

The Chairman and Members of the Planning Committee

10th December 2018

Members

CONSTRUCTION OF A HEAT AND POWER PLANT COMPRISING BIOMASS ENERGY FROM WASTE (FLUIDISED BED COMBUSTION) FACILITY AND TREATMENT OF WASTE WATER BY EVAPORATION TREATMENT PLANT AND ASSOCIATED INFRASTRUCTURE COMPRISING TANK FARM, COMBUSTER WITH 25 METRE HIGH CHIMNEY, PROCESS BUILDING, STORE BUILDING, OFFICE BUILDING, WALKING FLOOR CANOPY, CAR PARK, FUEL STORAGE BAYS, FIRE WATER TANK, CONVEYOR, PIPE GANTRY, DIESEL TANK, CONTROL ROOM, AUXILIARY PLANT SKID, HIGH VOLTAGE TRANSFORMERS

LOCATION: WARBOYS LANDFILL SITE, PUDDOCK HILL, WARBOYS, PE28 2TX

APPLICATION NO: H/5002/18/CW

As the time available to speak at the Planning Committee meeting on 13th December is limited, the Parish Council wishes to draw your attention to the following points:-

National Planning Policy Framework

Your officers have quoted the text of paragraph 183 of the NPPF in their reports to the meetings on both 6th September and 13th December as follows –

‘The focus of planning policies and decisions should be on whether proposed development is an acceptable use of land, rather than the control of processes or emissions (where these are subject to separate pollution control regimes). Planning decisions should assume that these regimes will operate effectively. Equally, where a planning decision has been made on a particular development, the planning issues should not be revisited through the permitting regimes operated by pollution control authorities.’

It is clear from the views expressed by several of you at the meeting on 6th September and recorded in the minutes that you had serious concerns about this application but were swayed into concluding that the issues raised in the objections were matters for the Environment Agency in the environmental permit and could not be addressed in determining the planning application.

Your officers have failed however to draw your attention to the wording of paragraph 180 of the NPPF which reads as follows –

‘Planning policies and decisions should also ensure that new development is appropriate for 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. In doing so they should:

a) mitigate and reduce to a minimum potential adverse impacts resulting from noise from new development – and avoid noise giving rise to significant adverse impacts on health and the quality of life;

b) identify and protect tranquil areas which have remained relatively undisturbed by noise and are prized for their recreational and amenity value for this reason; and

c) limit the impact of light pollution from artificial light on local amenity, intrinsically dark landscapes and nature conservation.

I will return to my highlighting of the words ‘including cumulative effects’ later.

It is clear from paragraph 180 that it is the responsibility of the planning authority to have regard to the likely effects of pollution on health, living conditions and the natural environment. Sub paragraphs (a), (b) and (c) are particularly relevant as the application provides for this development to be operational continuously throughout the night and at weekends. The Environment Agency will only consider whether the facility meets the relevant legislative requirements not the impact of a 24/7 operation which is matter for the planning authority.

National Planning Policy for Waste

Your officers also have not referred you to the National Planning Policy for Waste issued by the Department for Communities and Local Government in October 2014. The last paragraph of section 1 (Introduction) reads -

‘This document sets out detailed waste planning policies. It should be read in conjunction with the National Planning Policy Framework , the Waste Management Plan for England and National Policy Statements for Waste Water and Hazardous Waste, or any successor documents. All local planning authorities should have regard to its policies when discharging their responsibilities to the extent that they are appropriate to waste management.’

Section 7 (Determining planning applications) begins by reading –

‘When determining waste planning applications, waste planning authorities should:’ –

The section then lists a number of bullet points, the second of which is –

‘consider the likely impact on the local environment and on amenity against the criteria set out in Appendix B and the locational implications of any advice on health from the relevant health bodies.’

Appendix B lists an extensive range of environmental impacts, i.e. protection of water quality and resources and flood risk management; land instability; landscape and visual impacts; nature conservation; conserving the historic environment; traffic and access; air emissions, including dust; odours; vermin and birds; noise, light and vibration; litter; and potential land use conflict.

It is clear therefore that the issues raised in the objections to this application by the local community should be taken into account by the planning authority in determining the application. These should not be discounted as matters for the Environment Agency alone and the environmental permit.

Cumulative Effect

At the Committee meeting in September, Members were informed by officers that they should consider the application before them only and could not have regard to the effects of the nearby landfill site and material recycling facility (MRF). Clearly this is contrary to the requirements of section 180 of the NPPF which requires the planning authority to have regard to the cumulative effects of new development.

All of the consultants' reports submitted in support of the application concentrate exclusively on the impact of the CHP and waste water treatment plants. The responses from the statutory consultees and your officers rely on the modelling and predictions contained in those reports and assessments. No one has taken into account the cumulative effects as required by the NPPF.

For example at the meeting in September, a Member queried whether the wood to be used as fuel for the plant would be shredded at the adjoining MRF. The Member was informed by officers that this was not a material planning consideration as it did not form part of the application. This is a legitimate concern if the consequence is the potential expansion of a nearby plant which will lead to the cumulative effect of increased levels of noise pollution

In approving the application subject to conditions, the Committee imposed a restriction on noise emissions. It is difficult to see how noise from the proposed CHP and waste water treatment plants can be identified separately from that emitted from the adjoining landfill and MRF uses.

Your own Senior Compliance Officer in the Planning, Minerals and Waste Team wrote in an e-mail as recently as 5th November 2018 in response to complaints from neighbouring residents about noise and odour from the site as follows –

'The Environment Agency and our team have investigated a numbers (sic) of complaints received in September 2018 about the noise, working out-of-hours and smell.'

'The operator advised that the smell and noise were due to the capping works as they were moving and disconnecting the pipes. However, we confirmed that they were in breach of condition and working out-of-hours. The operator was warned during a site visit, on 01 October 2018, that if we receive any more complaints about them working out-of-hours we will undertake further enforcement actions.'

'In addition, the operator advised that the capping works should be completed by the end of October and probably another smell issues might be encountered by then but he assured that once the capping works are completed it should not be any more bad smell issues.'

Two more processing plants on site (CHP and waste water treatment) will exacerbate emissions of noise, odours, etc. The effects on the community should be regarded cumulatively as required

by the NPPF and not in isolation. It is difficult to see how the planning authority will be able to differentiate where noise, odours, dust, light pollution etc. will have originated when complaints arise and are investigated by enforcement officers. The hours of operation of the landfill site and MRF are restricted by condition but it will be impossible to ascertain whether they are in breach of those conditions if the CHP and waste water plants are operational 24/7.

Planning Permission and Environment Permit

Returning to the advice given to the Planning Committee on 6th September and repeated in the report now before you regarding the relationship between planning permission and environmental permits, your attention is drawn to the case of *Harrison v. the Secretary of State for Communities and Local Government* 2009 (EWHC 3382).

In his judgement, His Honour Judge McKenna wrote -

- '19 PPS 23 at paragraphs 2 and 10 describes the pollution control regimes and planning regimes as complementary. Planning system "plays a key role in determining the location for development" (paragraph 2) particularly in respect of development which "may give rise to pollution" (paragraph 10). The planning system has to determine whether the development itself is an acceptable use of land and the impact of those uses. This to my mind is distinct from the IPPC process which "controls the processes or emissions themselves". PPS 23 advises that planning decision makers "work on the assumption that the relevant pollution control regime will be properly applied and enforced." Guidance is however broad guidance to be applied sensibly having regard to all the facts in a wide range of different situations. It works on the assumption that an appropriate location is chosen for a particular activity not that pollution control will make any activity acceptable in any given situation.
- '20 It cannot be right in my judgment that paragraph 10 simply says that the planning system must assume that no pollution issues will arise. Indeed, in the case of Hopkins Developments Ltd -v- (1) The Secretary of State (2) North Wiltshire District Council [2007] Env LR 14 George Bartlett QC sitting as a Deputy High Court Judge upheld an Inspector's decision which decided that the amenities of the area and the local residents would be seriously harmed by dust emissions. In the High Court challenge, it was argued that the Inspector had to assume the proper application of the pollution control regime and accordingly he erred in law in deciding that there would be serious harm to the amenity of the area by reason of dust emissions. The Court rejected that contention at paragraph 15 in the following terms:-

"This is an argument that is superficially attractive. But it is dependent on the underlying assumption that, in relation to the likely impact of the pollutants to which the 2000 Regulations apply, primacy must be accorded to the judgment of the Regulator above that of the planning authority. I can see no basis for such an assumption, and it does not appear to me that the passage from paragraph 10 of PPS 23 that I have quoted above provides support for it. It would effectively mean that, unless it was clear to the planning authority that the plant could never achieve a Permit (cf Gateshead per Gladwell LJ at 359), the potential impact of pollutants could never enter into its consideration of whether planning permission should be granted. The thrust of paragraph 10 is that planning authorities should focus on the impacts rather than the control of emissions, not that they must subordinate their judgment on the impacts to those of the pollution control

authority. I therefore reject Mr Wadsley's contention that it was not open to the Inspector to conclude that the impact of the dust would be seriously adverse".

- '21 The thrust of the decision in Hopkins therefore, a decision which of course is persuasive but not binding on me, is that the planning decision maker was entitled to reach his own conclusions as to the impact of the proposed development on amenity and whether the site under consideration was the appropriate location for the proposed development. The fact that the impact might be capable of being regulated under a pollution control regime did not necessarily mean that the only possible option available to an Inspector was to leave everything to that regime. If the planning decision maker considered that there might be adverse consequences because of the effects of the proposed development on amenity and/or issues as to the appropriateness of locating the development of the site in question, he was entitled to have regard to such matters as material considerations in making his decision on the planning merits of the proposed development.
- '22. This approach to my mind accords with a fair reading of PPS 23 paragraph 10. Under the ground (a) Appeal the question of the acceptability of the site for the proposed use was the issue and the Inspector had to make a decision on planning grounds as to whether the location of the site was appropriate. To do so it seems to me he had to have regard to all material planning considerations including the site's proximity to other users and in reaching his planning judgment about the acceptability of the use he correctly directed himself that he needed to make the decision on the assumption that the pollution control regime would be properly applied and therefore there can be no doubt to my mind that the Inspector did have regard to the guidance. However, he was entitled to have regard to the evidence which he heard as to the effect of the use when it had operated without the benefit of planning permission. He did not simply accept that evidence but specifically acknowledged the scope for improvement when further steps were taken to comply with pollution controls and he clearly took into account the fact that the IPPC Permit had been issued in 2007. He nevertheless concluded that the close proximity of the site to residential developments would continue to cause problems. This was a judgment which was reasonably open to him on the evidence given that there was compelling evidence before him that there had been odour problems for many years and that those problems had existed notwithstanding the availability of the pollution control regime. He was not satisfied that the problems would be eliminated having regard to the specific limitations and areas of uncertainty which he himself identified during the course of his analysis. In so doing he undertook a realistic and fact specific assessment of the amenity impact of the proposal which he was entitled to do in the light of the controls that would be applied under the pollution control regime. In doing so he did not abdicate responsibility to decide whether the location in question was appropriate and what the effects of the development would be and his approach closely matched the approach of the Inspector in the Hopkin's case an approach which was to my mind, rightly upheld by the High Court. I am not persuaded by the Appellant's argument that the concluding sentence of paragraph 99 constituted an attempt by the Inspector in some way to distance himself from the guidance.'

In the case of the Warboys application, the planning authority's role is to have regard to the cumulative impact of the application on the local community and environment. The planning authority is wrong to leave this to the discretion of the permitting arrangements and the Environment Agency.

The officers' conclusion in paragraph 8.1 of their report 'that the plume of water vapour would be assessed by the Environment Agency as part of the environmental permit' is therefore inaccurate.

The Parish Council urge you to have regard to the references in this letter to paragraph 180 of the NPPF, the National Planning Policy for Waste and case law and in so doing, to consider the effects, and particularly the cumulative effects, of this proposal on the local environment and the residents of Warboys. If you do, you will appreciate the very genuine fears of the community that their lives will continue to be blighted by yet further development at the landfill site to which Warboys has been exposed for over 20 years.

Yours faithfully

Clerk to Warboys Parish Council

From:
Sent: 07 December 2018 12:39
To:

Subject: Planning reference H/5002/18/CW

Good afternoon

Planning reference H/5002/18/CW
Construction of a heat and power plant at Warboys Landfill Site, Puddock Hill, WARBOYS, PE28 2TX

I wish to make further objections to the above mentioned application to which I previously objected on February 2018 and June 2018.

I understand the planning committee will be considering two topics regarding this at the planning meeting on 13th December, as they were not taken into account at the original planning meeting on 6th September 2018.

Topic 1. The effects of emissions on local atmospheric conditions

It is well known that the very flat fens experience frequent fogs which hang over the ground for hours without dispersing as they would do at higher levels. The liquid in the emissions coming from the evaporator would mix with the fog and exacerbate it, causing even higher levels of poor visibility. With the heat and power plant being proposed to be built near the junction of Puddock Road and Fenside Road, the extremely poor visibility would cause a hazard at the junction where the lorries will arrive just before turning in to the site. Section CS32 of the Minerals and Waste Core Strategy Development Plan (adopted July 2011) states that:-

"Minerals and waste development will only be permitted where:

- a. it is demonstrated that opportunities for the use of alternative methods of transport have been evaluated and the most appropriate pursued where practicable;*
- b. access and the highway network serving the site are suitable or could be made suitable and able to accommodate any increase in traffic and /or the nature of the traffic associated with the development;*
- c. any associated increase in traffic or highway improvements would not cause unacceptable harm to the environment, road safety or residential amenity....."*

With the emissions from the evaporator mixing with the existing fog regularly experienced in the low-lying fens, this will increase the amounts of chemicals breathed in by the occupants who live nearby. I live on the village side of the proposed site and for the past two years the wind (which has a prevailing direction of South Westerly) has been coming from the North much more often. I don't know the reason for this and I suspect no-one else does either. However if it is related to climate change this could be a regular feature of Warboys' weather. When the wind is coming from the North, the hazardous chemicals trapped in naturally occurring fog mixed with the cloud emitted by the evaporator will blow towards the village. The height of the chimney stack will only be slightly higher than the level of the land due to the proposed stack being built on the slope leading down to the low-lying fenland, this is due to the proposed site being built right on the edge of the Claylands. Therefore this mixture of fog and chemicals will be at the level of villager's rooftops or even lower and will arrive at the school playground. Even if only one child has their life blighted by the effects of breathing in harmful chemicals and metals such as arsenic, cadmium and chromium this is one child too many. The fact that all the children in the school could be affected doesn't bear thinking about.

Representations

It is worrying to consider that the council's lawyers have reviewed all information and concluded that the Air quality assessments which the applicant commissioned did not mention the effects of water vapour releases on local atmospheric conditions. I would have thought it would be reasonable to assume that an Air Quality assessment would be looking at exactly that, and if this wasn't done then it would be safe to assume that there have been other omissions. In addition, in Section 4.17 of 'Chapter 4 – Air Quality', it states that *"The WWTP will be used to evaporate leachates from non-hazardous MSW landfills and composting facilities."* However it is intended that leachate from the adjacent landfill site will be treated at the new plant, and it therefore must be remembered by the planning committee that Warboys landfill site contains 250,000 tons of unknown and undocumented hazardous waste which was deposited there without planning permission. It is therefore not possible for that leachate to be non-hazardous.

Section 4.2.4 states that *"This allows for atypical odour emissions or poor dispersion caused by unfavourable weather conditions, around 175 hours over a year."* This seems to be a very optimistic figure, as 175 hours equates to about a week of poor weather conditions over the course of one year.

The same document Chapter 4 – Air

Quality [SUBDOC5 2018 05 02 EIA Chapter 4 Air Quality.pdf](#) uses the phrases "minor adverse significance" many times when referring to the harm that will come to Warboys residents. The Council's lawyers concede that the effects on local atmospheric conditions have not been taken into account and due to the above-mentioned fogs experienced by the low lying fenlands the atmospheric conditions will be affected adversely causing even thicker fogs, and it must therefore be concluded that all future harm to residents would be more than "minor adverse significance"

Topic 2. The caravan park

The nearby caravan park was not considered but should have been. The noise of the lorries travelling to and from the site will be extremely unpleasant for the occupants of the site and will increase by many times the numbers of people whose enjoyment of the surroundings will be affected. The Environment Agency at Brampton have confirmed in an email to Warboys Landfill Action Group that they have no jurisdiction over the lorries, the section of their email I copy as follows:-

"Amenity issues such as noise, odour or dust issues caused by vehicles travelling to and from the permitted site would not fall under the regulatory jurisdiction of the Environment Agency." The occupants of the caravan site would also be affected by noise coming from the heat and power plant if it were to be built and the numbers affected by the constant high noise levels would again be multiplied by many times, these sensitive receptors could include young children whose hearing would be more susceptible to damage. It must also be remembered that the noise from the proposed site will be added to the current noise from the existing operations at the adjacent recycling centre, and therefore the noise levels in the noise assessment documents can't be considered as stand-alone measurements, but need to be added to the high decibels already coming from the existing operations.

I also wish to mention that although the planning committee were repeatedly advised during the meeting on 6th September that all issues regarding dust, odour, emissions and air quality would be addressed by the Environment Agency's permit, this is in fact incorrect as the Department for Communities and Local Government's document entitled National Planning Policy for Waste gives the following advice for Waste Planning Authorities:-

"Considerations will include the proximity of sensitive receptors, including ecological as well as human receptors, and the extent to which adverse emissions can be controlled through the use of appropriate and well-maintained and managed equipment and vehicles."

This confirms that Waste planning Authorities have a duty to consider air quality. In addition, it would seem to be a waste of resources were the plant to be built only for it to have its permit refused by the Environment Agency.

For all of the reasons mentioned above, I urge the members of the planning committee to reconsider and to refuse this application

I thank you for reading this

Kind regards

From:
Sent: 28 November 2018 12:06
To: Planning DC
Cc:
Subject: RE: Committee for Warboys Landfill application (H/5002/18/CW) - opportunity to register to speak
Attachments: WLAG Petition.pdf; letter to Emma Fitch.docx
Follow Up Flag: Follow up
Flag Status: Completed

FAO: Jane Stanley and Emma Fitch

Dear Jane and Emma,

Please find attached, the copy of a letter and a petition which will be posted to you today. These are submitted on the basis that the Planning Committee are considering the two matters below.

Kind regards,

(On behalf of WLAG)

From: Planning DC <PlanningDC@cambridgeshire.gov.uk>
Sent: 12 November 2018 14:02

Subject: Committee for Warboys Landfill application (H/5002/18/CW) - opportunity to register to speak

Mimecast Attachment Protection has deemed this file to be safe, but always exercise caution when opening files.

Dear Sir / Madam

CONSTRUCTION OF A HEAT AND POWER PLANT COMPRISING BIOMASS ENERGY FROM WASTE (FLUIDISED BED COMBUSTION) FACILITY AND TREATMENT OF WASTE WATER BY EVAPORATION TREATMENT PLANT AND ASSOCIATED INFRASTRUCTURE COMPRISING TANK FARM, COMBUSTER WITH 25 METRE HIGH CHIMNEY, PROCESS BUILDING, STORE BUILDING, OFFICE BUILDING, WALKING FLOOR CANOPY, CAR PARK, FUEL STORAGE BAYS, FIRE WATER TANK, CONVEYOR, PIPE GANTRY, DIESEL TANK, CONTROL ROOM, AUXILIARY PLANT SKID, HIGH VOLTAGE TRANSFORMERS

LOCATION: WARBOYS LANDFILL SITE, PUDDOCK HILL, WARBOYS, PE28 2TX

APPLICATION NO: H/5002/18/CW

I am writing to you because you commented on the above planning application and to let you know that the County Council's Planning Committee will reconsider this item at 10am on Thursday 13 December 2018 in the Council Chamber at Shire Hall, Cambridge. Should this meeting date and/or venue change, we will contact you again to inform you of the changes.

Important information

The Planning Committee is only being asked to consider two matters:

- 1) potential noise experienced by the occupants of the caravans situated at the western end of Fenside Road; and
- 2) the effects of water vapour released from the proposed waste water treatment plant chimney on local atmospheric conditions.

It is considered that not all the information on these matters was available to the Planning Committee on 6 September 2018 when they resolved to grant planning permission. The further consideration on 13 December 2018 will **not** involve a full rehearsing of the entire application and any representations you make at the meeting should **only relate to the two matters set out above**. If you attempt to introduce other matters the Chairman will ask you to stop speaking.

The officer report will be available on the County Council's website 6 working days before the Planning Committee date. Meetings are open to the public and you are welcome to attend to listen to the debate. However, if you wish to speak at the meeting you need to register in advance by contacting the Democratic Services Officer (not the planning department) at the earliest opportunity, but no later than Thursday 6 December 2018.

Early engagement with the Democratic Services Officer (Mr Daniel Snowdon on 01223 699177 or by e-mail to democraticservices@cambridgeshire.gov.uk) and your Parish Council is strongly encouraged if you do wish to speak so co-ordination of the speakers for each of the two topics can take place. By planning this in advance, we hope that key groups / speakers will co-ordinate with each other to agree what they intend to cover in their allotted 3 minutes. This should avoid the need for the Chairman having to stop any speakers for repetition. Our recommendation is that action groups and residents work with their Parish Council initially to co-ordinate their concerns, alongside registering to speak with the Democratic Services Officer. The registration form for speaking has been attached to this e-mail for ease of reference.

For this application, each speaker will be given 3 minutes, rather than all objectors sharing a 5 minute slot which is standard practice. The total amount of time given to objectors will also be given to the applicant / supporters to ensure a fair and balanced approach is taken by the Committee. Summaries of what speakers are planning to say should be provided to the Democratic Services Officer at the earliest opportunity, but no later than Thursday 6 December 2018, to ensure there is enough time for them to be compiled and shared with the Chairman of the Planning Committee ready for the meeting. This should include any plans, drawings or photographs that you wish Members to see; these cannot be accepted on the day of Committee.

As well as contacting everyone who has commented on the planning application to let them know about the Planning Committee date and the procedure to register to speak at the meeting, we will also contact local Parish Councils, interested groups and local County / District Councillors and MPs (where they have

registered an interest) to ensure that they publicise this information to provide everyone that wants to speak with an opportunity to register in advance.

If you have any specific questions about the Planning Committee meeting or how to register, please contact Daniel Snowdon directly on the details above.

Yours faithfully

Jane Stanley

Interim Business Manager, County Planning, Minerals and Waste

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Redacted text from first attachment

FAO: Emma Fitch/Jane Stanley
Business Manager
County Planning Minerals and Waste
Cambridgeshire County Council
Shire Hall
Cambridge
CB3 0AP
November 28th 2018

Dear Emma (or Jane),
Re: Application H/5002/18/CW

In light of the invitation of the of the Planning Committee to allow representations on the following two matters with regard to the above planning application;

- potential noise experienced by the occupants of the caravans situated at the western end of Fenside Road; and
- the effects of water vapour released from the proposed waste water treatment plant chimney on local atmospheric conditions.

please find enclosed a petition signed by over 600 local people objecting to the proposed construction of a heat and power plant comprising biomass energy from waste (fluidised bed combustion) facility and treatment of waste water. You will note that the petition focusses on the emissions, therefore includes water vapour, and the potential noise.

As a committee member of the Warboys Landfill Action Group, I would like to ensure that the planning committee are made aware of this petition ahead of the meeting on the 13th December at which these two points will be discussed.

Yours sincerely,

Text from signed petition attachment

Warboys Landfill Action Group
Say no to untested Chemical Emissions
Relentless noise and smell 24/7 in Warboys
We the undersigned object to the proposed CHP + Waste
Water Treatment Plant

Fitch Emma

From:
Sent: 30 November 2018 10:36
To:
Cc:
Subject: Re: WARBOYS LANDFILL SITE - APPLICATION NO: H/5002/18/CW

On 30 Nov 2018, at 09:34, wrote: _____

Dear Chairman and Members of the Planning Committee

CONSTRUCTION OF A HEAT AND POWER PLANT COMPRISING BIOMASS ENERGY FROM WASTE (FLUIDISED BED COMBUSTION) FACILITY AND TREATMENT OF WASTE WATER BY EVAPORATION TREATMENT PLANT AND ASSOCIATED INFRASTRUCTURE COMPRISING TANK FARM, COMBUSTER WITH 25 METRE HIGH CHIMNEY, PROCESS BUILDING, STORE BUILDING, OFFICE BUILDING, WALKING FLOOR CANOPY, CAR PARK, FUEL STORAGE BAYS, FIRE WATER TANK, CONVEYOR, PIPE GANTRY, DIESEL TANK, CONTROL ROOM, AUXILIARY PLANT SKID, HIGH VOLTAGE TRANSFORMERS

LOCATION: WARBOYS LANDFILL SITE, PUDDOCK HILL, WARBOYS, PE28 2TX

APPLICATION NO: H/5002/18/CW

I am writing on behalf of the Warboys Landfill Action Group (WLAG) to object to the granting of planning permission ahead of the second Planning Committee meeting on 13 December to reconsider additional items, and to seek a revocation of the Planning Committee's decision to approve the application at the Planning Committee meeting on 6 September.

I have also sent a copy of this e-mail to Jane Staley and Emma Fitch in the Cambridgeshire County Council Minerals & Waste team.

For your information, the online petition (see link below) against the site stands at 2,218 as of 28 November. The physical petition, which is being submitted separately, stands at 642.

https://www.change.org/p/say-no-to-the-untested-evaporation-to-the-air-of-hazardous-landfill-leachate-in-warboys?recruiter=249246556&utm_source=share_petition&utm_medium=facebook&utm_campaign

The Planning Committee are being asked to consider two matters, namely:

1 Potential noise experienced by the occupants of the caravans situated at the western end of Fenside Road; and

2 The effects of water vapour released from the proposed waste water treatment plant chimney on local atmospheric conditions.

We believe that both these issues provide robust and defensible grounds to refuse and revoke the planning application. We address the areas in turn.

1 Potential noise experienced by the occupants of the caravans situated at the western end of Fenside Road

Firstly, we find it quite alarming that the occupants of circa 30 caravans on this site were not considered in the original report / submission presented by the Planning Officer to the Planning Committee on 6 September. Given the site is situated very close and almost directly in front of the proposed entrance to the site, it is concerning how some 30 caravans were completely overlooked, particularly as members of the Planning Committee visited the area. See attached aerial photographs.

This raises questions as to the level of accuracy and thoroughness of other elements of the report / submission presented to the Planning Committee.

The proximity to the site and being directly adjacent to the road that HGV lorries are to travel on to bring waste wood and leachate to and from the site will result in the occupants of the caravan site being disturbed by noise, odour and poor air quality on a continuous basis level from the 24/7 operation of the plant.

Clearly the noise from the proposed site is not just related to the occupants of the caravan site, but also those families who live in their houses in close proximity to the site, some of which are less than the required minimum 100 metres distance from such sites. There are numerous inaccuracies as to the distances of 'sensitive receptors', or people's homes, from the site in the reports by The Airshed on behalf of the applicant.

The Airshed **Air Quality Impact Assessment**, paragraph 1.1 states "*the nearest residential area is the northern part of Warboys, at Little End, ~800m to the south*". This is manifestly inaccurate. In the same document **Table 1.1 - Sensitive Receptors - Human Health (selected)** lists distances from sensitive receptors that we simply do not recognise.

Granting permission that would lead to an increased and sustained noise disturbance and would give rise to an unacceptable impact in contravention of Policy CS32 Traffic and Highways of the Development Control Policies of the **Cambridgeshire and Peterborough Minerals and Waste Development Plan**, which was adopted on 19 July 2011 and still extant, and states:

"Minerals and waste development will only be permitted where:
c) any associated increase in traffic or highway improvements would not cause unacceptable harm to the environment, road safety or residential amenity".

Furthermore, the road to and from the proposed site, Fenside Road, is a single-track road with limited passing places. For a significant proportion of its length Fenside Road is just 4 metres wide and therefore is incapable of maintaining unrestricted two-way traffic flow as per Chapter 8, D3.3 of the Government's **The Traffic Signs Manual**.

See link:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/203669/traffic-signs-manual-chapter-08-part-01.pdf

Additionally, pedestrians, cyclists, walkers and horse riders use Fenside Road on a regular basis. The significant increase in the number of HGV lorry movements expected presents a very real and significant danger as the circa 4 metre width provides insufficient clearance to pass safely. It is clear Fenside Road is not an appropriate or an acceptable access road to the proposed site. The substrate and surface of Fenside Road are unstable and uneven (a feature of the Fens road network) and clearly unsuitable for regular HGV lorry use.

Granting permission that would see the single track width restricted Fenside Road as the only access road to the site would give rise to an unacceptable impact in contravention of Policy CS32 Traffic and Highways of the Development Control Policies of the **Cambridgeshire and Peterborough Minerals and Waste Development Plan**, which was adopted on 19 July 2011 and still extant, and states:

"Minerals and waste development will only be permitted where:

b) access and the highway network serving the site are suitable or could be made suitable and able to accommodate any increase in traffic and / or the nature of the traffic associated with the development".

Additionally, paragraph 180 of the revised **National Planning Policy Framework** states:

"Planning policies and decisions should also ensure that new development is appropriate for 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. In doing so they should:

a) mitigate and reduce to a minimum potential adverse impacts resulting from noise from new development - and avoid noise giving rise to significant adverse impacts on health and the quality of life

b) identify and protect tranquil areas which have remained relatively undisturbed by noise and are prized for their recreational and amenity value for this reason"

See link:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/740441/National_Planning_Policy_Framework_web_accessible_version.pdf

These arguments alone represent very strong grounds for refusal.

2 The effects of water vapour released from the proposed waste water treatment plant chimney on local atmospheric conditions

The proposed site is on the leeward side (the prevailing wind being from the southwest) of the circa 30 metre high Warboys Fen escarpment. The proposed evaporator chimney is 17 metres, i.e. 13 metres below the height of the escarpment.

The location of the evaporation chimney will cause the emissions and the water vapour plume to be caught in an eddy as a result of the prevailing wind blowing over the escarpment. Far from being dispersed, it will lead to increased and unacceptable concentrations of emitted pollutants for the sensitive receptors, people working at the proposed site and for those passing by.

The water vapour plume released will also become concentrated in the immediate vicinity and will cause fogging / misting, particularly on colder days, which will cause icing on the surrounding roads.

Were the wind to blow from a northerly direction rather than the prevailing southwest direction, the emissions and water vapour plume would blow over Warboys village, including the primary school and the old people's home. The water vapour plume will condense on and impregnate clothes that will then evaporate off in the classroom and in people's homes with clear health risks.

The low lying and moist / damp nature of the Fens, which are typically at or below to sea level, causes naturally occurring fog to occur frequently and to remain for long periods of time. Any temperature inversion will cause the damp air to be trapped near to the ground and result in smog / fog persisting for days on end.

Historic meteorological data from Monks Wood climate station (approx. 12km west from the proposed site), which is at an elevation of 41 metres, shows average wind speeds recorded at a height of 10 metres between 1981 and 2010 to range from 5.1 knots (5.9 mph) in the summer to 7.1 knots (8.4 mph) in the winter months.

Monks Wood's wind speeds are recorded at a level of 51 metres above sea level and therefore are not at all representative of the wind speeds to be found in the fenland area adjacent to the proposed site, which is at sea level. The wind speed around the proposed site will therefore be lower than the Monks Wood averages and will not disperse the emissions and water vapour plume. This lack of dispersive wind speed will be made worse by the topology of the area adjacent to the proposed site.

See link:

<https://www.metoffice.gov.uk/public/weather/climate/gcrfn7ch6>

A wind speed of 4 to 6 knots is classified as a light breeze by the Met Office, while a wind speed of 7 to 10 knots is a gentle breeze. This level of wind speed is not sufficient to create adequate dispersion.

See link:

<https://www.metoffice.gov.uk/guide/weather/marine/beaufort-scale>

Developing this point, a report from 1997 **The implications of dispersion in low wind speed conditions for quantified risk assessment. Prepared by WS Atkins for the Health and Safety Executive** highlights the implications of low wind speeds on toxic releases. An old report perhaps, but the science / physics has not changed. The report states:

6.2.2 Toxic releases

"This likely to be one of the areas of greatest concerns in terms of low wind speeds. A low mean wind speed generally results in less mixing and hence higher concentrations. Furthermore, a toxic cloud may take longer to pass over a point, so that people may be subjected to both higher concentrations and longer exposure durations".

See link:

http://www.hse.gov.uk/research/crr_pdf/1997/crr97133.pdf

The proposed site will be using a leachate evaporation to air process that has not been used elsewhere in the UK and therefore is untried and untested. It is untested in the sense that the expected, or modelled, emissions, depositions, toxicity, particulates, water vapour plume and atmospheric conditions cannot be known.

Water vapour sounds harmless, but it is not credible the water vapour plume emitted from the evaporation of toxic and hazardous leachate will contain only water. Therefore, in view of the unknown and unknowable level of pollutants, the key question to address is far more wide-ranging and more fundamental than considering the impact of simply water vapour.

The Planning Committee needs to also bear in mind that 250,000 tonnes of hazardous waste has been deposited in the landfill without permission.

The answers as to the potential impact on the local environment, air quality and amenity of evaporating leachate cannot be known. There are by definition purely best guesses using modelling techniques that do not, and cannot, include leachate evaporation data. Therefore, the data submitted cannot be regarded as reliable.

It is interesting to note that **The Guidance for Treatment of Landfill Leachate** produced by the Environment Agency makes no reference to the process of leachate evaporation of the type proposed for the Warboys site.

See link:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/322411/Guidance_for_the_Treatment_of_Landfill_Leachate_part_1.pdf

It is difficult to see how the Environment Agency will be able to adequately police toxic emissions when there is no precedent procedure and therefore no data.

It calls into serious question the submissions made by **The Airshed - Air Quality Impact Assessment** on behalf of the applicant. The applicant has not provided sufficient modelling to provide any certainty as to the extent and impact of the residual emissions and toxicity that would still inevitably occur even if it were regulated by the Environment Agency to allow for the planning authority to determine whether such residual impacts would be acceptable or whether they in fact demonstrate the inappropriateness of the proposed location.

For these reasons the impact of toxic deposition on crops in the surrounding grade A agricultural fenland is unknown and presents an unacceptable food safety risk. Unknown toxic depositions on to people and their homes over a wide area is a very significant concern and is an unacceptable personal health risk.

Along with the invisible and unknown levels of toxic pollutants being emitted, there will be the visible intrusion over the long line of sight fenland views are renown for of the emission or water vapour plume, particularly on colder days. While dispersion over the surrounding agricultural land is in and of itself unacceptable, the topology of the Warboys Fen escarpment adjacent to the site will lead to emissions or water vapour plumes becoming concentrated rather than dispersed.

The basis on which modelling results are presented in planning applications, environmental permit applications, and in decision documents, can be argued as leaving much to be desired. The practice is to address pollution levels in 'mean' terms such that there is no indication of peaks and troughs as may result, for example, from variations in emission levels from incinerators themselves and through meteorological variations. It tends to follow that however accurate the results a model may be capable of, the way in which these are presented is such that they may lose much of their potential significance.

The adequacy and efficacy of modelling atmospheric dispersal is open to wide interpretation and should be called in to question, not least as the evaporated emissions from an untested process are clearly unknown, as is their impact on people and the surrounding environment.

As The Airshed, on behalf of their clients, flippantly state on the cover of their **Air Quality Impact Assessment** "*prediction is very difficult, especially about the future*". Niels Bohr, Danish physicist (1885 - 1962). This quote is used to suggest, correctly, that the impacts and emissions of an untried and untested process are, by definition, unknown and unpredictable. The risks of this unproven process will be entirely and unacceptably borne by the people, families and children of Warboys and the surrounding area, not to mention the risk to the farmland.

Paragraph 2.4 of **The Airshed's Air Quality Impact Assessment** states:

"There is insufficient operational experience of the WwTP to determine if the odour from the evaporation process is highly offensive or moderately offensive".

Improving air quality is a priority for the Government, not least as 40,000 people die a premature death as a result of poor air quality. The proposed plant, with its unknown levels of polluting emissions and its impact on air quality, together with the fumes and particulates from burning scrap wood as the fuel source for the evaporation process, goes directly against this Government priority and will make the issue significantly worse. The adverse air quality impacts will be harmful to human health and amenity.

Granting permission would impact both the landscape character and surrounding uses and would give rise to an unacceptable impact in contravention of Policy CS33 Protection of Landscape Character and CS34 Protecting Surrounding Uses of the Development Control Policies (page 91) of the **Cambridgeshire and Peterborough Minerals and Waste Development Plan**, which was adopted on 19 July 2011 and still extant, and states:

CS33 Protection of Landscape Character

"Mineral and waste management development will only be permitted where it can be demonstrated that it can be assimilated into its surroundings and local landscape character area in accordance with the Cambridgeshire Landscape Guidelines, local Landscape Character Assessments and related supplementary planning documents".

CS34 Protecting Surrounding Uses

"Mineral and waste management development will only be permitted where it can be demonstrated that there would be no significant harm to the environment, human health or safety, existing or proposed neighbouring land uses, visual intrusion or loss to residential or other amenities".

A further point we wish to raise relates to the perceived role the Planning Committee were led to believe the Environment Agency has in the planning process. You will recall we raised a large number of concerns at the planning meeting on 6 September, namely around pollution, air quality, emission of particulates, including VOCs, odour, soil deposition, noise, amenity impact and the like. We, and the Planning Committee were told, including by the Council's Legal Officer, that such items fall under the remit of the Environment Agency and not the Planning Department, could not be considered and therefore should be dismissed. The minutes of the meeting on 6 September confirm this.

Correspondence with xxxxxx Installations Regulatory Officer, Installations Cambs and Beds Environment Agency shows this not be the case and in fact states such issues are matters to be considered by the Planning Committee and not the Environment Agency. This e-mail post-dates the Planning Committee meeting and so was not previously taken into account. xxxxx says:

"We are unable to take account of anything outside the remit of the Environmental Permitting Regulations, e.g. the proposed location of the site, which is done by the local authority via land use planning, and the impact of noise and odour from traffic travelling to and from the site.

Once an Environmental Permit is issued it will contain conditions relating to emissions to air land and water and also conditions relating to the amenity impact off site due to the activities within the permitted area. Amenity issues such as noise, odour or dust issues caused by vehicles travelling to and from the permitted site would not fall under the regulatory jurisdiction of the Environment Agency".

See attachment.

Appendix B of **The National Planning Policy for Waste** lists a series of Locational Criteria, many of which we raised by objectors at the Planning Committee meeting on 6 September, but dismissed, that are material planning considerations.

See link:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/364759/141015_National_Planning_Policy_for_Waste.pdf

The Environment Agency's **Guidance for developments requiring planning permission and environmental permits, October 2012**, sets out clearly on page 8 the relationship between planning and permitting and states:

"The scope of an environmental permit is defined by the activities set out in the EPR. The permitted activities may form a part of, but not all, of the development needing planning permission. In these cases, the planning application will need to address environmental considerations from those parts of the development that are not covered by the permit."

See link:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/297009/LIT_7260_bba627.pdf

The Planning Committee must re-examine and review the advice or direction given in relation the role of the Environment Agency in connection with amenity impact, pollution levels, noise, dust, transport impact, odour, air and soil quality as a matter of urgency in order to correct the previous misdirection / oversight. Some suggest this is an area that could give rise to a legal challenge.

In relation to the respective roles of the Environment Agency and the Waste Planning Authority, both impacts on local atmospheric conditions and all other air and soil quality impacts are relevant to the planning determination. The Environment Agency ensures facilities comply with relevant legislative requirements, but they do not make the determination of whether the impacts contravene local or national planning policies that seek to ensure proposals are only allowed at appropriate locations and that inappropriate development is rejected.

This argument is supported by **The role of the Environment Agency and the Scottish Environmental Protection Agency in waste incinerators: Briefing**, which states:

"The Planning system should not duplicate the controls of the other regulatory bodies: That does not mean to say that the residual impacts of matters controlled through the permit cannot be material planning considerations. Such impacts are relevant to whether the proposal represents an acceptable use of the land and they can legitimately have a bearing on any planning decision".

See link:

<https://www.parliament.uk/documents/commons-committees/environment-food-rural-affairs/correspondence/171214-Environment-Agency-briefing-on-role-of-EA-and-SEPA-towards-incinerators.pdf>

To further reinforce the point that the Planning Committee should have taken into account a number of issues it was instructed to disregard the cases of Harrison and Hopkins confirms that the issues that were raised do fall under the Planning Committee's remit and / or that of the individual Planning Committee members to make their own decisions.

The case of **R (Harrison) v SSCLG [2009] EWHC 3382** confirmed earlier case law that it is open to the decision maker to look at and determine issues involving the pollution impact of a proposed development. At paragraph 21 HHJ McKenna states:

"..... The fact that the impact might be capable of being regulated under a pollution control regime did not necessarily mean that the only possible option available to an Inspector was to leave everything to that Page 6 regime. If the planning decision maker considered that there might be adverse consequences because of the effects of the proposed development on amenity and/or issues as to the appropriateness of locating the development of the site in question, he was entitled to have regard to such matters as material considerations in making his decision on the planning merits of the proposed development."

Representations

This sets out that it is open to a decision maker to take into account any detrimental pollution effect that a proposed development would have on the amenity of an area. As HHJ McKenna set out above if the decision maker considers that the development would have an adverse effect then this becomes a material consideration in the planning decision. The case law is crystal clear that a local authority can take into account these matters rather than leaving them to be dealt with by the permitting process.

This is supported by **Hopkins Development Ltd. v SSCLG and North Wiltshire DC [2006] EWCH 2823 (Admin)**, paragraph 15 states:

"... planning authorities should focus on the impacts rather than the control of emissions...[but that does not mean]...that they must subordinate their judgment on the impacts to those of the pollution control authority".

We would suggest the guidance, or instruction, given to the Planning Committee in terms of what falls under the Environment Agency's remit was not correct and is not consistent with the NPPF policy of not duplicating responsibilities.

In conclusion, we urge the Planning Committee to:

- a) overturn and refuse the application on the grounds of the new areas / information (the caravan site and impact of water vapour) neglected in the previous application process when granting their earlier permission
- b) overturn and refuse the application on the grounds the unacceptable impact of contravening of the Development Control Policies 32, 33 and 34 of the Cambridgeshire and Peterborough Minerals and Waste Development Plan 2011
- c) overturn and refuse the application on the basis the Planning Committee members were not able to consider and make their own determination of the significant impact on amenity, pollution, health, soil and air quality given this is not within the Environment Agency's remit as suggested, but falls to the Planning Committee

The Planning Committee must recognise and accept that the location of the proposed site for an untested, and therefore unknown level emissions / pollution, is wholly inappropriate and will have a long lasting and a damaging impact on the environment, the health of people and the surrounding important farmland.

We ask the Planning Committee to overturn and revoke their planning permission.

Regards

On behalf of the Warboys Landfill Action Group (WLAG)