caused would be, in the language of the Framework, less than substantial, at the lower end of the scale. For the reasons set out above, I agree with that assessment. While this harm must attract great weight, paragraph 215 of the Framework tells us that it has to be weighed against the public benefits of the proposal. I consider this matter below.
32. Linked to that, in some ways, points have been made too about the impact of the proposals on the setting and thereby the significance of the Cadley Hill Farm complex, which has been treated as a non-designated heritage asset. Once a relatively isolated farmstead, this complex, which is now in residential use, has become much less so, as development, such as the sewage works to the north-west, the former coal mine to the east, and more recently, the westward expansion of Swadlincote, including the existing Willshees operation have grown up in close proximity. Nevertheless, one still appreciates the complex as one that was formerly involved in agriculture.
33. The proposals will be a strong visual presence, that will underline further the sense that the once isolated complex is being subsumed into the developed area of Swadlincote. That said, I do not consider that it would remove the sense of the complex as an isolated farmstead altogether. In that way, while some harm would be caused to the setting and thereby the significance of the former farm complex, I consider that it would be minor. Paragraph 216 of the Framework tells us that in such a situation, a balanced judgment will be required having regard to the scale of any harm or loss and the significance of the asset. I deal with this below.

34. Bringing all those points together, while the proposal would comply with elements of DDWLP Policy 7 in that it would be located and designed to be no larger than necessary and to minimise its visual impact, it would materially harm the local landscape and townscape and fail to respect the character and local distinctiveness of the area. On that basis, considered in the round, it is my conclusion that the proposals must fall contrary to DDWLP Policy 7.
35. There is a question to address then as to whether this conclusion means that the proposals cannot accord with the development plan read as a whole. This is not straightforward but there is an obvious tension between DDWLP Policy W7 which on my reading is not accepting of *any* harmful impact and DDWLP Policy W1b which is permissive of waste development if it would help to cater for the needs of the local area, in terms of quantity, variety and quality, as part of an integrated approach to waste management. It seems to me that this tension must require some balance to be struck between need and impacts because otherwise, needs would be very difficult to meet. I make that point because it is difficult to conceive of a waste-related facility, especially one like that proposed, that did not have something of a harmful impact on its surroundings.
36. That conclusion is underlined by the approach in some of the policies in SDLP Part 1 and SDLP Part 2. On the face of it, my conclusions on this issue suggest that there would be a failure to comply with SDLP Part 1 Policies BNE1, BNE4 and INF8, and SDLP Policy BNE5. However, I do note that SDLP Part 1 Policy BNE4 talks of *unacceptable* impacts and SDLP Part 2 Policy BNE5 requires development to not *unduly* impact landscape character and quality and heritage assets. That wording seems to me to acknowledge that at times, it will be necessary to strike a balance between meeting needs and managing impacts.
37. On that basis, a conclusion against the development plan read as a whole must require an assessment of need and if it can be shown that there is a need, a balance between meeting that need, with attendant benefits, against environmental impacts. It is on that basis that I turn to issues around 'need'.

The Question of Need

38. The DDWLP is of some vintage, and I can understand the Council's concerns around the approach to 'need' therein. However, it seems to me that on a fair reading, DDWLP Policy W1b can be readily applied having regard to a more up to date assessment. Regionally speaking, that most up to date assessment of need must be the DCN.
39. As the DCN states in Section 6: *This note is intended to support decision makers in planning for residual waste treatment needs and to support our national resources and deliver a circular economy. The analysis presented here will support the planning process and should be given due consideration when proposing, designing, or considering residual waste infrastructure treatment needs. The results presented should be used to ensure that we do not deliver overcapacity, especially where this risks compromising waste prevention or recycling now or in the future.* The importance of the DCN has recently been underlined by the Secretary of State in his decision on the North Lincolnshire Green Energy Park DCO⁵.

⁵ CD9.47 and 9.48

40. In relation to that application, it was made clear in paragraph 4.85 that: *the forecasts of residual waste capacity provided by Defra take precedence over any other forecast considered so far*. Further, in paragraph 4.92, it states that: *The Secretary of State considers that Defra's note provides the most appropriate forecasts for residual waste availability and EfW capacity*.
41. Alongside the DCN, the DMS incorporates the key policy requirements that flow from the DCN. The importance of these statements of Government in relation to capacity guidance and policy is underlined by paragraph 2.7.6 of the recent draft NPS EN-3 which makes reference to Defra's policy statement as providing the basis against which new EfW proposals will be assessed. This advice might be in draft at present, but it shows a very clear direction of travel.
42. Figure 1 of the DCN deals with operational, under construction and consented energy recovery capacity in England broken down by planning region. It shows that the East Midlands has the lowest operational energy recovery capacity in England, followed by the East of England. These two areas are identified as the only two in England where alternative treatment options to landfill for municipal residual waste are required. As can be calculated from Figure 1 of the DCN and Table 4, the East Midlands has 2.27mt of residual municipal solid waste arising, and 0.72mt of operational energy recovery capacity. This gives a 1.55mt treatment gap. On top of that, there is, according to the appellant's figures, a residual non-municipal waste treatment gap in the East Midlands of 486,000tpa. On that basis, the total waste treatment gap in the East Midlands is over 2mtpa.
43. It could be argued that rather than assessing energy recovery capacity in terms of operational plants, one should consider those in construction, and those consented too. Figure 1 of the DCN shows that if that approach was to be taken, then overall capacity would outstrip arisings. However, it seems to me that the situation in relation to many of these consented schemes is questionable. I heard, for example, that the developer has withdrawn from the 500ktpa EMERGE project and that the 1mtpa Boston Alternative Energy Facility would require a very challenging investment of £1 billion. Even the North Lincolnshire Green Energy Park is a questionable commercial proposition; a matter acknowledged by the Secretary of State in granting the DCO. It is also relevant to note that in granting that DCO, the Secretary of State used operational capacity as the basis for assessment, rather than consented capacity.
44. Overall, having regard to the DCN, it is obvious that regionally, in terms of the East Midlands in particular, but in terms of the East of England too, there is a clear need for additional EfW capacity. According to the appellant's analysis, Derbyshire (with Derby City), part of the East Midlands region, also has a significant shortfall in treatment facilities which currently results in a significant amount of waste leaving the area to be treated elsewhere or being buried in landfill.
45. In assessing the extent of that shortfall, the first matter to address is the extent of the residual waste arisings looking forward. The appellant suggests that come 2040, more than 900,000 tonnes of residual waste will be generated each year in Derbyshire., I have considered carefully the Council's criticism of the way this figure has been derived but I find the Council's approach to be much too fine grained. I consider the appellant's figure to be a reasonable estimate.

46. There is then the need to have regard to existing facilities in Derbyshire and the first to consider is that at Sinfin Lane. The intention was that this installation would deal with Derbyshire and Derby City's residual waste material. The plant used gasification technology and was meant to commence commercial operations in 2017 with a capacity to treat 190,000tpa. However, after construction, it failed to pass its 'Acceptance Tests' in 2019 and is currently mothballed. The Council is going through a procurement exercise in an attempt to resurrect the scheme, but given the track record of similar plants, it seems to me very unlikely to be successful.
47. Another facility at Drakelow uses a broadly similar gasification technology and is finding it difficult to achieve steady state operations. It has a nameplate capacity of 169,000tpa and was due to be operational in 2023 but only came into use towards the end of 2024. Given the nature of the technology involved, the appellant casts doubt over whether this plant will reach anything near its nameplate capacity and given the record of similar plants elsewhere, I can understand why.
48. Aside from those facilities, the Council suggests that local cement kilns have the potential to receive fuel derived from waste and cite a figure of around 174,000tpa. However, I heard that these facilities use a more refined fuel stock and have existing contractual arrangements with established suppliers. As such, it seems very unlikely that the operators will be minded to change their source of supply.
49. The proposal has a design capacity of 186,000 tonnes. If the appellant's figure of 900,000tpa of residual waste is accepted, and my finding is that it should be, then even if the procurement at Sinfin Lane is successful and it operates at a capacity of 190,000tpa (which is unlikely), Drakelow meets its nameplate capacity of 169,000tpa (again unlikely), there would still be a significant capacity shortfall with the proposal operating at a capacity of 186,000tpa, and 174,000tpa going to cement kilns (once again unlikely)⁶. That suggests very strongly to me that a clear need locally has been demonstrated for the proposal.
50. The Council's equivalent figure to the appellant's 900,000tpa of residual waste is around 473,000tpa. I have concerns about the way in which this figure has been arrived at, and I consider it to be an under-estimate, but it is informative as a 'sense check' to treat the two figures as a range. On that basis, the figure for residual waste will lie somewhere between 473,000 and 900,000tpa. If one looks at capacity in the same way, then without the proposal, the maximum available, assuming Sinfin Lane and Drakelow operate to their utmost, and full use is made of cement kilns, is 533,000tpa⁷. For the reasons set out above, that figure is very, very unlikely to be attained but even so, it is still well below the mid-way point of the range (686,500tpa). To my mind, that once again demonstrates that there is a very clear need locally for the proposal.
51. On the basis of that finding, then the proposal would help to cater for the waste needs of the local area, in terms of quantity, variety and quality, as part of an integrated approach to waste management. It complies, therefore, with DDWLP Policy W1b.

⁶ 900,000 – 186,000 (the proposal) – 190,000 (Sinfin Lane) – 169,000 (Drakelow) – 174,000 (Cement Kilns) still leaves a shortfall of 181,000

⁷ 190,000 (Sinfin Lane) + 169,000 (Drakelow) + 174,000 (Cement Kilns) = 533,000

52. There are two matters I need to address having formed that conclusion. In their evidence, the Council raised questions about the approach of the DCN and the DMS, and some of the assumptions underpinning the figures in the former. There may or may not be something in those questions, but it is not for me to cast doubt on the approach taken by the Secretary of State. To do so, albeit as an appointee of a different Secretary of State in the same Government, would be very likely to be found unlawful. As I have set out above, the Secretary of State has been very clear about the importance to be attached to the DCN and the associated DMS and I have followed that direction.
53. In relation to other aspects of the Council's analysis, I take the view that this is far too granular in its approach. In dealing with the North Lincolnshire Green energy Park DCO, the Secretary of State said in paragraph 4.85 that: *The Secretary of State is of the opinion that there is great uncertainty around assessing waste availability and consequently EfW treatment capacity, particularly in the absence of specific EfW policy and guidance on the methodology for modelling and forecasting.* In my experience, that is entirely correct. There are many variables and sensitivities involved, and it is necessary, in my view, for any analysis to concentrate on the bigger picture, without getting too bogged down in the minutiae. That is why the Planning Practice Guidance on Waste warns against unnecessary and spurious precision when trying to obtain the best evidence to inform what will be necessary to meet waste needs. Essentially, that is why I prefer the appellant's approach, which I regard as more pragmatic, and realistic.
54. On that basis it is my view that there is little in the Council's evidence that could justify a conclusion that the proposal is not in accord with WLP Policy W1b.

Other Matters

55. There are a number of issues that come under this heading. The first is the concern, expressed by a number of local residents in person at the Inquiry session devoted for public representations, and in writing at application and appeal stage, about the effect of the ERF in particular, on public health, as a result of emissions from the stack and its effect upon air quality, amongst other things, and pollution more generally. In dealing with these matters, I am conscious of the crossover between the planning system and the permitting regime, which operate in parallel.
56. In terms of impacts on human health and pollution the NPPW is clear in paragraph 7 that decision-makers should concern themselves with implementing the planning strategy in the Local Plan and not with the control of processes which are a matter for the pollution control authorities. Waste Planning Authorities (and by extension Inspectors acting on behalf of the Secretary of State) should work on the assumption that the relevant pollution control regime will be properly applied and enforced. I have no good reason to believe that the Environment Agency will not be able to do that, through the issue of an Environmental Permit.
57. That said, I can appreciate that the perception of local residents that the facility will have a harmful effect on their health could have a detrimental effect on their living conditions and/or quality of life. However, for a perception of that kind to carry weight, it would have to be based on something tangible rather than assumption or speculation. In the knowledge that the processes involved would be subject to an Environmental Permit, there is nothing convincing before me to suggest that the

proposals would have detrimental health impacts on local residents or cause unacceptable pollution. In that context, these are matters that do not attract any telling weight against the proposals.

58. The potential impact of the proposal on residents at Cadley Hill Farm is more specific. I was told by the residents of the complex that the existing operations at the Willshees Depot already have a significant impact on their living conditions because of noise and disturbance, vibration, dust emissions and light pollution generated by the facility. It is suggested that conditions attached to relevant grants of planning permission have not been adhered to.
59. However, it is not my role to adjudicate on the existing operations at the site, and it is for the Council to deal with adherence to the conditions it has attached to grants of planning permission⁸. What I am charged with dealing with is the proposal before me. I am satisfied that subject to conditions to deal with noise, hours of operation, external lighting, and the like, that I deal with below, the operation of the facilities proposed need have no undue impact on the living conditions of residents of Cadley Hill Farm, or others living relatively close to the facilities, in these terms.
60. That said, having visited the Cadley Hill Farm complex, and considered carefully the depiction of the proposal, and the ERF in particular, from Viewpoint 4, I do agree that the proposals would have a significant visual impact on some views out of the dwellings, their gardens, and the communal spaces within the complex. However, the degree of separation, the relative orientation between the ERF and the dwellings, and the presence of some existing woodland, would be enough to ensure that the visual presence of the ERF, while unwelcome no doubt, would not be dominant or overbearing. On that basis, while there would be something of a negative impact on the living conditions of the residents as a result of this visual impact, it is not one that weighs against the proposal to any significant degree. The question of whether there is any departure from SDLP Part 1 Policy BNE1 criterion h) relies on that impact on amenity being found to be undue but given my conclusions on need, it would not be.
61. A good deal of concern was expressed too about highways and traffic. I noted for myself the nature of the A444 and the roads feeding into it in the vicinity of the appeal site. Residents' concerns about existing conditions are perfectly understandable but the issue for me is not the nature of the prevailing situation, but whether the proposals at issue would make an unacceptable difference to current conditions? The Highway Authority raises no objection to the scheme in terms of the traffic it would generate, or anything else, and based on their advice, neither does the Council. Notwithstanding what I heard at the Inquiry, and what I observed at my site visits, there is nothing convincing before me that justifies a conclusion contrary to that expressed by the Highway Authority. I am content that the proposal would not have any unacceptable impact on road capacity or linked to that, highway safety.
62. Points were raised too about the potential impact of the proposal on tourism. I have no doubt that the National Forest is an attractive destination for visitors. However, it covers a wide area and while the proposal would have a significantly harmful

⁸ And I note that there is presently an application before the Council aimed at regularising activities at the existing Willshees Depot

impact in landscape character and visual terms, in the context of the wide compass of the National Forest, those impacts would be relatively localised. The same applies, in my view to any perception that the proposal is incompatible with the National Forest. The area it covers has been home to activities like mining in the past, and the nature of the western fringe of Swadlincote is still home to large buildings and associated activity. Overall, I do not consider the proposal will have the detrimental impact on the area as a tourist destination that some envisage.

63. UKWIN raise a number of questions about the way in which the benefits of the proposal have been articulated, matters that I refer to below, but also the principle of incineration as a means of treating waste. Some reference has been made in this regard to the DMS and the headline therein that the Government is to 'crack down' on waste incinerators with stricter standards for new builds.
64. The DMS does say that new waste incinerators will only receive planning approval if they meet strict new local and environmental conditions. In particular, developers will have to demonstrate that their projects will help lower the amount of non-recyclable waste sent to landfill or enable the replacement of older, less efficient plants. Moreover, new plants will need to be carbon capture ready and show how they will make use of the heat they generate. As I explain below, the proposal is able to meet all those requirements and bearing in mind too, the benefits of co-location, contribute to the circular economy. There is nothing in the DMS that weighs against the proposal. Moreover, it is clear from the DCN and the DMS that the Government is not set against the principle of incineration as a means of treating waste. While others might, it is not for me to question that approach.

Planning Balance and Conclusion

65. There are a number of benefits associate with the scheme. First of all, given my conclusions on 'need' that I have set out above, there would be a substantial benefit involved in meeting the current need for waste facilities locally (that is in Derbyshire and Derby City) and the East Midlands. If the facility at Sinfin Lane fails to become operational, and that at Drakelow fails to operate to its capacity, as seems likely, then that benefit would be magnified. This would drive the management of waste in Derbyshire up the waste hierarchy diverting it from landfill through recovery, rather than disposal. The facility would also be able to divert some waste that is currently sent for incineration further away, reducing waste miles, but also liberate capacity in those more remote facilities to take in waste that is produced more locally, even perhaps, diverting it from landfill. In forming that conclusion, I note that the proposal was originally promulgated on the basis that it would treat C&I waste, but there is no good reason, in my view, to rule out the possibility that it might treat LACW too
66. More site-specifically, there would be significant benefits involved in co-locating the ERF, and the ARF, with the existing MRF at the Willshees Depot. The extraction of recyclable materials from waste arisings in the MRF, could produce a post-recycled fuel source for the ERF. The by-products of incineration, the IBA in particular, could then be dealt with in the ARF, for re-use as secondary aggregates. This would be a very efficient arrangement that would cut out much of the need for fuel to travel to the ERF from an MRF, and for IBA to travel from the ERF to an ARF.

67. While it would require relocation of the proposed ARF to somewhere else on the site, there is the ability for carbon capture facilities to be accommodated on the site, and for the product of that process to be transported away from the site using the existing rail spur. The Council expressed some doubt about whether the rail spur could be accommodated on the site in conjunction with all the other facilities, but it seems to me that there is nothing fundamental that could not be surmounted through careful design.
68. Of course, the facility would also be able to export baseload heat and power, and it would (subject to a condition) be CHP ready. Once the parasitic load is considered, the facility could generate 18.5Mwe of low carbon energy which I am told is sufficient to power the needs of around 36,000 homes. As the appellant's evidence shows, this would lead to significant benefits in terms of reduced carbon emissions. The appellant has entered into a grid connection agreement with NGED enabling the full nameplate capacity to be exported into the local electricity distribution network. This capacity might be reduced if, as planned, the appellant sells heat and power (via private wire) to local businesses and further reduced if the facility is used, in time to supply the carbon capture process. Nevertheless, the benefit of this remains, even if heat and power is diverted in this way.
69. I note the detailed criticisms of the appellant's carbon assessment made by UKWIN. These criticisms have been addressed by the appellant in evidence, but it seems to me that even if UKWIN's points are accepted, the fact remains that dealing with waste, while at the same time producing electricity and heat from it, must be seen as beneficial. Waste recovery is obviously better than disposal.
70. The proposal would also bring forward significant benefits in socio-economic terms, with an investment of over £200m and significant numbers of skilled jobs produced in the construction and operational phases. Bearing in mind the importance attached to economic growth in wider Government policy, and the Framework in particular, these benefits attract a good deal of weight. Finally, secured by a combination of the Agreement under s.106, and appropriately worded conditions, that I address below, the project would deliver 10.14% Biodiversity Net Gain.
71. Taken together, these various benefits are very substantial indeed. They do, of course, need to be balanced against the harmful impacts of the proposal.
72. I must deal first of all, with the harm that would be caused to the significance of the Cadley Hill Farm complex, which has been treated as a non-designated heritage asset, as a result of the proposals. Given the degree of harm would be relatively minor, it would, in my judgment, be easily outweighed by the significant public benefits of the proposal that I have set out above. I note that the main parties take a similar view.
73. Turning then to the harm that the proposals would cause to the setting and thereby the significance of the Castle Gresley Scheduled Monument. As set out above, the harm would be less than substantial, at the lower end of the scale. Nevertheless, the harm attracts great weight, by dint of paragraph 213 of the Framework.
74. Following the course of paragraph 215 of the Framework, it must be weighed against the public benefits of the proposal. Notwithstanding the great weight this

less than substantial harm to the significance of the Scheduled Monument must nonetheless attract, the Council agrees with the appellant that it would be outweighed by the public benefits of the proposal. Given the scale of the benefits, that I have rehearsed above, that is my conclusion too.

75. I must observe at this point that the Council adopts this position in relation to the Scheduled Monument notwithstanding the fact that any harm to the significance of a designated heritage asset of such importance must attract great weight in any planning balance. That appears to me to be a tacit acceptance of the scale of the benefits that the proposal would bring forward, but it must also bring into question their overall approach to the scheme. The Framework is very clear that any harm to the significance of a designated heritage asset should require clear and convincing justification. If there is no need for the proposal, as the Council suggests, then it is difficult to see what that clear and convincing justification might be.
76. Added to the harm that would be caused to these heritage assets, there would be some limited harm caused to the living conditions of local residents at Cadley Hill Farm, as a result of the visual impact of the proposals, and more generally, the perception that the facility will cause health issues and the impact of that in quality of life terms. As I have set out above, the proposals would lead to a significant degree of harm in terms of landscape character and visual effects.
77. In my judgment, the harm that would be caused, in its totality, while significant, would be outweighed by the benefits the proposal would bring forward. I reach that conclusion on the basis that there is a clear need for the proposal, and conscious of the obvious advantages of co-location with the existing MRF, and the proposed ARF, with the potential for CCS using the rail spur, and the contribution that would make to the circular economy – something highlighted in the DCN and DMS. Any installation of this sort is going to result in harmful impacts, and it has not been argued that there are sequentially better sites available, especially sites that would provide the obvious co-locational benefits, and a rail spur. Indeed, the Council agrees that there is no suitable alternative site for the facility. On that basis, the level of harm caused would not be undue, or unacceptable, in my view.
78. As a consequence of all that, the proposal would fail to accord with DDWLP Policy W7 and SDLP Part 1 Policies BNE1 and INF8. However, in meeting the clear needs outlined, without unacceptable, or undue, impacts, the proposal would accord with DDWLP Policy W1b, SDLP Part 1 Policy BNE4 and SDLP Part 2 Policy BNE5. I take the view, based on the balancing exercise I have carried out above, that this accordance with DDWLP Policy W1b in particular, means that the proposal is in accordance with the development plan, read as a whole, and there are no material considerations that would justify a contrary decision. As a result, I intend to allow the appeal and grant planning permission for the proposals.
79. It is relevant to consider the alternative approach. If I had found that notwithstanding the demonstrable need for the facility, because of the failure to accord with policies aimed at protecting the landscape, heritage assets, and living conditions, the proposals failed to accord with the development plan read as a whole, then other material considerations, notably the need for the facility, and its other benefits, especially in terms of co-location, and the lack of any alternative site, would justify a decision that was not in accordance with the development plan.

Conditions and Obligations

80. Paragraph 57 of the Framework tells us that conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise, and reasonable in all other respects. Helpfully the parties worked up a list of conditions that formed the basis of a discussion at the Inquiry. These were refined after the discussion, and a fresh version of the list was submitted subsequently. I have largely repeated these in Annex B save for some minor adjustments necessary for the sake of precision. I pick out the more substantive adjustments in what follows below.
81. As is usual, a condition is necessary to deal with commencement (condition 1). A further condition is needed to require notification of the date of commencement to the Waste Planning Authority, and to define what 'commencement' means, for the purpose of the conditions (condition 2). Another condition is essential to set out the approved plans (condition 3). In relation to the latter, I would observe that the so called 'plans condition' is imposed in order to facilitate an application or applications for a Minor Material Amendment (MMA) under s.96A of the Act. As such, it can only include reference to the approved plans, not as drafted, other elements of the application, and the ES.
82. As set out above, the generation of electricity and its export to the National Grid is an important facet of the proposal. On that basis, a condition (condition 4) is justified to require details of the connection to be submitted for approval. Similarly, the ability of the proposal to deliver CHP is one of the benefits of the scheme so it is reasonable to apply conditions requiring a demonstration of CHP readiness (condition 5), and to allow for a 'CHP Review' (condition 6).
83. In highways terms, a condition is needed to ensure that the access, parking, and turning areas have been completed in accordance with the approved plans before the plant is brought into use (condition 8), to ensure bicycle parking has been provided (condition 9) and to secure a highway construction management plan to govern the way construction traffic is dealt with (condition 10). Linked to that, conditions are necessary to secure electric vehicle charging points (condition 26) and a Low Emissions Vehicle Strategy to cover vehicles servicing the facilities (condition 27).
84. The facility has the potential to raise environmental/amenity issues in both the construction and operational phases. To that end, a condition must be applied to secure a Construction Environmental Method Statement that ensures that the generation of dust and/or noise in the construction phase is properly managed (condition 11). The hours during which construction works can take place need to be controlled in order to protect the living conditions of residents (condition 14). In operation, noise management plans need to be approved by the Waste Planning Authority in relation to the ERF (condition 12) and the ARF (condition 13). The hours of operation of the ARF need to be controlled to protect the living conditions of local residents to a reasonable degree (condition 15).
85. The existing site possesses some features of ecological value. As a consequence, a condition is required to protect breeding birds from the effects of the works (condition 16) and the same applies to Great Crested Newts (condition 17).

86. On top of that, conditions are necessary to secure an Ecological Construction Environmental Management Plan to protect ecological interests in the construction phase (condition 18) and a Landscape and Ecological Management Plan to do the same in the operational phase (condition 19).
87. Further, a specific condition is needed to ensure that existing trees to be protected are covered by a Tree Protection Plan (condition 20). On top of that, the nature and delivery of on-site Biodiversity Net Gain have to be secured through a Biodiversity Net Gain Plan (condition 22), and a further condition to ensure its proper delivery (condition 23).
88. I have referred to the nature of the design of the facilities and its visibility in my reasoning above. To ensure that the proposal is implemented in an acceptable fashion, it is appropriate to apply a condition requiring the details of external materials and finishes to be submitted for the approval of the Waste Planning Authority (condition 21). External lighting has the potential to cause issues for bats and other nocturnal wildlife, as well as local residents. To ensure that control is exerted over this aspect of the scheme, it is necessary to apply a condition requiring details of any external lighting to be submitted for the approval of the Waste Planning Authority (condition 24).
89. There is the potential for the appeal site to be contaminated so a condition requiring a remediation strategy to be approved and implemented is a reasonable imposition (condition 25). It is essential that surface water drainage of the site is dealt with in an appropriate manner. Conditions are therefore necessary to secure a Management and Maintenance Plan for Surface Water Drainage for the plant in operation (condition 28), and to vouch for its effectiveness through a Surface Water Drainage Verification Report (condition 30).
90. Surface water drainage in the construction phase has to be controlled through a condition too (condition 29). Finally, a condition is necessary to ensure that the development accords with the requirements of the submitted Flood Risk Assessment (condition 31).
91. As set out above, an Agreement under s.106 (the Agreement) was entered into by the parties. Reflective of Regulation 122(2) of the Community Infrastructure Levy Regulations 2010, paragraph 58 of the Framework tells us that planning obligations must only be sought where they are: necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development.
92. The scheme deals with the required Biodiversity Net Gain in two ways. Some would come forward on-site and that element can, as I have referred to above, be dealt with by condition. The remainder needs to be dealt with off-site. To that end, two separate BNG Sites have been promulgated: the first on land at Manor Farm, and the second on land at Bretby. As I have set out above, the Biodiversity Net Gain is an important benefit of the proposals, to which I have attached weight, and the Agreement is designed to secure these sites, the implementation of the habitat creation involved, its completion, and its future monitoring. On that basis, the obligations very clearly meet the tests of the Framework and the relevant regulations.

Final Conclusion

93. For the reasons set out above, and having taken account of the development plan as a whole along with all other relevant material considerations, I conclude that the appeal should be allowed, and planning permission granted subject to the conditions set out in Annex B.

Paul Griffiths
INSPECTOR

Annex A: Appearances

For the Waste Planning Authority

Mark Westmoreland Smith KC

Instructed by Stephen Brent,
Legal and Democratic Services,
Derbyshire County Council

He called:

Alan Potter

Partner, BPP Consulting

Xanthe Quayle

Director, Xanthe Quayle
Landscape Architects

Alyn Nicholls

Principal, Alyn Nicholls
Chartered Town Planners

For the Appellant

David Elvin KC

Instructed by Robert Garden,
Cameron McKenna Nabarro
Olswang LLP

He called:

Adam Hinds

Redbourn Capital

Richard Smyth

Partner, Stephen George &
Partners Architects

Jon Mason

Technical Director, Axis

Stephen Othen

Technical Director, Fichtner
Consulting Engineers Ltd

Nicholas Leaney

Director and Head of Planning
and Development Team,
Aardvark EM Ltd

Interested Persons

Councillor Amy Wheelton

South Derbyshire DC

Councillor Stuart Swann

Derbyshire CC

Shlomo Downen

UKWIN

Josh Downen

UKWIN

Stephen Wright

Local Resident

Ann Hughes

Chair, Overseal Parish Council

Timothy Eley

Local Resident

Pam Stones	Local Resident
Susan Weekes	Local Resident
Sam Thomas	Local Resident
Colin Chapman	Local Resident
Tony Bayliss	Local Resident
Sue Jemson	Local Resident
Councillor Alan Hayes	Derbyshire CC and S Derbyshire DC
Matej Greabowski	Local Resident
Nicola Moore	Local Resident
Dr Tracey Wond	Local Resident and Community Against the Swadlincote Incinerator (CASI) Lead
John Pritchard	Local Resident
Matthew Hunt	Local Resident
Darren Greenwood	Local Resident
Mark Chessman	Local Resident
Graham Steward	Local Resident
Scott Tracey	Local Resident
Bill Thompson	Local Resident
Emma Attwood	Local Resident
Gary Ramsell	Local Resident
Jeanette Simpkin	Local Resident
William Raffle	Local Resident

Annex B: Schedule of Conditions

- 1) The development permitted shall be begun before the expiration of three years from the date of this permission.
- 2) The date of commencement of the development shall be notified to the Waste Planning Authority within seven days of the commencement and for the purpose of this decision notice the term “commence” means the carrying out of any material operation as defined by section 56(4) of the Town and Country Planning Act 1990 and the word “commence” shall be construed accordingly save that for the conditions set out below other than those numbered 11, 18, 19, 20, 22, 25 and 29 the term “commence” shall not include surveys, site clearance, the removal stripping and stockpiling of top soil, works of archaeological or ground investigation or remediation, the erection of temporary buildings or structures associated with the development, temporary access construction works, the provision of construction compounds, erection of any fences and hoardings around or on the land and the temporary display of site notices or advertisements and the access road, parking and turning facilities as shown on drawing 21-137-SGP-01- ZZ-DR-A- 131013 Rev F titled Proposed Zone C - Revised Access Road (and “commencement” shall be construed accordingly).
- 3) The development hereby permitted shall be carried out in accordance with the following approved plans:
 - Drawing No. 21-137-SGP-01-ZZ-DR-A-131000, Revision H, entitled Location Plan - SRRP, dated 21 January 2022
 - Drawing No. 21-137-SGP-01-ZZ-DR-A-131001, Revision M, entitled Proposed SRRP Site Plan, dated 27 February 2022
 - Drawing No. 21-137-SGP-01-ZZ-DR-A-131003, Revision C, entitled Planning_SRRP_Hard Landscaping, Fences, Gates and Barriers, dated 10 June 2022
 - Drawing No. 21-137-SGP-01-ZZ-DR-A-131008, Revision I, entitled Location Plan – SRRP & S73, dated 6 April 2022
 - Drawing No. 21-137-SGP-01-ZZ-DR-A-131009, Revision J, entitled Zone Plan, dated 25 April 2022
 - Drawing No. 21-137-SGP-01-ZZ-DR-A-131011, Revision E, entitled Planning_SRRP_Masterplan, dated 10 May 2022
 - Drawing No. 21-137-SGP-01-ZZ-DR-A-131013, Revision F, entitled Proposed Zone C – Revised Access Road, dated 25 May 2022
 - Drawing No. 21-137-SGP-01-ZZ-DR-A-131014, Revision B, entitled SRRP Masterplan - Point of Connection, dated 13 September 2022
 - Drawing No. 21-137-SGP-01-ZZ-DR-A-131015, Revision B, entitled Topo Site Plan, dated 21 September 2022
 - Drawing No. 21-137-SGP-01-ZZ-DR-A-131016, Revision C, entitled SRRP Location Plan - Lighting Layout, dated 19 October 2022
 - Drawing No. 21-137-SGP-01-ZZ-DR-A-131017, entitled Illustrative Temporary Construction Compound & Lay Down Area Plan, dated 26 October 2022

Drawing No. 21-137-SGP-AF-ZZ-DR-A-131100, Revision C, entitled ARF Building Layout, dated 7 October 2021

Drawing No. 21-137-SGP-XX-ZZ-DR-A-131101, Revision D, entitled ERF Building Layout, dated 10 June 2022

Drawing No. 21-137-SGP-OZ-ZZ-DR-A-131102, Revision A, entitled Roof Plan, dated 15 June 2022

Drawing No. 21-137-SGP-AF-ZZ-DR-A-131103, Revision C, entitled ARF Roof Plan, dated 11 January 2022

Drawing No. 21-137-SGP-OS-ZZ-DR-A-131104, Revision A, entitled L0 - L2 Office Plans, dated 9 June 2022

Drawing No. 21-137-SGP-OS-ZZ-DR-A-131105, Revision A, entitled L3 – L5 Office Plans, dated 9 June 2022

Drawing No. 21-137-SGP-AF-ZZ-DR-A-131200, Revision C, entitled ARF Building Sections, dated 11 January 2022

Drawing No. 21-137-SGP-XX-ZZ-DR-A-131201, Revision B, entitled Sections AA & BB, dated 9 June 2022

Drawing No. 21-137-SGP-AF-ZZ-DR-A-131300, Revision D, entitled ARF Building Elevations, dated 11 January 2022

Drawing No. 21-137-SGP-XX-ZZ-DR-A-131301, Revision E, entitled Proposed North & South Elevations, dated 7 June 2022

Drawing No. 21-137-SGP-XX-ZZ-DR-A-131302, Revision E, entitled Proposed East & West Elevations, dated 7 June 2022

Drawing No. 21-137-SGP-XX-ZZ-DR-A-131308, Revision C, entitled Building West Elevation – No Equipment, dated 10 June 2022

Drawing No. 21-137-SGP-XX-ZZ-DR-A-131309, Revision C, entitled Ancillary Buildings & Equipment Elevations & Plans, dated 10 June 2022

Drawing No. 21-137-SGP-OS-ZZ-DR-A-131310, Revision B, entitled Site Elevations, dated 10 June 2022

Drawing No. 21-137-SGP-OS-ZZ-DR-A-131900, Revision B, entitled External Visuals, dated 17 June 2022

Drawing No. 01-EWK-1001, Revision C, entitled Proposed Cut Fill Analysis, dated 20 September 2022

Drawing No. 01-GA-1001, Revision A, entitled Preliminary Site Levels, dated 20 September 2022

Drawing No. 01-PDL-1001, Revision A, entitled Preliminary Drainage Layout, dated 20 September 2022

Drawing No. 01-PDL-1002, Revision D, entitled Preliminary Drainage Layout, dated 2 February 2023

Drawing No. 1275/11b, Revision B, entitled Landscape Proposals, dated July 2022

Drawing No. P702-978-D-30, entitled Swadlincote ERF External Lighting, dated 25 October 2022

- 4) No development shall commence until details for connection to the National Grid point of connection have been submitted to and approved in writing by the Waste Planning Authority and the approved details must be implemented prior to the first export of electricity to the National Grid point of connection.
- 5) (A) No part of the development may be commissioned until a scheme to demonstrate CHP readiness has been submitted to and approved by the Waste Planning Authority. (B) The scheme submitted under (A) must as a minimum comply with the conditions relating to CHP readiness within any environmental permit granted in respect of the development. (C) The scheme approved under sub-paragraph (A) must be implemented as approved prior to the coming into operation of the development and maintained throughout the operation of the development.
- 6) (A) Prior to the date of the development coming into operation, to submit to the Waste Planning Authority for its approval a report ("the CHP review") setting out the combined heat and power assessment. The CHP review must consider the opportunities that reasonably exist for the export of heat from the development at the time of the submission of the CHP review; and will include a list of actions that are reasonable and practicable to take and specify the timescales specified to achieve those actions. (B) The actions included within the approved CHP review must be implemented within the timescales specified in the approved CHP review. (C) The Waste Planning Authority must consult with the Environment Agency before approving any CHP review.
- 7) Only the types of waste as are identified in the application form, shall be imported and processed by the proposed development.
- 8) The development hereby approved shall not be brought into use until the access, parking and turning facilities have been provided, as shown on drawing 21-137-SGP-01- ZZ-DR-A- 131013 Rev F titled Proposed Zone C - Revised Access Road.
- 9) Prior to the first commissioning of any part of the development hereby approved, sheltered, secure and accessible bicycle parking shall be provided, in accordance with details which have been first submitted to and approved in writing by the Waste Planning Authority. The bicycle storage area shall be retained thereafter.
- 10) No development shall commence until details of a highway construction management plan have been submitted to and approved in writing by the Waste Planning Authority. The approved plan shall be adhered to throughout the demolition/construction period. The plan/statement shall include, but is not restricted to: parking of vehicle of site operatives and visitors (including measures taken to ensure satisfactory access and movement for existing occupiers of neighbouring properties during construction); advisory routes for construction traffic; any temporary access to the site; locations for loading/unloading and storage of plant, waste and construction materials; the method for preventing mud and dust being carried onto the highway; arrangements for turning vehicles; arrangements to receive abnormal loads or unusually large vehicles; highway condition survey to cover the public highway route from the Cadley Hill roundabout to the entrance to the development site; and methods of communicating the Construction

Management Plan to staff, visitors and neighbouring residents and businesses.

- 11) No development shall commence until a Construction Environmental Method Statement (CEMS) has been submitted to and approved in writing by the Waste Planning Authority. The CEMS shall include: construction dust management plan in accordance with measures described as both 'desirable' and 'highly recommended' set out in Appendix A6 of the Air Quality Assessment: Swadlincote Resource and Recovery Park (Air Quality Consultants Sept 2022); construction noise management plan in accordance with measures outlined within the submitted Environmental Statement – Chapter 9 Noise and Vibration; and provision of quarterly community liaison meetings. The development shall be undertaken in accordance with the approved CEMS.
- 12) Prior to the first commissioning of the Energy Recovery Facility hereby approved, a noise management plan shall be submitted to and agreed in writing by the Waste Planning Authority, incorporating the mitigation measures identified in Section 9.7, and the enhanced mitigation proposed in Paragraph 150 of the Environmental Statement – Chapter 9 Noise and Vibration. The agreed noise management plans should include a site boundary noise limit, and include night time maximum noise levels (LMAX). Compliance with the management plans should be validated during the commissioning of the plant, and within six months of becoming operational. Compliance with the noise limits, contained within the plan thereafter, should be checked by the operator no less than every 12 months, and a validation report submitted to the Waste Planning Authority annually.
- 13) Prior to the first commissioning of the Aggregate Recycling Facility hereby approved, a noise management plan shall be submitted to and agreed in writing by the Waste Planning Authority, incorporating the mitigation measures identified in Paragraph 172 of the of the Environmental Statement – Chapter 9 Noise and Vibration. The agreed noise management plans should include a site boundary noise limit, and include night time maximum noise levels (LMAX). Compliance with the management plans should be validated during the commissioning of the plant, and within six months of becoming operational. Compliance with the noise limits, contained within the plan thereafter, should be checked by the operator no less than every 12 months, and a validation report submitted to the Waste Planning Authority annually.
- 14) During the period of construction, no ground, construction or fitting out works shall be undertaken and no deliveries shall be taken at or dispatched from the site other than between the following hours: 0800 and 1800 hours Monday to Friday; and 0800 and 1300 hours on Saturdays. There shall be no deliveries, despatches or ground, construction, or fitting out works undertaken (except for works to address an emergency) on Sundays, Bank Holidays or other Public Holidays.
- 15) The hours of operation of the Aggregate Recycling Facility shall be limited to the following hours: 0700 to 1800 hours Monday to Friday; and 0700 to 1400 on Saturdays. No operations shall be undertaken on Sundays, Bank Holidays, or other Public Holidays.

- 16) No stripping, demolition works, or vegetation clearance shall take place between 1st March and 31st August inclusive, unless preceded by a nesting bird survey undertaken by a competent ecologist no more than 48 hours prior to clearance. If nesting birds are present, an appropriate exclusion zone will be implemented and monitored until the chicks have fledged. No works shall be undertaken within exclusion zones whilst nesting birds are present.
- 17) Prior to the commencement of any works which may affect Great Crested Newts and/or their habitat, a copy of the relevant issued District Level Licence shall be submitted to the Waste Planning Authority.
- 18) No development shall commence (including demolition, ground works, vegetation clearance and movement of plant, machinery and materials) until a Construction Environmental Management Plan (CEMP: Biodiversity) has been submitted to and approved in writing by the Waste Planning Authority. The CEMP (Biodiversity) shall include the following: (a) risk assessment of potentially damaging construction activities; (b) identification of “biodiversity protection zones”; (c) practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts on species and retained habitats during construction; (d) the location and timing of sensitive works to avoid harm to biodiversity features; (e) the times during construction when specialist ecologists need to be present on site to oversee works; (f) responsible persons and lines of communication; (g) the role and responsibilities on site of an ecological clerk of works (ECoW) or similarly competent person; and (h) use of protective fences, exclusion barriers and warning signs. The approved CEMP (Biodiversity) shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details, unless otherwise agreed in writing by the Waste Planning Authority.
- 19) No development shall commence until a landscape and ecological management plan (LEMP) has been submitted to and approved in writing by the Waste Planning Authority. The LEMP should combine both the ecology and landscape disciplines and include the following: (a) description and evaluation of features to be created, enhanced and managed; (b) ecological trends and constraints on site that might influence management; (c) aims and objectives of management; (d) appropriate management options for achieving aims and objectives; (e) prescriptions for management actions; (f) preparation of a work schedule (including an annual work plan capable of being rolled forward over a five-year period); (g) details of the body or organisation responsible for implementation of the plan; (h) ongoing monitoring visits, targets and remedial measures when conservation aims and objectives of the LEMP are not being met; and (i) locations of three bat boxes and five bird boxes (include specifications/installation guidance/numbers). The approved plan will be implemented in accordance with the approved details.
- 20) No development shall commence until a Tree Protection Plan, based upon the recommendations of the approved ‘FPCR’ Arboricultural Assessment, dated September 2022 (Appendix 7.7 to the environmental statement with the application) has been submitted to and approved in writing by the Waste Planning Authority. All measures of the approved Tree Protection Plan shall be adhered to throughout site preparation and construction operations.

- 21) No above ground development shall commence until details of all materials and finishes of any external building elevations and plant have been first submitted for the approval of the Waste Planning Authority. Development shall be carried out in accordance with the approved details.
- 22) No development shall commence until a Biodiversity Net Gain Plan (BNGP) has been submitted to and approved in writing by the Waste Planning Authority. The aim of the BNGP is to enhance and sympathetically manage the biodiversity value of on-site habitats, in line with the proposals reflected in the submitted Biodiversity Impact Assessment (FPCR, ES Technical Appendix 8.10 Biodiversity Impact Assessment, September 2022) and Biodiversity Metric 3.1 (ES Technical Appendix 8.10A) and to achieve no less than a 10% net gain. The Plan shall address the requirements of net gain at both the Manor Farm and Bretby off-site locations. It shall be suitable to provide to the management body responsible for the site. It shall include the following: (a) description and location of features to be retained, created, enhanced and managed, as per the approved biodiversity metric; (b) aims and objectives of management, in line with desired habitat conditions detailed in the metric; (c) appropriate management methods and practices to achieve aims and objectives; (d) prescriptions for management actions; (e) preparation of a work schedule (including a 30-year work plan capable of being rolled forward in perpetuity); (f) details of the body or organization responsible for implementation of the plan; (g) a monitoring schedule to assess and report on the success of the habitat creation and enhancement measures annually for the first five years and at three-year intervals thereafter with a final report in year 30; (h) a set of remedial measures to be applied if conservation aims and objectives of the plan are not being met; and (i) requirement for a statement of compliance upon completion of planting and enhancement works. The approved Plan will be implemented in accordance with the approved details.
- 23) On commencement of the development, all habitats shown to be retained within area identified as 4-Zone B on the approved Drawing No. 7233-ES-8.10-03, entitled BNG ASSESSMENT SRRP SITE BASELINE HABITATS – RETENTION & LOSS, dated 23 September 2022. Shall be retained for not less than 30 years as a component of the BNG delivery for this site approved under the Biodiversity Gain Plan under Condition 20.
- 24) No external lighting fixtures or fittings shall be installed until a detailed lighting strategy has been first submitted to and approved in writing by the Waste Planning Authority to safeguard bats and other nocturnal wildlife. This should provide details of the chosen luminaires, their locations, and any mitigating feature such as dimmers, PIR sensors and timers. Dependent on the scale of proposed lighting, a lux contour plan may be required to demonstrate acceptable levels of light spill to any sensitive ecological zones/features. Guidelines can be found in Guidance Note 08/18 - Bats and Artificial Lighting in the UK (BCT and ILP, 2018). The approved lighting measures shall be implemented in full and maintained thereafter.
- 25) No development shall commence until a remediation strategy (including a verification plan) to deal with the risks associated with contamination of the site in respect of the development hereby permitted, have been submitted to and approved in writing by the Waste Planning Authority. The remediation

strategy shall include the following components: (1) site investigation scheme to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off-site; (2) the results of the site investigation and the detailed risk assessment referred to in (1) and, based on these, an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken; and (3) a verification plan providing details of the data that will be collected in order to demonstrate that the works set out in the approved remediation strategy are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action. The approved remediation strategy and verification plan shall then be implemented in full as approved.

- 26) Prior to the first commissioning of any part of the development recharge points for electric vehicles shall be provided within the development to comply with the following criteria: one charging point for every 10 parking spaces (this may be phased with 5% provision initially and a further 5% trigger). To prepare for increased demand in future years, appropriate cable provision should be included in scheme design and development in agreement with the local authority; charging points shall be supplied by an independent 32 amp radial circuit and equipped with a type 2, mode 3, 7-pin socket conforming to IEC62196-2. Alternative provision to this specification must be approved in writing, by the Waste Planning Authority; and the electric vehicle charging points shall be provided in accordance with the stated criteria prior to occupation and shall be maintained for the life of the approved development.
- 27) Prior to the first commissioning of any part of the development, a written scheme, providing full details of controls from fleet transport emissions, shall be submitted to and approved in writing by the Waste Planning Authority. The scheme shall include details about the mix of the vehicle engine and fuel types and fleet management measures which will be taken to minimise the emissions of respirable particulate (PM) and nitrogen dioxide (NO₂). The Low Emissions Strategy shall include specific targets for emission reduction and timescales. The measures in the agreed scheme shall be delivered in accordance with the agreed timescales and maintained throughout the life of the development.
- 28) No development shall commence until a detailed design and associated management and maintenance plan of the surface water drainage for the site, in accordance with the principles outlined within: Flood Risk Assessment Reference: 1079, dated 30 September 2022, prepared by Awcock Ward Partnership *"including any subsequent amendments or updates to those documents as approved by the Flood Risk Management Team"* and DEFRA's Non-statutory technical standards for sustainable drainage systems (March 2015), have been submitted to and approved in writing by the Waste Planning Authority.
- 29) No development shall commence until a Surface Water Drainage Plan for the construction phase has been submitted to and approved in writing by the Waste Planning Authority, that details how additional surface water run-off from the site will be avoided during the construction phase. The applicant may be required to provide collection, balancing and/or settlement systems for

these flows. The approved system shall be operating to the satisfaction of the Waste Planning Authority, before the commencement of any works, which would lead to increased surface water run-off from site during the construction phase.

- 30) Prior to the first commissioning of any part of the development, a verification report carried out by a suitably qualified independent drainage engineer must be submitted to and approved in writing by the Waste Planning Authority. The verification report shall demonstrate that the drainage system has been constructed as per the agreed scheme (or detail any minor variations), provide the details of any management company and state the national grid reference of any key drainage elements (surface water attenuation devices/areas, flow restriction devices and outfalls).
- 31) The development shall be carried out in accordance with the submitted Flood Risk Assessment (Ref. 1079, dated 30 September 2022) and the following mitigation measures it details: finished floor levels shall be set in accordance with Section 5.2, above Ordnance Datum (AOD); and compensatory storage shall be provided in accordance with Section 5.3, and EIA Chapter 13, paragraphs 51 to 54. These mitigation measures shall be fully implemented prior to the first commissioning of any part of the development and subsequently in accordance with the scheme's timing/ phasing arrangements. The measures detailed above shall be retained and maintained thereafter throughout the lifetime of the development.