The Planning Inspectorate

Appeal Decisions

Inquiry sat on 9-12, 24 April & 26-28 November 2019

Accompanied site visit made on 23 April 2019

by I Jenkins BSc CEng MICE MCIWEM

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

Decision date: 4th February 2020

Appeal A Ref: APP/A4710/W/18/3205776
Belmont Industrial Estate, Rochdale Road, Sowerby Bridge, West Yorkshire, HX6 3BL

- 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 Calder Valley Skip Hire Ltd against the decision of Calderdale Metropolitan Borough Council.
- The application Ref 17/00113/WAM, dated 1 February 2017, was refused by notice dated 2 January 2018.
- The proposed development is described as construction of external flue, and change of use of existing building from recycling use (B2) to heat and energy recovery process (sui generis) and introduction of mechanical drying of inert soils and aggregates (B2) adjacent to the existing recycling shed together with the installation in underground ducts of pipes connecting the energy recovery plant in the said building to the dryer.

Appeal B Ref: APP/A4710/W/18/3205783
Belmont Industrial Estate, Rochdale Road, Sowerby Bridge, West Yorkshire, HX6 3BL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Calder Valley Skip Hire Ltd against the decision of Calderdale Metropolitan Borough Council.
- The application Ref 17/00114/VAR, dated 1 February 2017, was refused by notice dated 2 January 2018.
- The application sought planning permission for a Recycling centre with indoor sorting shed and widening of access from Rochdale Road (as amended) without complying with conditions attached to planning permission Ref. 04/02712/FUL, dated 29 June 2006.
- The conditions in dispute are Nos. 5 and 12 which state that:
  - No. 5-Unless otherwise agreed in writing by the Local Planning Authority, the use of the premises shall be restricted to the hours from 07:00 to 18:00 Mondays to Fridays and from 08:00 to 14:00 on Saturdays, and the premises shall not be used at any time on Sundays and Bank or Statutory Holidays.
  - No. 12-There shall be no burning at any time on the site.
- The reasons given for the conditions are:
  - No. 5-In the interests of the amenity of occupiers of nearby properties.
  - No. 12-In the interests of the amenity of the occupiers of nearby properties and to ensure compliance with Policy N91 of the *Calderdale Unitary Development Plan*.

Decisions

1. Appeal A (APP/A4710/W/18/3205776) is allowed and planning permission is granted for construction of external flue, and change of use of existing building from recycling use (B2) to heat and energy recovery process (sui generis) and introduction of mechanical drying of inert soils and aggregates (B2) adjacent to the existing recycling shed together with the installation in underground ducts of pipes connecting the energy recovery plant in the said building to the dryer at Belmont Industrial Estate, Rochdale Road, Sowerby Bridge, West Yorkshire, HX6 3BL in accordance with the terms of the application, Ref. 17/00113/WAM, dated 1 February 2017, subject to the schedule of conditions set out in Appendix 3 at the end of this document.

2. Appeal B (Ref. APP/A4710/W/18/3205783) is allowed and planning permission is granted for a Recycling centre with indoor sorting shed and widening of access from Rochdale Road (as amended) at Belmont Industrial Estate, Rochdale Road, Sowerby Bridge, West Yorkshire, HX6 3BL in accordance with the application Ref. 17/00114/VAR, dated 1 February 2017, without compliance with the conditions previously imposed on planning permission Ref. 04/02712/FUL, dated 29 June 2006, and subject to the schedule of conditions set out in Appendix 4 at the end of this document.

Procedural matters

3. Whilst the planning application the subject of appeal A was with the Council for determination the plans were amended to remove a previously proposed extension to an existing building and the description of development was modified to reflect this change. I have taken this into account and determined the appeal on the basis of the modified scheme, as did the Council. The modified description is reflected in the summary information and formal decision set out above.

4. Regulation 76 of *The Town and Country Planning (Environmental Impact Assessment) Regulations 2017* (2017 EIA Regulations) sets out the circumstances under which *The Town and Country Planning (Environmental Impact Assessment) Regulations 2011* (2011 EIA Regulations) continue to apply. These include where '*an applicant, appellant or qualifying body, as the case may be, has submitted an Environmental Statement or requested a scoping opinion'* prior to the commencement of the 2017 EIA Regulations. In the case of the subject appeals, the 2011 EIA Regulations continue to apply. An Environmental Statement[1] (ES) was submitted in support of the proposals.

5. Topographical survey results attached to the appellant's email to the Planning Inspectorate, dated 17 April 2019, indicated that the ground floor level of the appeal building, which had been used in the ES and formed the basis of a number of the assessments, was incorrect. The actual floor level was around 9 metres lower. In response, on the 18 April 2019, the Planning Inspectorate issued a request on my behalf, pursuant to Regulation 22 of the *Town and Country Planning (Environmental Impact Assessment) Regulations 2011 (as amended)*, that the appellant provide Further Information for the purposes of the Inquiry, reflecting the correct site levels.

[1] CD10 and addenda related to traffic and habitats, submitted on 8 February 2019 to the Council and the Planning Inspectorate.

6. At the Inquiry on 24 April 2019, the appellant confirmed its intention to comply with the request and asked for the Inquiry to be adjourned to allow time for it to prepare and submit the Further Information. I agreed to the request, so that my decisions could be based on the updated Environmental Statement in the interests of all parties. Furthermore, the resumption date for the Inquiry of 26 November 2019 was announced.

7. The Inquiry resumed on 26 November 2019, following the submission of an Environmental Statement Addendum, July 2019[2] (ESA) (and technical appendices) taking account of the corrected site level data as well as an associated update of the Non-Technical Summary. Other information, such as proofs of evidence, were submitted for the purposes of the Inquiry. In reaching my conclusions, I have taken account of the environmental information, which I consider to be sufficient to assess the likely environmental impacts of the applications.

8. Reference documents submitted by the appellant prior to the Inquiry, nos. 1-53, are referred to as core documents (CD) in the footnotes below. Documents submitted following the opening of the Inquiry are listed in Appendix 2 and are given Inquiry Document numbers (ID).

Main Issues

9. The Council cited a single reason for the refusal of the planning applications the subject of appeals A and B, which related to air quality. However, I have also had regard to other relevant planning concerns raised by interested parties.[3]

10. In relation to appeal A, I consider that the main issues are: whether the proposal would be inappropriate development in the Green Belt, having regard to any relevant local and national policies; the effect on the openness of the Green Belt; the effect on living conditions in the local area, with particular reference to air quality as well as noise and disturbance; the effect on flood risk; the effect on the safety and convenience of the users of public footpath Sowerby Bridge 94a; and, whether the proposal would be consistent with the aims of local and national policy as regards moving the management of waste up the Waste Hierarchy.

11. In relation to appeal B, I consider that the main issue is the effect on living conditions in the local area, with particular reference to air quality as well as noise and disturbance.

Reasons

Background

12. The appeal site is currently used as a waste recycling and recovery centre, a use for which planning permission was originally granted in 2006[4]. The proposed small waste incinerator plant (SWIP) would be housed in an existing building (SWIP building/appeal building) situated at the northeastern end of the site. Whilst that building was formerly used for vehicle maintenance, at present it is being used to store some of the proposed plant. The proposed mechanical dryer would be situated alongside the southwestern elevation of the

[2] Inquiry Document 75 (ID75).
[3] ID69 para 2.2.
[4] Planning permission Ref. 04/02712/FUL.

large waste recycling building (WRB), which is situated towards the middle of the site. Between the WRB and the SWIP building there is an office building as well as a weighbridge and associated small office. Much of the remainder of the site is surfaced in concrete. The site is accessed using a short accessway off the A58, Rochdale Road.

Appeal A

Inappropriate development in the Green Belt

13. The proposal would include the addition of an incinerator flue stack (proposed stack) to the SWIP building. RUDP Policy NE3 indicates that proposals for limited extension and/or alteration to buildings other than dwellings will be refused unless very special circumstances to justify inappropriate development are demonstrated. However, the *National Planning Policy Framework, February 2019* (the Framework) indicates that the construction of new buildings should be regarded as inappropriate in the Green Belt, with certain exceptions. The exceptions include the extension or alteration of a building provided it does not result in disproportionate additions over and above the size of the original building[5]. I consider therefore, that RUDP Policy NE3 is inconsistent with the provisions of the Framework and unduly restrictive. For those reasons, whilst under the terms of RUDP Policy NE3 the appeal scheme would amount to inappropriate development in the Green Belt, I give that matter little weight.

14. I also give little weight to the unsupported assertion made by the appellant at the Inquiry that the SWIP building may have formed part of a large mill building which previously occupied a similar position on site. I attribute greater weight to the first-hand account of a former local resident[6], who stated that the mill building had been removed in its entirety in the 1970s. I consider it appears most likely that the SWIP building, which was the subject of planning application Ref. 06/01246/FUL seeking *an extension to the servicing garage*, was the building as built; the original building for the purposes of Green Belt policy. Based on the estimates agreed by the Council and appellant, it appears to me that the extension approved by planning permission Ref. 06/01246/FUL is likely to have resulted in a small increase in the footprint of the building and an increase of around 46% in its volume. The proposed stack would have an external diameter of some 0.6 metres and would project above the ridgeline of the taller section of the existing building by around 4.6 metres[7]. The increase in the volume of the building resulting from the appeal proposal would be small. In my judgement, having regard to the cumulative effect of extensions, the proposed extension of the SWIP building would not result in disproportionate additions over and above the size of the original building.

15. The form, bulk and general design of the SWIP building is in keeping with its surroundings, which include a number of buildings such as the larger WRB. The SWIP building is of permanent and substantial construction and is capable of conversion without major or complete reconstruction. The Framework indicates that the re-use of such buildings is not inappropriate providing the

[5] Framework definition-Building as it existed on 1 July 1948 or, if constructed after 1 July 1948, as it was built originally.
[6] A Watson.
[7] Environmental Statement Addendum Appendix 2.2 Survey Levels Comparison Table.

development preserves openness and does not conflict with the purposes[8] of including land within the Green Belt.

16. The appellant has estimated that the transportation of waste between the WRB and the SWIP building would be likely to involve around 5 vehicle movements per hour during a normal working day. However, it appears to me that vehicles able to access the SWIP building would be likely to be much smaller than the Heavy Goods Vehicles (HGVs) that already move around the site on a frequent basis. The number of vehicle movements associated with the transportation of SWIP ash off site would be limited. Under these circumstances, I consider that the vehicle movements associated with the proposed change of use would be unlikely to have a material detrimental effect on the openness of the Green Belt. My view is reinforced by the potential fallback use of the SWIP building. The appellant has indicated that in the event of planning permission being refused in this case, it is likely that the SWIP building would be put to another use within the scope of existing permissions and that some 2-way traffic flows would be associated with that use. Whilst I have no reason to believe that the number of vehicle movements would be as high as likely to be associated with the appeal scheme, I consider that some weight is attributable to the fallback position. Although incinerator ash would be stored in skips within the existing yard area, prior to removal from site, the quantities involved would be likely to be relatively small and skip storage is a feature of the existing use.

17. In summary, the proposed change of use would result in an increase in the size of the SWIP Building, albeit limited, additional vehicular activity between on-site buildings, and additional skip storage in the yard area. However, the existing site is characterised by a number of buildings that are bulkier than the SWIP building, frequent movements of large vehicles and the external storage of skips. Furthermore, whilst the buildings and associated operational activity would be clearly visible from the public footpath that runs through the site, surrounding woodland limits visibility from vantage points in the wider area. The proposed stack would not extend above the top of the neighbouring woodland canopy. I consider overall that the proposal would preserve the openness of the Green Belt.[9] Furthermore, in my judgement, the re-use of the building within an existing waste management site would not conflict with the purposes of including land within the Green Belt. Therefore, the re-use of the proposed SWIP building would not amount to inappropriate development in the Green Belt.

18. The proposed mechanical dryer would be sited in the yard area alongside the southwestern elevation of the WRB. The appellant has indicated that it would be a free-standing piece of plant, not fixed to the concrete surface, and this has not been disputed. Under these circumstances, I consider that it would not amount to operational development. Furthermore, it would not result in a material change of use, as it would be used to process inert soils and aggregates as part of an industrial process (Class B2) and the site is already in Class B2 use. Therefore, it would not constitute inappropriate development in the Green Belt. If in the alternative, the proposed mechanical dryer were to amount to operational development in the form of an extension to the WRB, as

[8] Framework-purpose: to check the unrestricted sprawl of large built-up areas; to prevent neighbouring towns merging into one another; to assist in safeguarding the countryside from encroachment; to preserve the setting and special character of historic towns; and, to assist in urban regeneration, by encouraging the recycling of derelict and other urban land.
[9] ID70 section 4 and proof of evidence of Andrew Stevenson Appendix 2..

argued by the Council, this would not alter my conclusion. Relative to the large scale of the original WRB, the mechanical dryer would add little in terms of either footprint or volume. Having regard to the cumulative effect of previously approved extensions, the proposed mechanical dryer would not result in disproportionate additions over and above the size of the original WRB. In those circumstances, it would not constitute inappropriate development in the Green Belt either.

19. The proposed installation of pipes to connect the SWIP to the mechanical dryer would amount to an engineering operation which would not affect the openness of the Green Belt, as the pipes would be situated below the surface of the site. Furthermore, the pipework installation beneath the concreted yard area of the site would not conflict with the purposes of including land within the Green belt set out in the Framework. It would not constitute inappropriate development in the Green Belt.

20. I conclude that whilst the scheme would amount to inappropriate development under the terms of RUDP Policy NE3, that Policy is not consistent with the Framework and, in that context, is unduly restrictive, and so I give that matter little weight. I conclude overall, that the appeal proposals would not amount to inappropriate development in the Green Belt, with particular reference to the terms of the Framework. This is also the view of the Council. It follows that the Framework requirement to demonstrate very special circumstances in order to justify inappropriate development in the Green Belt does not apply in this case.

Openness of the Green Belt

21. I consider, for the reasons set out above, that the proposal would preserve the openness of the Green Belt.[10]

Living conditions-air quality

22. Policy EP 1 of the *Calderdale Replacement Unitary Development Plan, 2006* (RUDP) indicates that development which might cause air pollution will only be permitted if: i) it would not harm the health and safety of users of the site and surrounding area; and, ii) it would not harm the quality and enjoyment of the environment. Furthermore, where permission is granted, appropriate conditions and/or planning obligations will be attached to ensure that the air quality is maintained. Reading the Policy as a whole, it appears to me that the latter requirement seeks to maintain the air quality expected to result from the development, which has been found to meet criteria i) and ii). It does not seek to ensure that air quality is maintained at a pre-existing level. If that were the case, it seems to me that criteria i) and ii) would be redundant.

23. RUDP Policy WM 9 identifies that proposals for incinerators will only be permitted where they meet a number of criteria. They include, amongst other things, that: the development creates no unacceptable environmental or amenity problems; and, appropriate provision is made for the control of emissions to the air. Furthermore, it requires incinerators to be located in an area appropriate to their development (such as an industrial area) away from major concentrations of population. The reasoned justification for the Policy indicates that the reasons for this requirement include the impact of airborne emissions.

[10] ID70 section 4 and proof of evidence of Andrew Stevenson Appendix 2..

24. These Policies are consistent with the aims of the Framework, which seeks to ensure, amongst other things, that new development is appropriate to its location taking into account the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment, as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development.

25. The appeal site comprises an existing waste management site at the bottom of a steep sided valley and, in the vicinity of the site, the valley bottom is generally characterised by commercial and industrial land uses. Rochdale Road runs along the valley side to the northwest of the site and whilst the area beyond is predominantly in residential use, it includes some other uses such as schools. In comparison, the southeastern side of the valley thereabouts is generally characterised by a lower density, scattered pattern of residential development, with grassland and some livestock in evidence. I share the view set out in the Council's Report to the Planning Committee that the nearby residential areas do not amount to a major concentration of population.[11] The Calderdale Air Quality Management Area No. 2 (AQMA2), which encompasses parts of Sowerby Bridge, is situated approximately 700 metres to the northeast of the proposed SWIP, at the closest point.

26. *Land-Use Planning & Development Control: Planning for Air Quality* (LPDC) is guidance published by Environmental Protection UK and the Institute of Air Quality Management. Although it is non-statutory guidance, there is no dispute either: that it is widely used to guide the assessment of the air quality implications of development proposals; and, that it is a material consideration in this case. It indicates that in the majority of cases, the impacts from an individual development will be insufficiently large to result in measurable changes in health outcomes that could be regarded as significant by health care professionals. In reality, therefore, it is the impact on local air quality that is used as a proxy for assessing effects on health. Furthermore, it identifies an assessment framework for describing impacts which can be used as a starting point to make a judgement on significance of effect. The LPDC indicates that judgement of the overall significance of effect of a development should be made by a competent professional who is suitably qualified and will need to take account of factors such as: the existing and future air quality in the absence of the development; the extent of current and future population exposure to the impacts; and, the influence and validity of any assumptions adopted when undertaking the prediction of impacts. Furthermore, the presence of an AQMA that may be affected by a proposed development will increase the sensitivity of the application and any accompanying assessment. The LPDC assessment framework impacts descriptor table acknowledges this.[12]

27. The air quality assessments submitted in evidence include assessments of air quality within the study area without the proposed development (baseline) as well as the likely cumulative impact of the development. The ESA indicates that, when consulted, the Council's Pollution Control Officer confirmed that there were no significant committed sources of emissions which should additionally be taken into account. I have not been provided with any compelling evidence to the contrary and note that a permit application

[11] CD21.
[12] LPDC para 7.1-7.12

Ref. S13/004 for the operation of a SWIP at the appellant's Mearclough Road site in Sowerby Bridge has been refused[13].

28. The Council has confirmed that the concerns upon which its reason for refusal is based relate to Nitrogen Dioxide (NO_2) and not to any of the other potential emissions to air from the scheme. With reference to those other potential emissions, including PM_{10}, $PM_{2.5}$ and hexavalent chromium (Cr VI), the ESA confirms that the predicted process contributions would not be significant and I have not been provided with any compelling evidence to the contrary.[14] I turn then to consider NO_2.

29. As identified in the '*ClientEarth judgements*' referred to by the Council and others, *exposure to nitrogen dioxide in the air carries with it a significant risk to human health. A recent analysis from Department for the Environment, Food and Rural Affairs (Defra) estimates that the effects of exposure to nitrogen dioxide has "an effect on mortality equivalent to 23,500 deaths annually in the UK"…Recognising those risks, EU law seeks to control that exposure by imposing limits on ambient nitrogen dioxide in the territories of Member States and, when limits are exceeded, requiring the publication of Air Quality Plans (AQPs) aimed at reducing that exposure.* Emphasis was placed on '*achieving compliance in the shortest possible time*'.[15] Air quality limits in England in respect of NO_2 are set by Regulations transposing the provisions of EU Directives and EU Limit values, with the aim of protecting human health and the environment.[16] The associated air quality objectives (AQOs) are: 40 $\mu g/m^3$ measured as an annual mean; and, 200 $\mu g/m^3$ measured as a 1-hour mean not to be exceeded more than 18 times per calendar year.

Effect within Calderdale Air Quality Management Area No. 2

30. The Council's Environmental Health Officer (EHO) has indicated that the designation of AQMA2 is due to levels of NO_2 and whilst there is no reason to believe that the 1-hour mean AQO for NO_2 is likely to be exceeded in AQMA2, there is a history of exceedance of the annual mean AQO of 40 $\mu g/m^3$. It is believed the associated levels of NO_2 are largely due to traffic-related pollution supplementing the background levels. Furthermore, the EHO indicates that problematic characteristics of AQMA2 include: built development along West Street and Wharf Street which create street canyons restricting the dissipation of fumes; as well as, standing traffic and parts of the highway where vehicles are acting under load, e.g. accelerating away from traffic lights and climbing Bolton Brow. The main focus of the Council's *Air Quality Action Plan*[17] as well as the *West Yorkshire Low Emission Strategy* is on road transport interventions and modal shift.[18]

31. The Council's *2019 Air Quality Annual Status Report, June 2019* (ASR) indicates that Sowerby Bridge was affected by roadworks in 2018 and although there have been some increases in annual mean concentrations between 2017 and 2018 at a number of the AQMA2 monitoring locations, the associated concentrations in those years are characterised by the ASR as being similar. In my view, this is a reasonable finding, in light of the limited differences

[13] ID70 Appendix 13.
[14] ESA page 3-35.
[15] ID115 paras 12-18.
[16] ID46 page 7 refers.
[17] CD38 and the emerging plan CD49.
[18] CD32 para 10, ID13, Environmental Statement Addendum Appendix 3 para 4.4.

between them. Although the ASR confirms that the AQMA2 continues to be affected by concentrations above the annual mean objective at some of the monitored sites, it identifies that there has clearly been a fall over the period 2012 to 2018 and I consider that the existence of a downward trend is supported by the trend analysis submitted by the appellant.[19] Against that background, I give little weight to the assertion of the Council's air quality witness (WYG) that there is no clear trend, which appears to be based in part on incomplete 2017 data for diffusion tubes SB18 and SB21.[20]

32. The Council accepts that the proposal would not result in increased traffic levels to/from the site relative to the levels which have already been approved under previous permissions. Continuation of those restrictions could be ensured in this case through the imposition of a suitable condition. I consider therefore, that the proposal would not conflict with the actions set out in the Council's *Air Quality Action Plan* or the *West Yorkshire Low Emission Strategy* the main focus of which is to address traffic pollution. Whilst the appellant anticipates that the proposal would reduce the need to transport residual waste from the site to landfill, no allowance for such a reduction has been made in the air quality assessments undertaken on its behalf.

33. I deal first with the air quality baseline, before turning to the impact of the proposed incinerator. A number of different approaches have been used in the air quality assessments submitted in evidence to establish the baseline NO_2 contribution at Receptor 8 (R8), which is located at the southwestern boundary of the AQMA2. In my judgement, of those, the approach taken by RPS in the ESA assessment is the more reliable. In the ES the baseline at R8 was simply assumed to be 95% of the AQO, with reference to exceedances of the AQO at some but not all of the monitoring locations within the AQMA2. In contrast, in its initial evidence to the Inquiry, RPS assumed a figure of 42 $\mu g/m^3$, the average of the values recorded during the period 2012-2016 at the Council's automatic continuous monitoring point AQS4. However, given the variation in monitored levels throughout the AQMA2 and that AQS4 is some distance away from R8, in my view, it is not self-evident that this is either representative or conservative.

34. In its evidence to the Inquiry, WYG used an ADMS-Roads model verified using its own diffusion tube monitoring results to predict baseline NO_2 concentrations. A similar approach was taken by RPS in the ESA, using the Council's own monitoring results to verify the model. Model verification, which involves a comparison of the predicted versus measured concentrations, allows an adjustment to be made for systematic errors. Such errors may include uncertainties in traffic flow, vehicle emissions factors and estimated background concentrations, as well as limitations of the model to represent dispersion in settings where air flow is affected by features such as roadside buildings and trees[21]. Both models have been adjusted and found to be performing well, with reference to the monitored results. However, there is a significant difference between the WYG and RPS baseline predictions for R8: WYG predicting 49.14 $\mu g/m^3$; and, RPS predicting 35.5 $\mu g/m^3$.[22]

[19] ID84.
[20] ID82 and CD46 page 37 table and footnote 'tubes SB18, SB20 and SB21 were discontinued during 2017 and no annualization has been carried out'.
[21] CD41 page 23 para f.
[22] Proof of evidence of Mr Mann, March 2019 Appendix B page 42 Table B4 .

35. The ESA confirms that originally, and unusually, the location of R8 was within the road space, rather than at the façade of a building occupied by sensitive receptors. It appears that initially, in the ES assessment, this was unimportant as R8 was being used to judge the impact of the maximum process contribution from the SWIP on the AQMA2 in the context of an assumed baseline figure which was not specific to the R8 location. I agree with RPS that that is not a suitable location for a modelling exercise which seeks to predict levels at sensitive receptor locations.

36. For the ESA, RPS has adjusted the position of R8, moving it from a location within the road to a position that better represents the facades of nearby properties at the boundary of the AQMA2. It is not self-evident that this adjustment has been made by WYG, and RPS has indicated that this may explain WYG's surprisingly high baseline prediction for R8. In my view, there are also a number of other reasons to give greater weight to the RPS baseline prediction. The WYG predicted baseline level of 49.14 µg/m^3 is far higher than the value of around 38 µg/m^3 measured at its nearest diffusion tube survey location point 12 (DT12), whereas, given the location of DT12 next to a bus stop and closer to a traffic light controlled junction than R8, it would be reasonable to expect the value at facades neighbouring R8 (set back from the road) to be lower. My view in this regard is reinforced by the contour map provided by WYG, which suggests that as you move from DT12 towards R8 the concentration could be expected to fall to somewhere in the range 39-36 µg/m^3.[23] Furthermore, at the Inquiry WYG acknowledged that the numerical assessment set out in its proofs of evidence contained a number of errors and whilst it sought to correct these at the Inquiry[24], I consider that this casts doubt over the reliability of its other analysis.

37. For the reasons set out above, and given that its model verification check showed the model to be performing well, I consider that, for sensitive receptors in the vicinity of R8, the RPS predicted annual mean NO_2 baseline contribution of 35.5 µg/m^3 is likely to be reasonably reliable. Furthermore, I am satisfied that it is not necessary to apply an error bar to the result in light of the model verification results.

38. I turn now to consider the impact of the proposed development.
The assessments submitted in evidence of the likely impact of pollutants dispersed from the proposed incinerator stack point source have made use of the ADMS and/or AERMOD dispersion models. They are formally validated steady state Gaussian models and are widely used for undertaking air quality assessments of industrial pollution sources. The Council and appellant agree that they are suitable models with which to assess the likely impact of the discharge from the proposed stack and that they have been used appropriately[25].

39. However, only the point source dispersion modelling reported in the ESA was based on the correct discharge height for the stack, the earlier assessments[26] being based on an incorrect level, as set out at the start of this decision. Therefore, I give greater weight to the ESA assessments. The highest predicted

[23] ID82 figure 3.2.
[24] ID84 pages 7 and 8, ID111-amongst other things, the value for monitoring point 12 is reduced from 44.78 to 37.97 µg/m^3.
[25] CD44 para 8.
[26] Modelling undertaken by: Entran for the original Environmental Statement; RPS for the original proof of evidence of Mr Smyth; and, WYG for the original proof of Mr Mann.

annual mean NO_2 contribution from the point source at R8 is 0.19 µg/m^3 in the ESA.[27] Having regard to the baseline and process contributions, the predicted environmental concentration would not exceed the AQO.[28] As I have already indicated, R8 is located at the southwestern boundary of the AQMA2 and, based on the contour plots provided by WYG and RPS, it appears likely that the contribution of the point source would be even lower at other locations in the AQMA2, further from the site.[29] 0.19 µg/m^3 represents 0.46% of the AQO. The footnotes to the LPDC assessment framework indicate that the user is encouraged to treat the numbers with recognition of their likely accuracy and not to assume a false level of precision. In this context it indicates that a contribution of less than 0.5% of the AQO can be regarded as a change of 0% and described as negligible.

40. The LPDC indicates that whilst model verification will normally be expected for modelling of road traffic emissions, it is not practicable to undertake model verification on point source models. However, the LPDC indicates it is desirable that air quality assessments include a comment on the sensitivity of the results to input choices, so that a view may be taken of the uncertainties.

41. RPS takes the view that it is not appropriate to attempt to quantify the uncertainty of the modelled results, not least due to practical difficulties identified by CERC, the ADMS software authors, involved in attempting to compare modelled and observed annual average concentrations. Instead it relies on a qualitative analysis of uncertainty, with reference to the software models and the inputs used.

42. As regards the inputs to the models, RPS identifies the main components of uncertainty in the predicted concentrations as being associated with the stack emissions, meteorological data and receptor assumptions. Furthermore, it argues that, as a result of the conservative approach it has taken to the inputs, the model outputs are likely to be towards the top of the uncertainty range, tending towards a worst case rather than a central estimate.

43. Dealing first with stack emissions assumptions, the ESA assumes for the most part, including in relation to Nitrogen Oxides, that emissions would be at the maximum levels allowed by the current Industrial Emissions Directive (2010/75/EU) (IED). I consider this to be a conservative approach for a number of reasons. Control of the proposed incinerator process and emissions from it would be regulated under the terms of an Environmental Permit (EP). There is no dispute that it would be open to the Regulator to set limits in accordance with the IED and I have no reason to believe that higher levels would be permitted in this particular case. I give little weight to the example of an EP provided by interested parties, which permitted a higher emission level, as it appears to relate to a wood fuelled boiler in a relatively isolated, exposed location in a moorland setting.[30] The nature and location of development is not directly comparable to that before me. I also consider it would be reasonable to expect that, in practice, operators of the regulated incinerator proposed at the appeal site would aim to operate at a level some way below EP requirements in order to ensure compliance. The appellant has indicated that this would be

[27] ESA Appendix 3 table 5.1.
[28] ID 86-Air emissions risk assessment for your Environmental Permit, page 7 of 12, further action would not be required, ID100.
[29] ESA Figure 2 and Proof of evidence of Mr Mann, March 2019 Figure 4.2.
[30] ID70 Appendix 12.

likely to be the case and that the proposed incinerator would be capable of achieving emission levels for oxides of nitrogen well below the maximum level allowed by the IED. I give no weight to the concern raised by a number of interested parties that EP emissions requirements may not be enforced, as the Framework confirms that planning decisions should assume that separate pollution control regimes operate effectively.

44. Turning to meteorological data, Defra's *Local Air Quality Management Technical Guidance (TG16)* indicates that for point sources, multiple years of meteorological data (three years or more) should be used. This is to ensure that the potential effects of fluctuating wind directions in different years are taken into account when defining exceedance areas. Although results for all meteorological years should be reported, it confirms that any decision should be based upon the worst-case result. The ESA follows this approach with simulations performed using 5 years of data from Leeds-Bradford Airport Weather Station. Whilst using the worst-case result, in this instance 0.19 µg/m^3, indicates a level of conservatism, in my view it is not significant, given the limited range across the 5 years, 0.14-0.19 µg/m^3.[31]

45. I have had regard to the concerns raised by a number of local residents that as the airport is on higher ground and around 25 Km to the northeast of the location of the appeal site, which is in the bottom of a steep sided valley, the data used is unlikely to be representative of the area under study. However, the data used has been modified by the models to take account of local topography, surface roughness effects, such as the neighbouring woodland, and building effects. Furthermore, sensitivity tests have been undertaken, using data from Bingley Weather Station, which is closer to the site, and different modelling assumptions, which indicate that the ESA approach is robust. In addition, air quality witnesses for the Council and appellant have indicated that the modelling accounts to some extent for the effects of temperature inversions, which local residents have indicated are not uncommon in this locality.

46. Under the circumstances, I am content that the meteorological data and the manner in which it is used is likely to be reasonably representative of the area under study, as required by TG16. I have no compelling reason in this case to depart from the view of RPS that this approach is preferable to the use of Numerical Weather Prediction model data, which provides forecast data rather than measured; a matter which is not disputed by WYG.[32]

47. Turning to receptors, the ESA results focus for the most part on discrete receptor locations. With reference to the modelled contour plots showing the predicted geographical extent of impacts[33], I am content that the discrete receptor locations are representative of the likely impact at locations where people are likely to be exposed, having regard to existing patterns of development and the possibility of further development in the future on land to the north of Rochdale Road.

48. As regards the software models themselves, there is no dispute that some uncertainty is likely to be associated with the software models used, being simplified versions of the real situation. However, as I have indicated, they:

[31] ID94.
[32] ID94, ID93.
[33] ESA Figures 2 and 3.

have been formally validated; are widely used for regulatory purposes; and, the Council and appellant agree that they are suitable to assess the likely dispersion of emissions from the proposed stack.

49. At a late stage in the Inquiry, it was suggested by WYG that Computational Fluid Dynamics Modelling (CFDM) could be used to assess the likely impact of calm conditions on dispersion. However, RPS explained that it would be impracticable to use it to make an assessment against the NO_2 AQOs, due to the quantity of data that would need to be processed. I have not been provided with any compelling evidence to the contrary. Furthermore, as part of the sensitivity testing undertaken for the ESA, ADMS was run using a 'calms' option, enabling calm conditions down to wind speeds of 0.3 m/s to be modelled. It found that the NO_2 impacts remain negligible. Furthermore, the appellant's analysis of the meteorological data indicates that lower wind speeds occur only 1% of the time. Under the circumstances, I agree with RPS that CFDM would not be justified in this case.[34]

50. Overall, in my view, RPS's approach to the consideration of likely uncertainty is reasonably robust.

51. In contrast to the approach to uncertainty advocated by RPS, at the Inquiry WYG advocated the application of a +/- 20% error bar to modelling results to account for uncertainties. Applying the +/- 20% suggested by WYG to the 0.19 µg/m^3 result would give a range of 0.15-0.23 µg/m^3. The upper end of the range would be marginally greater than 0.5% of the AQO. Nonetheless, even if that were rounded to a 1% change, the impact, with reference to the LPDC assessment framework, would remain negligible[35]. However, this +/- 20% error bar suggested by WYG was not reflected in its previous written submissions and appears to be based on little more than a case specific judgement of the individual WYG witness, whose written proofs of evidence submitted to the Inquiry were acknowledged to contain a number of errors. Against this background, I consider that little weight is attributable to the suggested WYG approach[36]; and the reasoned RPS approach is to be preferred.

52. I consider overall, that it would be reasonable to regard the ESA predicted stack emissions contributions as likely to be conservative, such that the actual contributions would be unlikely to be higher.

53. As I have already indicated, R8 is located at the southwestern boundary of the AQMA2 and, based on the contour plots provided by WYG and RPS, it appears likely that the contribution of the point source would be even lower at other locations in the AQMA2, further from the site.[37] Insofar as there are parts of the AQMA2 where the AQO is being exceeded, in my judgement, the proposal would be unlikely to make a material contribution to the unacceptable levels of NO_2 there. In this respect it would accord with paragraph 170 e) of the Framework which seeks to prevent new development from contributing to unacceptable levels of air pollution.

[34] ID82 and ID84.
[35] Long-term average concentration at receptor in assessment year= ((35.5+0.23)/40)x100=89%, % change in concentration relative to Air Quality Assessment Level taken as 1%.
[36] ID116 para 10b.- 'Mr Mann reproduced an extract from Coleville et al and suggested that this supported his error bar of +/-20%. But it does not-Coleville et al found that ADMS Urban…over predicts annual mean nitrogen dioxide by between 0 and 12%.'
[37] ESA Figure 2 and Proof of evidence of Mr Mann, March 2019 Figure 4.2.

54. Against this background, I agree with the professional judgement of RPS that the impact of the proposal in terms of the annual mean level of NO_2 would be negligible and it would be unlikely to have a significant effect on human health. Furthermore, in my view, it would be unlikely to materially delay progress towards compliance with the AQO within the AQMA2.[38]

55. Paragraph 181 of the Framework indicates that decisions should contribute towards compliance with relevant limit values or national objectives for pollutants, taking into account the presence of Air Quality Management Areas. Insofar as this indicates that schemes should result in a reduction in existing pollution levels in areas where limit values are being exceeded, the appeal scheme would not do so. However, given the negligible impact of the proposal, it would not materially worsen compliance in the AQMA2. Furthermore, it would not conflict with the actions set out in the Council's *Air Quality Action Plan*, which focus on transport initiatives, and would be unlikely to materially delay progress towards compliance. Under these circumstances, I consider that this conflict with the Framework should, in this instance, be accorded only limited weight.[39]

56. There is no dispute that the proposal would not risk compliance with the 1-hour mean AQO for NO_2, with predicted levels, taking account of the baseline and process contribution, predicted to remain well below the AQO. As regards the impact of the process contribution, LPDC assessment framework is only designed to be used with annual mean concentrations[40]. The LPDC indicates that for short-term concentrations less than 10% of the AQAL can be regarded as being insignificant and in the range 11%-20% the impact can be described as slight[41]. At R8 the ESA predicts a process contribution far less than 10% of the 1-hour mean AQO for NO_2; insignificant.

57. I conclude that, with respect to its effect on air quality within the AQMA2, the scheme would not materially harm the health and safety of users of the AQMA2 or the quality and enjoyment of the environment there. Furthermore, it would be possible to ensure that this remains the case through a combination of the imposition of planning conditions, which I deal with below, and the regulatory controls likely to the associated with the required Environmental Permit. I conclude that the effect on the AQMA2 would not conflict with the aims of RUDP Policies EP 1 or WM 9. Nor would it conflict with the Framework insofar as it seeks to ensure that new development is appropriate to its location taking into account the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment, as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development.

Effect outside Calderdale Air Quality Management Area No. 2

58. WYG has undertaken a survey of baseline air quality within the area surrounding the development site using diffusion tubes mounted close to roadsides. The fullest set of results were reported in ID82. I give little weight to

[38] These circumstances are materially different from those in the case of Gladman Developments Ltd v SSCLG & CPRE (Kent)[2019]EWCA Civ 1543, (ID78), which makes reference to '*moderate adverse*' impacts being '*almost certain*'.
[39] Ms Seymour's rebuttal proof Appendix 1-APP/A4710/W/17/3185542. The approach taken in the 'Hipperholme' appeal decision is of little assistance, as it was determined in the context of an earlier version of the Framework, which differs on this matter.
[40] Table 6.3 footnote 3.
[41] LPDC paras 6.36-6.39.

the previous partial reports. At the resumed Inquiry WYG acknowledged that the numerical analysis set out in ID82 contained a number of errors and it provided corrected data tables in ID111. Of the locations surveyed outside the AQMA2, the highest annual average level reported was 32.29 µg/m^3 (around 81% of the AQO) at a point along Rochdale Road, approximately opposite the appeal site entrance and on the roadside in front of No. 84, Receptor 5. Based on the evidence provided[42], I consider that it would be reasonable to expect the level at the façade of No. 84, which is set back from the highway to be lower. Nonetheless, I have assumed that the reported value is indicative of the baseline at R5 for the purposes of the assessment below.

59. The ESA predicts a maximum annual mean NO_2 process contribution at R5 of up to 1%.[43] Taken together with the baseline, the predicted annual mean concentration at R5 would equate to around 82% of the AQO. With reference to the LPDC assessment framework, this would be a negligible impact.
The outcome would be the same even if the process contribution were to be increased to reflect the upper end of the range that would result from the application of the +/- 20% error bar suggested by WYG. However, for the reasons set out above in relation to the AQMA2, I consider that this would not be appropriate and the RPS approach to uncertainty is to be preferred.
A significantly lower figure would be obtained if the ESA roads modelling results are used (predicted environmental contribution of approximately 31 µg/m^3, equivalent to around 78% of the AQO), rather than the WYG baseline air quality survey results. The ESA indicates that the maximum annual mean NO_2 predicted environmental contributions at the other identified residential receptors outside of the AQMA2 are likely to be lower than at R5. Unlike those residential receptors, R7 represents Spring Bank Industrial Estate, a work place, where the annual-mean AQO does not apply[44]. Nonetheless, the maximum annual mean NO_2 predicted environmental contribution there is also expected to fall well below the AQO.

60. There is no dispute that outside the AQMA2 the proposal would not risk compliance with the 1-hour mean AQO for NO_2, with predicted environmental contributions, taking account of the baseline and process contributions, remaining well below the AQO at all the identified receptors. Furthermore, with reference to the LPDC guidelines for short-term concentrations, the ESA predicts process contributions far less than 10% of the 1-hour mean AQO for NO_2; insignificant, at all receptors. In WYG's original analysis the predicted short-term concentrations fell below 10% of the 1-hour mean AQO for NO_2 at all but 2 receptors, levels at R1 and R8 predicted to be around 11%; slight impact. However, as already identified, that analysis was based on an incorrect stack height and so I give it less weight than the ESA analysis.

61. I conclude that, with respect to its effect on air quality outside the AQMA2, the scheme would not materially harm the health and safety of users of the site or surroundings or the quality and enjoyment of the environment there. Furthermore, it would be possible to ensure that this remains the case through a combination of the imposition of planning conditions, which I deal with below, and the regulatory controls likely to be associated with the required Environmental Permit. I conclude that the effect on air quality outside of the

[42] Mr Smyth's proof of evidence pages 45 and 89-117.
[43] ESA Appendix 3 Table 5.1.
[44] ESA page 33 Table 5.1 footnote.

AQMA2 would not conflict with either RUDP Policies EP 1 or WM 9 or the Framework.

Other matters

62. I have had regard to the concern raised by a large number of interested parties that the effect of the proposal on air quality would harm the health of local residents, who include, amongst others, children, elderly people and some people with breathing difficulties. In no small part, this concern has been prompted by relatively recent experience of the impact on air quality caused by a serious waste fire at the site, which damaged the WRB. However, that event is not directly comparable to the appeal proposal, in relation to which I have concluded the evidence does not support such a finding of harm. There were no objections to the scheme on the grounds of its impact on air quality from either the Council's Environmental Health Officer, the Environment Agency or Public Health England. This adds further weight to my conclusion. Furthermore, in my judgement, there is no compelling evidence before me to show that the perception of harm would be likely to have any significant land use consequences in the local area. Under these circumstances, I give little weight to the perception of harm.

63. I have found appeal decision Ref. APP/J4423/A/10/2143547, drawn to my attention by the Council, to be of little assistance in my consideration of the proposal before me, as the circumstances were materially different. The previous appeal related to a proposed food store extension in Sheffield. Furthermore, it was determined with reference to: a different Policy and guidance framework; and, the risk that the related scheme would itself result in a breach of the annual mean AQO.

Conclusions-air quality

64. I conclude overall, that the effect of the proposal on living conditions in the local area, with particular reference to air quality, would be acceptable and, in relation to this matter, it would not conflict with the requirements of RUDP Policies WM 9 or EP 1 or the aims of the Framework, with particular reference to location relative to concentrations of population as well as environmental and amenity impacts.

Living conditions-noise and disturbance

65. The effect of the scheme on living conditions in the local area with reference to noise and disturbance has not been given as a reason for refusal by the Council, who considers that adequate safeguards could be put in place through the imposition of conditions.[45] However, it has been raised by a number of local residents, who are concerned to ensure that the proposal does not result in increased noise from the site, which they regard as already being unacceptable from time to time.[46]

66. No increase in traffic beyond the limits already approved by the Council is proposed in this case. Furthermore, it does not automatically follow from the nature of the scheme that noise events associated with HGV's waiting on Rochdale Road for the site to open would increase. Relative to the existing position, traffic associated with the export of residual waste would be likely to

[45] ID77.
[46] ID70 section 5.

decrease to some extent. Nonetheless, the scheme would introduce new activity to the site.

67. Consistent with the requirements of RUDP Policy WM 9, RUDP Policy EP 8 indicates that where development proposals could lead to the juxtaposition of incompatible land uses, they will only be permitted if they do not lead to an unacceptable loss of amenity caused by factors such as noise. Where development is permitted appropriate planning conditions will be added as necessary to provide mitigation measures. These Policies are consistent with the aims of the Framework, which seeks to safeguard against development that would contribute to unacceptable levels of noise pollution, including cumulative effects, and to mitigate and reduce to a minimum potential adverse impacts from noise from new developments.

68. The ESA noise assessment considers existing ambient noise levels, the existing operations on the appeal site as well as noise likely to be associated with the proposed SWIP, using the BS 4142:2014 (+A1:2019) *Methods for rating and assessing industrial and commercial sound*. Existing operations have been modelled as part of the ESA noise assessment, in contrast to the ES approach in which existing operations were treated as part of the baseline studies. The assessment of noise likely to be associated with the proposed SWIP operation has included detailed consideration of activities associated with the SWIP building, transportation of refuse derived fuel across the yard and use of the proposed dryer.

69. In common with the findings of the ES noise assessment, the ESA noise assessment concludes that the scheme would have negligible noise effects. I have not been provided with any compelling evidence to the contrary. Whilst the Council indicated that, based on its own measurements, the actual nigh-time background noise level on Rochdale Road may be significantly lower than the 46 $L_{A90,T}$ dB(A) identified by the ESA, the background to the Council's 33 dB(A) value was not fully evidenced and this limits the weight attributable to it. Nonetheless, in any event, as identified by authors of the ESA noise assessment, this would not alter the outcome considered against the significance framework set out in the ESA.[47] It would remain negligible.

70. The ESA noise assessment takes account of a number of proposed measures which would limit noise arising from the site. It would be necessary to secure those measures by condition. It takes account of the proposed operation of the SWIP for 24 hours per day on only 5 days of the week (Monday-Friday). The ESA indicates that there would be a single vent in the southwestern façade of the building to allow adequate ventilation and it is anticipated that during the daytime the entrance door to the SWIP building would only be open for relatively short periods of time to allow the movement of mobile plant involved in moving refuse derived fuel. However, for the purposes of the ESA noise assessment, it was conservatively assumed that the door would be open throughout the daytime assessment period. It is also assumed that mobile plant movements to and from the SWIP building would only occur during the daytime and the doors to the building would remain closed at night. To my mind, the identified mitigation measures could be secured by suitable conditions.

[47] ID79 Appendix 9 page 2, ESA page 4-6.

71. In submissions to the Inquiry, a number of interested parties expressed the concern that, based on past experience, noise arising from within the site would not be adequately regulated. For its part, the Council has indicated that whilst its Environmental Health team has received a number of complaints concerning noise arising from existing activities at the appeal site, it has determined that they did not constitute a statutory nuisance and enforcement action was not justified.[48]

72. Condition no. 4 of planning permission Ref. 04/02712/FUL sets the noise level limit at the site boundary for the existing operation. The Council's Report to the Planning Committee concerning planning application Ref. 17/00113/WAM confirms that verification of sound levels at the boundary presents challenges, not least as part of the boundary follows the River Ryburn. Due to the challenges involved, the Council and appellant agreed at the Inquiry that it is impracticable to undertake the monitoring required to assess compliance with condition no. 4. An alternative condition was proposed, based on assessment in accordance with the BS 4142:2014 (+A1:2019) methodology at residential receptor points which are considered to be representative[49], together with a condition requiring the implementation of a noise management plan.
Having had regard to the comments made during the open discussion of the proposed alternative conditions at the Inquiry, whilst minor amendments would be required, I agree that the proposed alternative approach would be necessary: in the interests of enforceability; and, for the purpose of safeguarding living conditions in the local area, not least as over time the particular equipment used on site may differ from that considered in the ES/ESA assessments.

73. I conclude that, subject to conditions, the effect of the proposal on living conditions in the local area, with particular reference to noise and disturbance, would be acceptable. In this respect it would accord with the aims of RUDP Policies EP 8 and WM 9 as well as the Framework.

Safety and convenience of the users of Footpath Sowerby Bridge 94a

74. Public footpath Sowerby Bridge 94a connects Rochdale Road to the west of the appeal site, to a route along a former railway line through woodland on its eastern side. I understand that the former railway line may form part of a future greenway route being promoted by the community through the Sowerby Bridge Masterplan.[50] The section of the route of the public footpath through the site, which is clearly marked, runs along the side of the access road and across the yard area alongside the weighbridge. As a result, HGVs routinely run alongside and cross the footpath when entering, leaving and manoeuvring within the site[51].

75. Traffic associated with the transfer of waste between the WRB and SWIP building would be likely to increase the frequency with which vehicles cross the footpath. In particular the section between the weighbridge office and the main office building. However, from what I saw, I consider it likely that intervisibility between pedestrians using the footpath and vehicles approaching from the WRB or SWIP building would be sufficiently good to ensure that pedestrians

[48] CD43 and ID103.
[49] ID85.
[50] ID26. ID50-The Council states that it has not been through any formal planning process and would not attract significant weight in development management decisions.
[51] ID55.

and approaching vehicles would be unlikely to come into conflict with one another.

76. I conclude that the appeal scheme would be unlikely to harm the safety or convenience of the users of Footpath Sowerby Bridge 94a, nor would it conflict with the aims of RUDP Policies EP 15 or T11, or the Framework insofar as they seek to protect public rights of way and access.

Flood risk

77. The appeal SWIP building is located alongside the River Ryburn. The Environment Agency's Fluvial Flood Risk Maps indicate that the site of the SWIP building is predominantly located within Flood Zones 2 and 3, with a medium to high sensitivity to fluvial flooding. With reference to the national *Planning Practice Guidance* (PPG), the proposed development is classified as a land use that is 'less vulnerable' to flooding, which is appropriate within Flood Zones 1 and 2. Furthermore, as the scheme comprises a change of use of that building, it is not subject to sequential and exception tests. A site-specific Flood Risk Assessment (FRA) is required and has been provided as part of the ES, with an addendum as part of the ESA.

78. The FRA indicates that detailed hydraulic modelling of the River Ryburn is considered to be beyond the scope of the assessment, given the limited scale of development. Instead a conservative flood level has been derived using the Flood Zone 2 extent as a proxy for Flood Zone 3 with climate change. Having had regard to the supporting technical paper[52] and the absence of any objection from the Environment Agency, I consider this approach to be acceptable. On this basis the FRA identifies a design flood level of 84.35 metres above Ordnance Datum (AOD), which is around 150 mm above the floor level of the appeal building.

79. The FRA identifies a number of measures to safeguard the building and its contents from flooding/flood damage, including the installation of flood gates and raising sensitive equipment above the estimated flood level by at least 300 mm. In my view, these measures are reasonable and implementation could be ensured through the imposition of a suitable condition. Furthermore, the existing internal staircase gives access to higher ground outside the building, providing a safe and dry access/egress route. In addition, the FRA indicates that stockpiles of SWIP fuel stored in the WRB, which would be subject to similar risks, would also be raised above flood level. I am satisfied that these measures would be unlikely to materially reduce flood storage capacity, as the existing appeal building is already enclosed for the most part and floor space within the WRB may well be occupied by waste stockpiles, if not used for the storage of SWIP fuel. The proposed drying plant, which would be located to the southwest of the WRB, would be mounted on legs to minimise flood risk and to ensure that the floodwater displacement potential would be negligible. Incinerator bottom ash would be stored in a small number of skips in the yard area, thereby in my view ensuring containment, minimising flood risk and representing a negligible impact in terms of potential floodwater displacement.

80. The Environment Agency's Surface Water Flood Risk Maps indicate that the site of the appeal building has a low to medium risk of flooding from that source.

[52] ID79 Appendix 2.

I have had regard to the concerns raised by interested parties with respect to the adequacy of the existing site drainage system and evidence showing that parts of the site, including the area around the appeal building, have been the subject of surface water flooding in recent years.[53] Nevertheless, having had regard to that evidence, it appears to me that the mitigation measures referred to above, such as flood gating and elevating sensitive equipment, would also be likely to be sufficient to adequately safeguard the scheme from surface water flood risk.

81. I conclude overall that, subject to condition, the effect of the appeal scheme with respect to flood risk would be acceptable. It would not conflict with RUDP Policies EP 20 and EP 17, which are consistent with the Framework insofar as it seeks to ensure, amongst other things, that: flood risk is not increased elsewhere; development is appropriately flood resistant and resilient; any residual risk can be safely managed; and safe access/egress routes are included. Neither the Council nor the Environment Agency object to the scheme on the basis of flood risk and this adds further weight to my finding.[54]

Waste Hierarchy

82. RUDP Policy WM 1 identifies that proposals for waste management facilities will be assessed against a number of criteria, which include that there is a demonstrated need for the facility. The reasoned justification for the Policy confirms that the aims of the Council's waste management strategy include reducing the amount of waste sent to landfill. The Framework promotes the prudent use of natural resources and indicates that it should be read in conjunction with the Government's planning policy for waste. The *National Planning Policy for Waste, October 2014* (NPPW) confirms the country's waste ambitions include the delivery of sustainable development and resource efficiency by driving waste up the Waste Hierarchy. Disposal, which includes landfill and is the lowest tier of the Waste Hierarchy, is the least desirable option. Other recovery, which includes *R1-use principally as a fuel or other means to generate electricity*, is the next tier in the Hierarchy followed by recycling.

83. The ES (January 2017) indicates that the proposed SWIP would process around 8,000 to 10,000 tonnes/annum of residual non-recyclable waste arising from the existing waste management and recycling operations carried out on site. It indicated that this tonnage of materials was being disposed of to landfill, the lowest tier in the Waste Hierarchy. In my view, this is likely to have been the case, with reference to the 2016 Waste Return sent to the Environment Agency, which details the destinations of waste removed from the site, and other supporting information provided, which identifies the likely levels of recyclable/non-recyclable waste (ID66). I am satisfied that the likely fuel source for the proposed SWIP would be waste otherwise destined for landfill and not recycling.

84. That is not the end of the matter. If the proposal would be an incineration facility dedicated to the processing of municipal solid waste, it must comply with the R1 energy efficiency index in order to be classed as 'other recovery', as opposed to 'disposal'. Guidelines on the R1 energy efficiency formula in Annex II of the Directive 2008/98/EC indicate that '*Waste incinerators*

[53] ID70 section 5.
[54] ID76-Environment Agency response to the ESA.

dedicated to the incineration of municipal waste are waste incinerators which have the permit and are technically designed in a way so that they are capable to incinerate mixed municipal solid waste… The R1 formula does not apply to co-incineration plants and facilities dedicated to the incineration of hazardous waste, hospital waste, sewage sludge or industrial waste.'

85. The appellant has confirmed that the proposed SWIP would be capable of incinerating mixed municipal waste. However, the ES indicated that the existing waste stream giving rise to residual non-recyclable waste was primarily from commercial sources and although some municipal waste is received, it indicated that it is not the main source and the SWIP would not be dedicated to the treatment of municipal waste.

86. However, the available records, ID66, indicate that the majority of the waste received by the site in 2016 was mixed municipal waste (EWC code 20 03 01), as was all of the landfilled waste referred to above. With reference to the 2017 Waste Return (17WR), whilst the waste identified by the appellant as being sent to landfill was also coded as mixed municipal waste, the 17WR indicated that the source of that waste was not municipal. At the Inquiry, the appellant was reported as suggesting that it had coded the waste incorrectly on that Waste Return. I give this suggestion little weight, not least as the appellant has not sought to correct any such reporting error in the records it has submitted to the Environment Agency. Furthermore, to my mind, on the face of the records, it does not automatically follow that there was an error in the coding, given that EWC code 20 03 01 may comprise not only household waste, but also similar commercial, industrial and institutional wastes.

87. The 2019 Waste Return records completed by the appellant following the adjournment of the Inquiry in April 2019 indicate that the profile of waste received and removed from the site has changed somewhat. I give limited weight to this change, not least as the appellant has indicated that the waste types received at the site are likely to fluctuate from time to time and, as identified by the appellant, it still includes a significant amount of mixed municipal waste.

88. Based on the evidence presented, I consider that the source of non-recyclable waste available for use as fuel for the SWIP may well be mixed municipal waste and, as a result, it may be that the proposal could be regarded as being dedicated to the processing of municipal waste. Whilst I note that the appellant's contract with the Council for the management of street cleaning waste was not renewed in 2019, I understand that that waste stream was recycled and would not have contributed to the proposed feedstock for the SWIP.[55] Therefore, this matter does not alter my findings.

89. I have had regard to the appellant's argument that the SWIP may not be classed as an 'installation' to which the R1 efficiency index would apply. However, given: the appellant's acknowledgement that some SWIPs, such as those incinerating waste wood, are classed as 'installations'; and, uncertainty with respect to the character of the fuel, I consider that little weight is attributable to that argument.[56]

[55] ID96.
[56] ID97.

90. Under the circumstances set out above, I consider that in order to be sure that the proposal can be regarded as other recovery, thereby driving the management of the associated waste up the Waste Hierarchy, it would be necessary to ensure that it would meet the requirements of the R1 energy efficiency index. The appellant has stated that it would be able to do so[57] and to my mind this could be secured by condition. In my judgement, subject to condition, it is more likely than not that the SWIP would operate as an R1 facility.

91. The SWIP would produce ash as a by-product of the energy from waste process. Whilst it is the appellant's hope that it can be recycled in the production of aggregates, there is no guarantee that this will be the case and so I give such a benefit no weight in this case.

92. I conclude, with reference to RUDP Policy WM 1, the NPPW and the Framework, that the scheme would be consistent with the aims of local and national policy as regards moving the management of waste up the Waste Hierarchy. I consider that this weighs heavily in favour of the scheme. The scheme would also accord with: Policy WA1 of the *emerging Calderdale Local Plan* (eCLP), which seeks to ensure, amongst other things, that development supports the Waste Hierarchy; and, eCLP Policy CC1 insofar as it seeks to minimise waste going to landfill. I understand that these emerging Policies, which are consistent with the Framework, are not the subject of objections and having had regard to the stage of preparation of the plan, I give them limited weight.

93. Furthermore, the proposal would provide the opportunity for waste arising within Calderdale, as evidenced by the Waste Returns, to be managed in Calderdale, rather than being transported to other areas for management. This would be consistent with: the proximity principle advocated by the NPPW, the aim of which is to ensure communities and businesses are engaged with and take more responsibility for their own waste; and, RUDP Policy WM 1 insofar as it seeks to ensure consideration is given to the location of proposals in relation to the main sources of waste. This also weighs in favour of the scheme.

Other matters

94. The Council and appellant agree that the proposal would not have an adverse impact on sensitive ecological receptors including protected species, habitats and wildlife corridors, and would not harm the adjacent woodland, in keeping with the aims of RUDP Policies NE 15, NE 16 and NE 20 as well as section 15 of the Framework. [58] Furthermore, the proposals would be unlikely to have an adverse effect on the setting of designated heritage assets in the area, having had regard to the appeal site's existing industrial character and appearance, the intervening distances, topography and development as well as the dense woodland enveloping the site and restricting views. In addition, the appeal site makes no contribution to the significance of any heritage asset. In these respects, the proposal would comply with the aims of RUDP Policy BE 15 and section 16 of the Framework.[59] I have not been provided with any compelling evidence to the contrary.

[57] CD15.
[58] CD43 paras 42-43.
[59] CD 43 para 44.

95. Consistent with the Framework, eCLP Policy CC5 gives encouragement to the transition to a low carbon future in a changing climate by, amongst other things, supporting renewable and low carbon energy and associated infrastructure. I understand that this emerging Policy is not the subject of objections and having had regard to the stage of preparation of the plan, I give it limited weight.

96. There is no dispute that emissions resulting from the combustion of waste at the site would include CO_2.[60] However, the Department for Environment, Food and Rural Affairs' (Defra) document entitled *Energy from waste-A guide to the debate, February 2014 (revised edition)* (EFWG) indicates that, in carbon terms, energy from waste is generally a better management route than landfill for residual waste. The EFWG identifies that key factors include the renewable (biodegradable) content of the waste and the energy efficiency of the plant. The appellant has indicated that the residual waste can be expected to include some biodegradable waste and this is supported by the Waste Returns. Furthermore, as I have already indicated, it would be possible to ensure that the proposed facility would comply with the R1 energy efficiency index through the imposition of a suitable condition. The EFWG indicates that the more efficient the energy from waste plant is at turning waste into energy, the greater the carbon offset from conventional power generation and the lower net emissions from energy from waste. I am also conscious that in this particular case, the residual waste used as fuel would no longer be transported to landfill, avoiding trips with which emissions are also associated. Having regard to factors such as these, it appears to me that the proposal would be likely to have a lower greenhouse gas impact (carbon dioxide equivalents) than the existing landfill route, a view shared by the Council.[61] Whilst I note that a number of interested parties have expressed contrary views with reference to work by 'United Kingdom without Incineration Network', the analysis referred to is based on a much larger electricity-only incinerator scenario, not directly comparable to the appeal proposal.[62]

97. I consider on balance that the scheme would accord with eCLP Policy CC5, although in the absence of evidence to show the scale of any associated benefits in terms of greenhouse gas emissions relative to landfill, this particular factor does not add significantly to the weight in favour of the scheme.

98. I note that the Council, acting as the Environmental Permitting Authority, has refused a permit application Ref. S13/004 for the operation of a SWIP at the appellant's Mearclough Road site in Sowerby Bridge[63]. However, whilst I do not know the full circumstances of that scheme, it appears to me that it is not directly comparable to the case before me, not least in terms of its location relative to Sowerby Bridge, and in relation to which I have found that the impact on air quality would be acceptable. Under these circumstances, it is not self-evident that the application for the Environmental Permit which would be required to operate the appeal SWIP, when it is made, would be refused.[64] Each case must be considered primarily on its own merits.

[60] ID70 section 3.4, Appendix 9 National Policy Statement for Renewable Energy Infrastructure (EN-3) para 2.5.38.
[61] ID16 paras 35-46, CD43 para 30.
[62] ID70 section 3.4 and Appendix 11.
[63] ID70 Appendix 13.
[64] ID70 page 9 and Appendix 4.

99. The appeal site comprises previously developed land, well related to the road network and a short distance from an urban area. In my judgement, it can be regarded as a sustainable location, in terms of limiting travel demand and protecting the countryside, and would not conflict with the aims of RUDP Policy GP 2.

100. With reference to my conclusions on the main issues and these other matters, I consider that the proposal would not conflict with the aims of RUDP Policy NE4, which requires schemes involving the re-use of buildings in the Green Belt to meet certain criteria. I note that the requirements of this Policy go beyond those of the Framework as regards the re-use of buildings in the Green Belt.

Conditions[65]

101. The Council has provided a list of suggested conditions, which it considers should be imposed in the event of the appeal being allowed and planning permission granted. The list was discussed at the Inquiry, together with other conditions suggested by interested parties. I have had regard to those views, when compiling the list of conditions set out in Appendix 3 to these decisions, which departs from the Council's list where I consider it necessary in order to accord with the tests of conditions set out in the Framework.

102. In addition to the normal commencement condition (1), conditions would be necessary to ensure that the works would be carried out in accordance with the approved plans (2) and that the scale and nature of the SWIP would be as applied for; a small waste incineration plant fuelled by residual non-recyclable non-hazardous waste arising from on-site waste management operations, with a capacity to take up to 2 tonnes per hour (3-5). This would be necessary in the interests of certainty as well as to ensure that the development is generally in accordance with the scheme which was the subject of the ES/ESA. It would not be reasonable to prohibit the burning of all municipal solid waste, as proposed by the Council, not least as the residual non-recyclable waste arising from site operations is likely to include such waste.

103. In order to ensure that the management of waste would be moved up the Waste Hierarchy, conditions would be necessary requiring that: the infrastructure would be installed and would remain available to enable the use of electricity and heat derived from the SWIP to be used; and, the efficiency of the SWIP energy generation process meets or exceeds the requirements of the R1 energy efficiency index[66] (6-8).

104. In the interests of safeguarding living conditions in the local area, conditions would be necessary to: control the environmental impact of construction activities through a Construction Environmental Management Plan; limit noise levels arising from within the site; restrict operating hours; control dust arising from activity associated with the appeal scheme and control the height of soils stockpiles; control artificial lighting; and, prohibit burning within the site, except in the proposed SWIP (9-17). In my judgement, it is not necessary to make general provision for the appellant to set aside the proposed restrictions on operating hours during emergencies; this would be a

[65] The numbers in brackets ( ) relate to the conditions set out in Appendix 3.
[66] CD15-Annexe 6 to the ES.

matter for discussion with the Local Planning Authority on a case by case basis.

105. In order to manage flood risk and protect the environment from contamination, conditions would be necessary to: ensure the implementation of mitigation measures set out in the Flood Risk Assessment; and, ensure that ground levels within the yard areas of the site are not raised (18-19).

106. The Council, through the grant of planning permission Ref. 06/01777/VAR, approved a relaxation of the restriction imposed by condition no. 27 attached to planning permission Ref. 04/02712/FUL, which seeks to restrict the number of vehicle movements associated with the appeal site. The appellant has confirmed that the appeal A scheme will not lead to vehicle movements exceeding the current restriction and there is no guarantee that it would result in lower levels of vehicle movements, below the level approved by the Council. Whilst I note the desire of a number of interested parties that the approved vehicle movement allowance be reduced, it is not justified by the evidence before me and is not supported by the Council. However, in the interests of certainty and enforcement, in my judgement, a condition would be necessary setting out the existing restriction imposed by condition no. 1 of planning permission Ref. 06/01777/VAR and ensuring records are kept (20).

107. In addition, I consider that the establishment of a liaison group would be likely to help mitigate the concerns expressed by local residents with respect to the proposed use of the site[67]. In light of the significant level of public interest expressed in the appeal proposal, a condition requiring the establishment of such a group would be reasonable and necessary, in the interests of safeguarding living conditions in the local area (21). Furthermore, as the site includes previously developed land which has been filled in parts, it would be necessary to impose a condition seeking to control the risk that excavation would disturb contaminated land, in the interests of safeguarding living conditions in the local area (22).

108. The proposed SWIP would be subject to a separate pollution control regime concerned with the control of processes and emissions, necessitating an Environmental Permit. The Framework indicates that planning decisions should assume that these regimes will operate effectively. Under these circumstances and in light of my findings with respect to the likely impact on air quality, I consider that it would not be necessary to impose a planning condition seeking to control or require monitoring of emissions from the process. Furthermore, the national *Planning Practice Guidance* indicates that blanket removal of freedoms to carry out small scale alterations that would otherwise not require planning permission are unlikely to meet the tests of reasonableness and necessity. Whilst permitted development rights applicable to waste management facilities are constrained by a number of factors, they do not include the Green Belt. In my judgement, I have not been provided with evidence to show that there would be clear justification in this case to remove permitted development rights and under the circumstances, such a condition would not be reasonable or necessary.

109. I have had regard to the concerns raised by a number of interested parties that conditions associated with planning permission Ref. 04/02712/FUL have

[67] Membership to include representatives of the site operator and the local planning authority as well as representatives of local residents, should they wish to be represented.

not been adequately enforced by the Council in the past.[68] Nonetheless, in my judgement, the conditions set out in Appendix 3 to this document meet the tests of conditions, including that they would be practical to enforce. The allocation of resources to such activities is a matter for the Council and not for me.

Conclusions

110. Whilst I have found that the proposal would amount to inappropriate development under the terms of RUDP Policy NE3, I give this matter little weight as the Policy's requirements are not consistent with the terms of the more recent Framework. Under the terms of the Framework, I have found that the scheme would not be inappropriate development in the Green Belt, a view shared by the Council. Against this background, I consider that although RUDP Policy NE3 is out of date, this does not trigger the application of the 'tilted balance', as it is not one of the policies which are most important for determining the appeal.

111. It is clear from the written submissions made and the views expressed by a large number of local people, including some elected officials and objectors who appeared at the Inquiry, that there is a significant level of public opposition to the appeal scheme. However, although the views of those people are important, they must be balanced against the other aspects of the evidence.

112. It has been suggested, with reference to air quality, that allowing the appeal would result in a breach of Human Rights, in particular Schedule 1, Part I Article 2 of the *Human Rights Act 1998*; the right to life. I do not consider this argument to be well founded, as I have found that the scheme would not materially harm human health. In my judgement, having had regard to my conclusions on the main issues and other matters raised, allowing the appeal would not result in interference with or violation of any Human Rights, with reference to the *Human Rights Act 1998*.

113. I conclude on balance that the benefits of the scheme would outweigh any adverse impacts likely to be associated with it and the appeal scheme would accord with the Development Plan taken as a whole. Furthermore, it would amount to sustainable development under the terms of the Framework taken as a whole. For the reasons given above, I conclude that appeal A should be allowed.

Appeal B

114. The planning application subject of Appeal B sought planning permission for a *Recycling centre with indoor sorting shed and widening of access from Rochdale Road (as amended)* without complying with conditions attached to planning permission Ref. 04/02712/FUL. The conditions in dispute were condition nos. 5 and 12. In the event that the appeal were to be allowed, a new planning permission would be created; the original planning permission Ref. 04/02712/FUL remaining unaltered.

115. The application sought a relaxation of the terms of: condition no. 5, which restricts the hours of use of the premises; and, condition no. 12, which prohibits burning on site. The aim was to enable the proposed small waste

[68] For example, ID25.

incinerator plant within the appeal building to burn residual non-recyclable waste and to operate 24 hrs/day Monday to Friday inclusive. I have already taken those matters into account when considering the likely impact of the scheme the subject of appeal A.

Living conditions-air quality

116. For the reasons set out above in relation to appeal A, I consider that, with respect to its effect on air quality, the scheme would not materially harm the health and safety of users of the site or surroundings or the quality and enjoyment of the environment there. I conclude that the effect of the proposed modifications of condition nos. 5 and 12 on living conditions in the local area, with particular reference to air quality would be acceptable, and it would not conflict with the requirements of RUDP Policies WM 9 or EP 1 or the aims of the Framework. Furthermore, in that context the existing restrictions imposed by condition nos. 5 and 12 would not be reasonable and necessary.

Living conditions-noise and disturbance

117. For the reasons set out above in relation to appeal A, I conclude that, subject to the imposition of conditions, the effect of the proposed modifications of condition nos. 5 and 12 on living conditions in the local area, with particular reference to noise and disturbance, would be acceptable and it would not conflict with the requirements of RUDP Policies EP 8 and WM 9 or the Framework. In support of that outcome, it would also be necessary to modify the terms of condition no. 4 attached to planning permission Ref. 04/02712/FUL, which deals with noise monitoring.

Conditions

118. As I have indicated, in the event that appeal B were to be allowed, a new planning permission would be created. The guidance in the national *Planning Practice Guidance* makes clear that decision notices for the grant of planning permission under section 73 should also repeat other relevant conditions from the original planning permission, unless they have already been discharged. The Council has provided a list of suggested conditions, which whilst based on the original planning permission Ref. 04/02712/FUL, includes minor modifications (other than in relation to original condition nos. 4, 5 and 12) to reflect the current status of the previously imposed conditions. The list was discussed at the Inquiry, together with other conditions suggested by interested parties. I have had regard to those views, when compiling the list of conditions set out in Appendix 4 to these decisions, which departs from the Council's list where I consider it necessary in order to accord with the tests of conditions set out in the Framework.

119. The Council's suggested list of conditions did not include condition nos. 21-25 attached to the original planning permission. As the status of those original conditions is unclear, I consider that it would be necessary to re-impose them. In the event that some have in fact been discharged, that is a matter which can be addressed by the parties. The Council, through the grant of planning permission Ref. 06/01777/VAR, approved a relaxation of the restriction imposed by condition no. 27 attached to planning permission Ref. 04/02712/FUL, which seeks to restrict the number of vehicle movements associated with the appeal site. In the interests of consistency, it would be necessary to impose the more recent restriction.

120. In my judgement, the modified conditions proposed would not alter the nature of the previously approved recycling centre development Ref. 04/02712/FUL and would fall within the scope of section 73 of the *Town and Country Planning Act 1990.*

Conclusions

121. I conclude on balance that the benefits of the scheme would outweigh any adverse impacts likely to be associated with it and the appeal scheme would accord with the Development Plan taken as a whole. Furthermore, it would amount to sustainable development under the terms of the Framework taken as a whole.

122. For the reasons given above, I conclude that appeal B should succeed. I will grant a new planning permission without condition nos. 4, 5, 12 and 27 attached to planning permission Ref. 04/02712/FUL but substituting others and restating, with minor modifications, those other undisputed conditions that are/maybe still subsisting and capable of taking effect.

I Jenkins
INSPECTOR

APPENDIX 1-APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:	
John Barrett Of Counsel	
He called	
Nigel Mann	WYG Environmental Planning Transport
Anita Seymour	Calderdale Metropolitan Borough Council
Thomas Moorhouse (conditions only)	Calderdale Metropolitan Borough Council

FOR THE APPELLANT:	
Satnam Choongh Of Counsel	
He called	
Daniel Smyth	RPS Group
Andrew Stevenson	RPS Group
Paul Wormald	RPS Group
Sunil Patel (conditions only)	Entran Ltd
Michael Krantz (conditions only)	Gunnercooke LLP

INTERESTED PERSONS:	
Colin Peel	Councillor
Mike Payne	Councillor
Dot Foster	Councillor
Geraldine Carter	Councillor
George Pickles	Local resident
Isolde Davy	Local resident
Edward Green	Local resident
Shaun Daniel	Local resident
Rachael Langstaff	Local resident
Enid Jackson	Local resident
Alan Watson	Local resident
Tadeusz Sulich	Local resident

APPENDIX 2-INQUIRY DOCUMENTS

1	Council's letters notifying interested parties of the appeals and the Inquiry arrangements
2	Correspondence from interested parties in response to the appeal notifications
3	WHO Air quality guidelines for particulate matter, ozone, nitrogen dioxide and sulphur dioxide-Global update 2005
4	16/00297/WVARS (withdrawn) red lined plan
5	15/01072/WAM (withdrawn) Plans
6	10/00270/FUL Extension to recycling building planning permission and plans
7	06/01777/VAR Variation of condition 27-Vehicle movements planning permission
8	06/01246/FUL Extension of servicing garage planning permission
9	04/02712/FUL Recycling centre planning permission
10	04/00893/FUL Recycle centre refused
11	17/00114 Red lined plan
12	17/00113 red lined and 'to scale' plans
13	CD32-Revised-Planning interim consultation response 17/00113/WAM Environmental Health October 2017
14	SOL response to CD32
15	Official copy of register of title including red lined plan
16	Defra's Energy from waste-A guide to the debate, February 2014 (revised edition)
17	INCENER8 Operation, maintenance and installation handbook
18	Photos of proposed SWIP installation
19	Waste descriptors applicable to the EWC codes in Table 5.2 of the Planning Statement
20	Stronga Flowdrya FD1WS specification
21	Site survey drawing 9677/12/01 Mar'12
22	Opening statement on behalf of the Council
23	Opening statement on behalf of the appellant
24	Gov.UK Waste incinerator plant: apply for R1 status
25	Complaints regarding planning and EA Permit breaches at CVSH
26	I Davy- proof of evidence
27	Councillor Foster- proof of evidence
28	Councillor Payne- proof of evidence
29	G Pickles- proof of evidence
30	WYG Air quality modelling uncertainty notes
31	ADMS5 user guide and table showing the % of windspeeds at Bingley and Leeds-Bradford ≤0.75 m/s
32	Plan showing road spot levels close to the site
33	Plan showing locations of the site, Mearclough and a school in Sowerby Bridge
34	Councillor Peel- proof of evidence
35	G Pickles- reference documents
36	Appeal site Waste Returns 2017
37	Appeal site EA compliance band rating
38	Appellant's Old House Lane ownership note
39	Entran note-Points of clarification-noise

40	Drawing 9677/19/28B Stronga Flowdrya FD17
41	Defra's NO_2 diffusion tubes for LAQM: Guidance note for local authorities, March 2006
42	Directive 2010/75/EU on industrial emissions
43	Directive 2008/98/EC on waste and repealing certain Directives
44	Defra's Local Air Quality Management Technical Guidance (TG16)-extract
45	Councillor Foster-reference documents 'Child health experts warn air pollution is damaging children's health'
46	Councillor Foster-reference documents UNICEF 'Healthy air for every child: a call for national action'
47	Mr Daniel's photos of the site 16 March 2019
48	Mr Green's photo view of appeal site from 80 Rochdale Road
49	Council's draft suggested conditions
50	Council's note on the status of the Sowerby Bridge Masterplan
51	Council's Clarification note R1
52	Council's Clarification note on its position regarding applications impacting on air quality
53	Appellant's note on the R1 energy efficiency formula
54	RPS' note on Uncertainty
55	Appellant's Note concerning the footpath, vehicle movements and associated topics
56	Councillor Carter-proof of evidence
57	Appellant's Note on Residual Waste Quantities and the Waste Returns
58	Appellant's note Thermal Processing Building Storage
59	Ordnance survey map extracts for the vicinity of the appeal site
60	WYG Air quality note
61	Gov. UK Planning Policy Guidance: Air quality
62	Email from the appellant to the Planning Inspectorate, dated 17 April 2019, Topographical survey
63	Email from the Planning Inspectorate to the Council and appellant, dated 18 April 2019-Inspector's questions
64	Letter from the Planning Inspectorate to the appellant, dated 18 April 2019, Regulation 22 request for Further Information
65	Letter from the Planning Inspectorate to the appellant, dated 23 April 2019, clarifying the Further Information is requested for the purposes of the Inquiry
66	Email from the appellant to the Planning Inspectorate, dated 23 April 2019, documentation requested by the Inspector.
67	Council's draft suggested conditions (updated)
68	Appellant's Further Note on Residual Waste and Waste Returns
69	WYG Air quality note
70	Closing Statement on behalf of the Community Objectors
	Documents submitted during the adjournment
71	Inspector's Inquiry Note-actions for the adjournment and resumption of the Inquiry (latest v4)
72	Email from the appellant to the Planning Inspectorate, dated 7 June 2019, MSW and the R1 energy efficiency formula

73	Letter from the Council to the Planning Inspectorate, dated 17 June 2019, R1.
74	Email from the appellant to the Planning Inspectorate, dated 5 July 2019, RPS' response to WYG's note dated 23 April 2019
75	Environmental Statement Addendum
76	Consultation responses relating to the Environmental Statement Addendum
77	Bundle of correspondence between the Council and appellant with respect to noise measurements
78	Email from Triangle Village to the Planning Inspectorate, dated 23 September 2019, Court of Appeal decision Gladman Developments Ltd
79	Appellant's response (tabs 1-9) to the Regulation 22 consultation correspondence from interested parties.
80	Statement of Common Ground agreed between the Council and appellant, dated 26 September 2019
81	Council's draft suggested conditions and objector's comments
82	Mr Mann's proof of evidence, October 2019
83	Email from the Planning Inspectorate to the appellant, dated 21 November 2019, Inspector's clarification/some further questions
84	Mr Smyth's rebuttal proof of evidence
85	Email from the appellant to the Planning Inspectorate, dated 22 November 2019, Agreed note on the proposed noise condition[69]
	Documents submitted following the resumption of the Inquiry
86	Gov.UK Environmental Management-guidance, Air emissions risk assessment for your environmental permit
87	Gov.Uk Environmental permitting: air dispersion modelling reports
88	Defra's Local Air Quality Management Technical Guidance (TG16)-full copy
89	Gov.UK PPG: Air quality
90	Email from the Planning Inspectorate to the Council/appellant, dated 25 November 2019, Inspector's questions
91	Council's note on 'Planning Matters'
92	Council plan showing the extent of the designated Green Belt local to the appeal site
93	WYG-Planning Inspectorate Air Quality Modelling Queries
94	RPS-Response to Inspector's written questions on air quality modelling and uncertainty
95	RPS-Response to Inspector's written questions on R1 and CO_2
96	Gunnercooke-Response to SWIP feedstock questions
97	Gunnercooke-Municipal solid waste and the R1 energy efficiency formula
98	E Jackson-proof of evidence
99	G Pickles-proof of evidence
100	WYG-Air quality note on Environment Agency 'Air emissions risk assessment for your environmental permit'
101	RPS-Environmental Statement Addendum-Appendix F: ADMS Model Sensitivity Testing, tables to 2 decimal places.

[69] Circulated (22/11/19) to interested parties (via contact person agreed at the Inquiry) prior to the resumption of the Inquiry.

102	Council's draft suggested conditions upon which the 'triangle village' comments were based (Inquiry document 81)
103	Email between the Council's EHO and Mr Daniel, dated 30 October 2019, with respect to noise complaint investigation
104	Council's-Updated note on Green Belt
105	CV-Paul Wormald
106	Plan and photos for 06/01246/FUL Extension of servicing garage planning permission
107	Council's letter notifying interested parties of the Inquiry resumption details (previously announced at the Inquiry)
108	T Sulich-proof of evidence
109	G Pickles-statement
110	Appeal site historic plan and photo (submitted by A Watson)
111	WYG-Amended tables 3.2 and 5.3 of Mr Mann's evidence and tables showing the potential impact of lowering the emissions limit from 200 mg/m^3 to 120 mg/m^3
112	RPS-Response to Inspector's questions on air quality modelling inputs in the ESA
113	Council/appellant agreed calculation of current/original building volumes
114	Council/appellant agreed suggested condition related to the R1 energy efficiency index
115	Council's closing statement
116	Appellant's closing statement

APPENDIX 3-APPEAL A-SCHEDULE OF CONDITIONS

1) The development hereby permitted shall begin not later than 3 years from the date of this decision.

2) The development hereby permitted shall be carried out in accordance with the following approved plans except to the extent that variation of the plans is required by another condition of this planning permission:

   9677/27/02A- Site Plan & Location Plan;

   9677/19/33- Building to accommodate energy recovery plant for renewable energy (excluding the illustrative internal plant layout), dated June 19.

   9677/17/03A- Illustrative Drawing and Location of New Stronga Flowdrya;

   9677/19/28C- Stronga Flowdrya FD17, dated 15/04/19; and,

   UAM3183_B- Topographical survey sheets 1-4, dated June 2019.

3) No Hazardous Waste shall be used to fuel the small waste incineration plant (SWIP) hereby approved.

4) Only non-recyclable waste derived from the onsite operations shall be used to fuel the SWIP hereby approved. No material shall be brought into the site at any time for incineration for the sole purpose of disposal.

5) The throughput of the SWIP hereby approved shall be no greater than 2 tonnes per hour.

6) Before the first operation of the SWIP hereby approved details of the Drying Plant and the connections to it from the SWIP shall be submitted to and approved in writing by the Local Planning Authority. The Drying Plant and the connections to it shall be completed in accordance with the approved details before the first operation of the SWIP and shall be maintained as installed. The SWIP shall not be operated in the event that the Drying Plant is not available for use.

7) Before the first operation of the SWIP, a scheme for its connection to the National Grid for the export of electricity shall be submitted to and approved in writing by the Local Planning Authority. The connection shall be completed in accordance with the approved details before the first operation of the SWIP and shall be maintained as installed. The SWIP shall not be operated in the event that the connection to the National Grid for the export of electricity is not available for use.

8) Before the first operation of the SWIP hereby approved a scheme shall be submitted to and approved in writing by the Local Planning Authority to demonstrate that electrical generation and/or heat recovery systems have been installed with the capability to meet equivalent energy outputs per unit of waste derived fuel input that meets or exceeds the equivalent of the R1 energy efficiency index. The SWIP shall be operated and maintained in accordance with the approved scheme to ensure that it continues to meet this R1 energy efficiency index and maintains Recovery status.

9) No trenching or other construction activities associated with the scheme hereby approved shall take place until a Construction Environmental Management Plan (CEMP) has been submitted to and approved in writing by the Local Planning Authority. The CEMP shall include methods of contractor liaison with the general public, hours of work and timescales of implementation, management practices to control dust, traffic, access, waste and water resources. All trenching and other construction activities shall thereafter take place in accordance with the approved CEMP.

10) The rating level (as defined in BS4142:2014+A1:2019 'Method for rating and assessing industrial and commercial sound') of noise emitted from the site shall not exceed the background noise levels by more than 5 dB during the day (07:00-23:00 hours) or night (23:00-07:00 hours). The rating level shall be determined in accordance with the procedure set out in BS4142:2014+A1:2019 for the residential properties located at 28, 44, 46, 80 and 90 Rochdale Road, Sowerby Bridge and 'Bank House' and 'Bank Cottage', Long Lane, Norland, Sowerby Bridge. The assessment period shall be one hour during the day and fifteen minutes at night.

11) Before the first operation of the SWIP hereby approved a site specific Noise Management Plan (NMP) with the objective of limiting, so far as practicable, noise arising from activities at the site, shall be submitted to and approved in writing by the Local Planning Authority. The NMP shall include details of the arrangements for: movement of materials in the yard; loading of the drying plant; loading and unloading of skips; noise from reversing alarms; the investigation of noise complaints and remedial action. The NMP shall be implemented before the first operation of the SWIP and shall be adhered to thereafter.

12) No audible warning alarm for operations within the SWIP building shall be audible outside the boundary of the site.

13) (a) Except as provided by (b) - (c) below no vehicular movements, waste movements, movement of skips, recycling operations or operation of the drying plant authorised or required by this permission or by permission 17/00114/VAR shall be carried out on the site except between the following times: 07:00 hrs to 18:00 hrs Mondays to Fridays; and, 08:00 to 14:00 on Saturdays.

(b) The SWIP hereby approved shall only operate for 24 hours a day on Monday to Friday. On those days during the hours between 00:00 hrs to 07:00 hrs and between 18:00 hrs to 00:00 hrs the SWIP shall only operate when all of the roller shutter doors in the building which contains the SWIP are closed. The SWIP shall not operate on Saturdays, Sundays, or on Bank/Public Holidays.

(c) The above time restrictions shall not apply to environmental monitoring.

(d) Save for environmental monitoring there shall be no other working on Sundays or on Bank/Public Holidays.

14) Before the first operation of the SWIP hereby approved a dust management scheme for the operation of the SWIP and Drying Plant shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include management of dust arising from: Loading of the SWIP; Removal of Bottom Ash from the SWIP; Transportation of Bottom Ash from the site; as well as, loading and unloading of the Drying Plant and storage of the associated dried material. The approved dust management plan shall thereafter be implemented in full throughout the operation of the SWIP and Drying Plant.

15) The height of the soils stockpiles in the drying area shall be restricted to no more than 3 metres in height.

16) Before any external artificial lighting is installed for the purpose of illuminating activities or areas associated with the SWIP and/or Drying Plant operations, details of a scheme to adequately control any glare and obtrusive light produced by the artificial external lighting shall be submitted to and approved in writing by the Local Planning Authority. The lighting installation shall comply with the recommendations of the Institution of Lighting Professionals (ILP) "Guidance Notes for the Reduction of Obtrusive Light" reference GN01: 2011 for environmental zone E2. The artificial lighting shall be installed in accordance with the scheme so approved and retained thereafter. The scheme should include the following information:

a) The proposed level of maintained illuminance, measured horizontally at ground level;

b) The maintenance factor;

c) The predicted maximum vertical illuminance that will be caused by the lighting when measured at windows of any residential properties in the vicinity;

d) The proposals to minimise or eliminate glare from the use of the lighting installation when viewed from windows of properties in the vicinity;

e) The proposed type of luminaires to be installed showing for each unit, the location, height, orientation, light source type and power;

f) The proposed hours of operation of the lighting.

Furthermore, there shall also be submitted to the Local Planning Authority upon completion of the approved lighting a statement of a suitably qualified contractor that the light emitted by any lighting installation to which this condition applies is fully compliant with the ILP guidance for the relevant environmental zone.

17) Except for the operation of the SWIP hereby approved in accordance with the conditions attached to this permission, there shall be no open burning on the site at any time.

18) The development hereby approved shall be carried out in accordance with the Flood Risk Assessment Addendum Report (FRA) by RMA Environmental Ltd, referenced RMA/LC1984_1 - Calder Valley Skip Hire FRA and dated 26 July 2019, and the mitigation measures detailed within the FRA: Flood resilience/resistance measures shall be set at a minimum of 300 mm above finished floor level. These requirements shall be fully implemented prior to the SWIP and/or Drying Plant first being brought into use.

19) There shall be no raising of ground levels within the yard areas of the site at any time.

20) The maximum total number of movements by vehicles with a gross plated weight of more than 3.5 tonnes into and out of the whole site (including but not limited to those associated with the waste recycling activities and associated with the development subject of planning permission Ref. 17/00113/WAM) shall not exceed 120 (i.e. 60 movements into the site and 60 movements out) per day. A log of vehicle movements shall be kept and made available to the Local Planning Authority upon request.

21) Before the first operation of the SWIP hereby approved a scheme detailing the establishment of a liaison group shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include details of the liaison group objectives, membership, frequency and location of meetings and arrangements for the publication of the minutes of the meetings as well as a timetable for implementation of the scheme. Liaison group meetings shall be held in accordance with the approved scheme.

22) No excavation work associated with the development hereby approved shall commence until an assessment of the risks posed by any contamination, carried out in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency's Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced), shall have been submitted to and approved in writing by the Local Planning Authority. If any contamination is found, a report specifying the measures to be taken, including the timescale, to

remediate the site to render it suitable for the approved development shall be submitted to and approved in writing by the Local Planning Authority. The site shall be remediated in accordance with the approved measures and timescale and a verification report shall be submitted to and approved in writing by the Local Planning Authority. If, during the course of development, any contamination is found which has not been previously identified, work shall be suspended and additional measures for its remediation shall be submitted to and approved in writing by the Local Planning Authority. The remediation of the site shall incorporate the approved additional measures and a verification report for all the remediation works shall be submitted to the Local Planning Authority within 30 days of the report being completed and approved in writing by the Local Planning Authority.

APPENDIX 4-APPEAL B-SCHEDULE OF CONDITIONS

1) The development hereby permitted shall be carried out in accordance with the following approved plans except to the extent that variation of the plans is required by any other condition of this planning permission:

   CV28 Existing road layout and proposed improvements;

   CV29 Road gradients;

   CV30 Road cross sections;

   NA1 dated 21 September 2005 Location Plan;

   NA2 dated 21 September 2005 New Building Design;

   NA7 dated 21 September 2005 New Storage Bay Design;

   NA9 dated 21 September 2005 Road Details; and,

   NA10 dated 21 September 2005 Site Garage.

2) The facing materials approved under condition 2 of planning permission 04/02712/FUL on 26/4/2007 shall be retained in their approved form.

3) The roofing materials approved under condition 3 of planning permission 04/02712/FUL on 26/4/2007 shall be retained in their approved form.

4) The rating level (as defined in BS4142:2014+A1:2019 'Method for rating and assessing industrial and commercial sound') of noise emitted from the site shall not exceed the background noise levels by more than 5 dB during the day (07:00-23:00 hours) or night (23:00-07:00 hours). The rating level shall be determined in accordance with the procedure set out in BS4142:2014+A1:2019 for the residential properties located at 28, 44, 46, 80 and 90 Rochdale Road, Sowerby Bridge and 'Bank House' and 'Bank Cottage', Long Lane, Norland, Sowerby Bridge. The assessment period shall be one hour during the day and fifteen minutes at night.

5) Before the first operation of the Small Waste Incineration Plant (SWIP) approved by planning permission Ref. 17/00113/WAM a site specific Noise Management Plan (NMP) with the objective of limiting, so far as

practicable, noise arising from activities at the site, shall be submitted to and approved in writing by the Local Planning Authority. The NMP shall include details of the arrangements for: movement of materials in the yard; loading of the drying plant; loading and unloading of skips; noise from reversing alarms; the investigation of noise complaints and remedial action. The NMP shall be implemented before the first operation of the SWIP and shall be adhered to thereafter.

6) (a) Except as provided by (b) - (c) below no vehicular movements, waste movements, movement of skips, recycling operations or operation required by this permission or by permission 17/00113/WAM shall be carried out on the site except between the following times: 07:00 hrs to 18:00 hrs Mondays to Fridays; and, 08:00 to 14:00 on Saturdays.

(b) The SWIP approved by planning permission Ref. 17/00113/WAM shall only operate for 24 hours a day on Monday to Friday. On those days during the hours between 00:00 hrs to 07:00 hrs and between 18:00 hrs to 00:00 hrs the SWIP shall only operate when all of the roller shutter doors in the building which contains the SWIP are closed. The SWIP shall not operate on Saturdays, Sundays, or on Bank/Public Holidays.

(c) The above time restrictions shall not apply to environmental monitoring.

(d) Save for environmental monitoring there shall be no other working on Sundays or on Bank/Public Holidays.

7) All vehicles used by the operator of the site for the use of conveying skips to and from the site shall be fitted with a device in order to attenuate the impact noise generated from the moving of chains on the vehicles in accordance with the scheme submitted under condition 6 of planning permission 04/02712/FUL and approved in writing on 28/10/2008.

8) On the date of this decision and thereafter suppression of dust on access roads, circulation areas, storage of materials in stockpiles and the loading to and from stockpiles shall be carried out in accordance with the details submitted under condition 7 of planning permission 04/02712/FUL and approved in writing on 28/10/2008. Immediate preventative action, including suspension of operations if necessary, shall be taken if dust generated on the site becomes airborne and can be seen to be carried by the wind beyond the site boundaries.

9) On the date of this decision and thereafter prevention of the deposit of mud and waste material on the public highway caused by the operations hereby approved shall be carried out in accordance with the scheme submitted under condition 8 of planning permission 04/02712/FUL and approved in writing on 28/10/2008.

10) On the date of this decision and thereafter prevention of materials from becoming airborne shall be carried out in accordance with the control measures submitted under condition 9 of planning permission 04/02712/FUL and approved in writing on 28/10/2008.

11) Artificial lighting implemented in accordance with the details submitted under condition 10 of planning permission 04/02712/FUL and approved in writing on 1/3/2018 shall be retained in its approved form.

12) Mill House shall only be used as offices, occupied or used in connection with and ancillary to the occupation or use of the existing premises and replacement buildings permitted by planning permission 04/02712/FUL and at no time be severed and occupied as a separate independent unit.

13) Except for the operation of the SWIP in accordance with the conditions attached to this planning permission and planning permission Ref. 17/00113/WAM, there shall be no open burning on the site at any time.

14) No crushing or screening of material shall take place outside the replacement building permitted by planning permission 04/02712/FUL.

15) Materials, goods, plant and/or equipment shall not be stacked or deposited externally to a height exceeding 3 metres above the level of the concrete yard.

16) The parking areas/vehicle manoeuvring areas shown on the approved plan (amended 21 September 2005) no. NA1 shall be retained in their approved form for that purpose for the occupiers of and visitors to the development.

17) The access improvements shown on the approved plans nos. CV28, CV29 and CV30 shall be retained in their entirety for the lifetime of the development.

18) There shall be no obstructions above 900 mm in height at any time within the visibility splays shown on the approved plan no. NA1 (amended 21 September 2005).

19) Public footpath Sowerby Bridge 94a running through the site shall not be closed, stopped up, diverted or obstructed over either the whole or part of its length at any time.

20) Any proposed liquid storage (fuel oil, process chemicals, etc) tanks shall be located and retained within a bund having a capacity of not less than 110% of the largest tank. If the tanks are connected by pipework in such a way as to allow equalization of the level of the contents, then the bund capacity shall be 110% of the highest combined volume. Floor and walls of the bund shall at all times be impervious to oil and water (and resistant to any stored chemicals). Inlet/outlet/vent pipes and gauges shall at all times be within the bunded area. Before any such bunds are first brought into use, details of the arrangements for the proper disposal of contaminated surface water from within the bund (there must be no uncontrolled discharge to any drain or sewer) shall have been submitted to and approved in writing by the Local Planning Authority. Disposal shall thereafter be carried out only in accordance with the approved details.

21) Prior to being discharged into any watercourses, surface water sewer or soakaway system, all surface water drainage from parking areas and hardstandings shall be passed through an oil interceptor installed in accordance with a scheme previously submitted to and approved in writing by the Local Planning Authority. Roof water shall not be required to pass through the interceptor.

22) The development shall not begin, until a scheme for the provision of surface water drainage works has been submitted to and approved in writing by the Local Planning Authority. The drainage works shall be

completed in accordance with the approved details and timetable agreed, and shall be so retained thereafter.

23) No works or storage shall commence on the site until all trees/shrubs/hedgerows which are to be retained have been protected by the erection of a strong durable 1.5 metre high barrier fence in accordance with BS 5837. This shall be positioned so as to enclose their perimeter crown spreads, or as may be agreed in writing by the Local Planning Authority. The protective fencing shall be properly maintained for the duration of the development and shall not be removed during this period without the written approval of the Local Planning Authority. The positions of all trees/shrubs to be retained and the protective fencing shall be clearly marked on a plan(s) which shall have been submitted for the prior written approval of the Local Planning Authority before the commencement of the development.

24) With the exception of trees (but excluding trees T5 and T8) specifically shown on the permitted plan to be felled, or as otherwise agreed in writing by the Local Planning Authority, no trees on the site shall be lopped, topped, uprooted, felled, wilfully damaged or destroyed. Any trees so damaged, felled or destroyed without such approval within 5 years of the completion of the development shall be replaced before the end of the following planting season with trees of a size and species in a position approved in writing by the Local Planning Authority which shall be so retained thereafter.

25) The development shall not begin until a scheme for the long-term management of the woodland area and for protected species has been submitted to and approved in writing by the Local Planning Authority. This shall include a programme for the implementation of the management plans and they shall thereafter be implemented in accordance with the details so approved.

26) The recommendations contained in the submitted Bat Report (September 2005) shall be fully implemented in accordance with the timescales set out in the Report.

27) All loaded lorries leaving the site shall be securely and effectively sheeted before they leave the site.

28) The maximum total number of movements by vehicles with a gross plated weight of more than 3.5 tonnes into and out of the whole site (including but not limited to those associated with the waste recycling activities hereby approved and associated with the development subject of planning permission Ref. 17/00113/WAM) shall not exceed 120 (i.e. 60 movements into the site and 60 movements out) per day. A log of vehicle movements shall be kept by the site operator and made available to the Local Planning Authority upon request.