



GLOUCESTERSHIRE WASTE CORE STRATEGY

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Dear Mr Phillips

Gloucestershire Waste Core Strategy

Yvonne will have informed you that a Pre Hearing Meeting (PHM) has been arranged for 9 November 2011 and she may also have discussed with you the possibility of holding the hearing sessions themselves during the week of 9 January 2012. I have now completed a first read of what I regard as the more important documents within the totality of the evidence base and would like to share some concerns with you. When you have had a chance to consider these I would be grateful if you would let Yvonne know whether you still consider the draft examination timetable achievable. As you will appreciate, you will need to provide a good deal of additional written material. .

Procedural issues

The clear implication of Regulations 27, 28 and 30 is that the DPD that is submitted for examination will be the one that was consulted upon at Regulation 27 stage. There is no provision in the Regulations to make further changes to that document prior to submission. However, PPS12 states the starting point for the examination is the assumption that the local planning authority has submitted what it considers to be a sound plan. Clearly, if the Regulation 28

responses identify matters which would undermine that assumption, the local planning authority needs to act. The Plan Making Manual sets out a mechanism for doing so which involves the publication of an addendum, consultation upon it and the submission of both the addendum and the consultation responses to it along with the submission documents.

You have not followed this approach to the full. While very helpful to the examination in that document CD1.2 shows what the Plan would look like if all the focused changes were to be made, it is nevertheless confusing in that it is no longer clear which document has been submitted for examination. In the circumstances, it is not surprising that you received a slightly greater response to CD1.2 than you did to CD1.1. As you note in CD1.11, different issues have been raised at each stage and I will want to consider them all.

You will therefore need to make clear which document you wish me to examine. One of the reasons this is important is that it will be that document that will be subject to the changes that you will wish to propose for soundness. We can debate at the appropriate time which of the focussed changes set out in CD1.3 fall into that category but there will be others arising from the examination itself. These will need to be subject to an appropriate programme of consultation which should be as comprehensive in scope as the original Regulation 27. These are clearly matters for you to consider but I would draw your attention to a recent judgement¹ which resulted in Cumbria's plan being quashed. My initial view is that the plan to be examined should be CD1.1 (the December 2010 version). You can then reflect having considered all the representations made to that and CD1.2 as well as the discussion at the hearing sessions what changes you propose to suggest to me to make the plan sound.

The evidence base

Given the length of time this plan has been in preparation the volume of material available is inevitable and many of the documents themselves are lengthy. I do not criticise this as the plan must be founded on a demonstrably robust evidence base. However, I have some sympathy with those representors who have found it difficult to be sure that they have read all the right documents and/or followed the information trail correctly. I have had similar difficulties; for example, although I have followed successive references back to documents produced, I think, in 2007, I am still no wiser as to why you consider a 0% growth rate for commercial and industrial (C+I) waste to be justified-each simply says that the decision was made without ever explaining why! In responding to the matters set out below therefore (which will likely form the basis for the issues to be discussed at the hearings) you will need to prepare concise topic papers which clearly reference the core document(s) and paragraph(s) where the justification for what is in the plan can be found.

¹ *The Queen on the application of Barrow Borough Council v Cumbria County Council* [2011] EWHC 2051 Admin

The Vision

As now proposed to be drafted (FC10) this says that the facilities that exist now and are to be provided will ensure “enough capacity is made available to meet Gloucestershire’s needs”. While the ‘need’ with respect to municipal waste (MSW) clearly relates to waste arising in the County and is based on reliable data (although see below), the ‘need’ for other wastes (particularly C+I and hazardous waste) is, if I have understood CD10.4 correctly, not really related to what arises within Gloucestershire at all. Rather, it is based on what is managed now at existing facilities.

There are several aspects to this that I do not yet follow:

Why is the DEFRA survey of C+I arisings dismissed (FC3)? If metals are included in the plan’s figures, would the two figures not be closer? If the DEFRA figure is of the right order, does it not suggest that, in fact, the plan is some way off what the vision states?

The way that the capacity of transfer facilities is accounted for is confusing. Do these not simply facilitate the movement of waste around rather than ‘alter’ it any way? I do not follow Tables 3m to 3o (MSW) or any of Section 4 in CD10.4 in this regard.

Equally, I do not follow Table 7a (hazardous waste). Does this mean that of the 90,000tpa managed in the County only 38,000tpa is actually produced there and, even of this, only 10,500tpa is deposited in the County? In other words, although the County is a huge net importer of this waste, it is actually a net exporter of its own hazardous waste.

Does the plan not therefore simply reinforce the existing management patterns of large volumes of waste which would appear to involve significant cross boundary flows? (I do not find section 10 in CD10.4 helps understanding of this in the way it is presented and Figure 1e is more or less meaningless). Or does the plan aim for (net?) self sufficiency which might be implied by the use of the RSS apportionment (although I remain unsure how this feeds into the CD10.4 analysis or what footnote 9 on page 214 of CD 11.34 means)?

The relationship of the plan to the JMWMS (CD11.12)

The Companion Guide to PPS10 sets out at paragraph 7.8 how the preparation of a waste DPD and a municipal waste management strategy may be aligned at key stages of their respective processes. In my experience, a consequence is that it is often difficult to distinguish those representations that relate to the plan and those that relate to the waste management contract procurement process and the representations on this plan are no exception in that regard.

The suggested process alignment would seem to have taken place in Gloucestershire although, for the MSW waste stream, it is not clear whether the plan has regard to the JMWMS or is actually driven by it. For example, CD10.17 paragraph 10 does not appear to reflect the relationship between the two plans correctly in saying:

A series of 'exclusion' criteria were then used to slim down the initial list of sites. The rationale for this is that the Waste Core Strategy will be primarily concerned with identifying sites suitable for *strategic* waste management of MSW. (my emphasis)

In summary, you appear to rely wholly on the Waste Disposal Authority (WDA) for justification of the MSW part of the plan. There is some concern expressed that the targets are not challenging enough but there may also be confusion about the growth forecast for this waste stream which some representors do not find credible in the current circumstances of increasing recycling rates and waste reduction initiatives. Table 3k in CD10.4 sets out the growth predicted but what element of this is due to forecast/planned population growth and what, if any, to underlying growth in the waste stream?

Section 10.5 of CD11.12 is confusing. Although dated April 2008, it says what will happen in 2007 regarding the preferred technology and preferred location(s) for the residual waste. How was this taken forward, was it independent of this plan and what sites were considered?

The spatial strategy

This is related to the above matter. Paragraph 4.38 of PPS12 confirms that the chosen strategy must be the most appropriate when considered against reasonable alternatives. A number of representors consider that a dispersed pattern of waste management facilities, particularly for the management of MSW, would better meet the vision of providing an integrated sustainable waste management system.

Such a pattern appears to have been an option upon which views were sought at the Issues and Options stage in July 2006 (see CD2.1 and CD2.2). It is not clear how you moved from that position to the one set out in January 2008 in the Preferred Options (CD3.1). Here, the decision to pursue strategic sites has been taken and, although 4 zones are identified, paragraph 97 indicates that Zones B and D were never seriously likely to come forward while Zone A, being based around Newent, was never likely to be favoured in sustainable transport terms over Zone C.

You will need to explain therefore why a dispersed pattern of smaller scale facilities was dismissed leading in to the Preferred Options stage and the influence, if any, of the emerging JMWMS on this decision and whether there was any realistic alternative to Zone C.

Green Belt

A relatively small proportion of Gloucestershire's land area is Green Belt but what there is, is almost wholly to be found within Zone C. The spatial strategy chosen therefore contains a relatively high proportion of land on which the erection of new buildings will amount to inappropriate development in the Green Belt. CD10.12 correctly summarises national policy and guidance given in PPG2 and PPS10 including the need to deal with this matter by way of amendments to Green Belt boundaries. However, this does not appear to have been carried through to the policies of the plan where two of the four strategic sites are within the Green Belt (policy WCS4) and policy WCS10 does not accurately reflect PPG2 with bullet 1 in particular being a circular argument.

Irrespective of any particular conditions at the two Wingmoor Farm sites chosen, you will need to explain why the 'particular locational needs' of the types of waste management facilities for which the sites are allocated in WCS4 are such that the general presumption against inappropriate development in the Green Belt should be set aside. You should also consider whether policy WCS10 correctly interprets the well established 'very special circumstances' test set out in paragraph 3.2 of PPG2.

The allocated sites

Policy WCS4 would appear to be fundamental to the delivery of the vision and strategic objective 3. The sites must therefore be deliverable for the facilities identified. In practice, it would seem that Javelin Park and Wingmoor Farm West are the preferred sites for delivery of the MSW contract while the other two are primarily targeted at the C+I waste stream. These four sites must therefore be deliverable for the plan to be effective and, if they prove not to be, the plan must be clear about what contingency measures are in place.

Javelin Park

Complete Circle is self-declared as one of the two remaining bidders for the residual MSW contract (Focussed Representation 132). The inference that might be drawn from that representation and that made on behalf of Complete Circle at Publication Stage is that some form of thermal treatment facility at Javelin Park may feature in the bid. This raises the following issues:

If Table 3 in CD1.2 is correct do you remain confident that the required waste management facility can be delivered on the reduced site now proposed by FC44? It would appear that the indicative site area for a 150,000tpa plant would be at the very outer limits of what is now available.

As this site was (and still is) identified with scope for both MSW and C+I treatment facilities, what impact does the reduced site size have on the ability to deliver this and thus the plan?

Have you considered allocating the area that is actually required to implement the plan irrespective of ownership (that is, not necessarily the whole 11ha) and using compulsory purchase powers if necessary?

With regard to the Habitats Regulations Assessment (CD5.1) are you content that your interpretation of Natural England's and the Environment Agency's representations is fair? While the EA appreciate the different outcomes that may be achieved from the two air dispersion models used by ERM, my reading is that they caution that the more conservative results (AERMOD) should be used. If the results of this modelling are used no combination of stack heights and plant capacity modelled allows the necessary conclusion of 'no likely significant effect' on what ERM term 'European sites' to be drawn. Even if the results from ADMS are used, it is only a plant with 100,000tpa capacity and a stack height of 80m that permits the conclusion although 150,000tpa was not modelled. I fully understand the implications of the conclusions at paragraph 10.2.6 of CD5.1 for the inclusion of the site in the plan. However, it must be at least possible that a thermal treatment plant will prove to be incapable of being permitted at this site. What is the contingency plan?

I appreciate that stack heights can be varied depending on the way a plant is designed to operate. However, ERM's analysis suggests that a stack of significant height should be assumed for a thermal treatment facility to be permitted here. You also include at paragraph 4.260 of the plan (CD1.2) illustrations of what such a plant could look like. I am aware both from my own knowledge and from the representations made that this is an exceedingly open and prominent site. While the Landscape/Visual Impact comments in the key development criteria section of Appendix 5 can be debated, you will need to explain why a different approach (including assumed stack heights) appears to have been taken here in comparison with Wingmoor Farm West which, from recollection, is not as open or as prominent in the landscape.

Wingmoor Farm West

This site is also identified as being primarily for MSW and if you are able to say whether Cory is the second bidder for the residual MSW contract that would be helpful. My main concern with this allocated site is its location within the Green Belt. I do not understand what is meant by 'demountable buildings' (see key development criteria in CD1.2 Appendix 5) in the context of the kind of facilities that may come forward and be required. I may well have missed it so far but are the facilities now within Part B of the site time limited and/or linked in any way to the life of the adjacent landfill? If they are and assuming a typical residual MSW waste contract period of 25 years, how do the two relate for the purposes of assessing what would be inappropriate development in what could otherwise be a restored open countryside site in the Green Belt by the end of the contract period?

Wingmoor Farm East

Several representors consider that the inclusion of this site in the plan indicates that the outcome of the pending application has been prejudged, something that you do not accept.

The characterisation of the site in Appendix 5 of CD1.2 as one where all permissions relating to waste activities and the landfill 'technically expired' in 2009 is interesting. It could be said that the formal position is that the planning permissions expired in 2009, the site should presumably be in the process of restoration in accordance with what I imagine are fairly standard conditions but that the breach of planning control that the continuation of all waste activities represents is being tolerated pending the outcome of the planning application. You will therefore need to explain why the application remains undetermined, particularly as this site seems to be considered by some to be a national resource. You should also indicate where in the evidence base is the justification for the assertion in the Planning Status section of Appendix 5 that 'there is sufficient evidence to suggest that there is the prospect for delivery of proposals at this site'. It could equally be argued that since the site should presumably be well on the way to restoration and it is located in the Green Belt, the prospects of built development are actually slim (see Green Belt above).

Landfill

Without repeating paragraph 4.5 of PPS12, what it says is critical to this issue. Key issue 10 of the plan recognises that landfill will have a role to play for certain wastes. These would appear to include hazardous waste in particular (see above). The vision refers to the integrated sustainable waste management system ensuring enough capacity to meet the County's needs and strategic objective 4 recognises the continuing role of landfill. There is also an allusion to a landfill DPD (CD1.2 paragraph 4.126 and CD1.11 paragraph 3.37) although one does not appear to be included within the Development Scheme (CD11.1). Despite all this there is explicitly no core policy on this issue (paragraph 4.129 CD1.2) and Appendix 1 indicates that existing Waste Local Plan policy on landfill/landraise has not been saved. There is therefore no guidance for either DPD preparation or development management. Given the wording of policy WCS6 it is not clear what policy base will be used to determine the pending application at Wingmoor Farm East or any other application for landfill.

There is clearly a significant level of disagreement between you, Grundon and Cory regarding current landfill capacity and its likely duration. I have yet to determine if there is any merit discussing this at the hearing sessions because, even on your own evidence, capacity is likely to run out well within the plan period. In fact, as you recognise, if the Wingmoor Farm East planning application is not ultimately approved or is approved only in part, the situation becomes critical very soon. As a matter of fact, the formal position now must be that there is currently no permitted hazardous voidspace.

I believe the absence of any landfill policy to be an important omission that undermines the flexibility of the plan to deal with what are clearly foreseeable circumstances and prejudices the ability of the plan to deliver its vision and strategic objectives.

Monitoring framework

Sections 5 and 6 of CD1.2 are comprehensive except that they do not say what management actions you will take if the plan is failing to deliver. For example, policy WCS4. The potential constraints in section 5 include failure to achieve planning permission with the mitigation measure being, in effect, try again. However, if analysis of the reasons leads to the conclusion that the allocated site cannot be developed for the chosen technology solution how does the plan deal with that? The framework should also include key milestones to be achieved at points during the plan period to allow early and appropriate action to be taken.

Summary

In bringing the above matters to your attention I am not, with one exception, prejudging my examination of the soundness of the plan. Rather, I am alerting you to what I see as some significant concerns which may nevertheless be capable of being resolved by further explanation from you and discussion at the hearing sessions. My concerns are cumulative and may be expressed as follows:

There are some ambiguities and uncertainties within the evidence base regarding the waste that is being planned for. It is not clear whether you are aiming to be (net) self sufficient in provision or maintaining existing management patterns or a combination of both. This goes to the **justified** test of soundness.

It is not clear how you moved from Issues and Options to the spatial strategy that you have adopted and whether that has arisen as a result of consideration of realistic alternatives. I am not clear why a dispersed pattern was dismissed. This goes to the **justified** test of soundness.

On the evidence that I have read so far, I consider it far from certain that Javelin Park, Wingmoor Farm West and, especially, Wingmoor Farm East will be developed as set out in the Plan. This is partly because I do not believe your interpretation of national Green Belt policy and guidance in PPS10 to be correct and partly because I do not feel the evidence clearly supports the development of a thermal treatment facility at any of these sites. While it is right that the plan should not express a technology preference and I also appreciate that similarly the residual MSW contract tender process would not wish to inhibit bidders, there is a danger that the chosen contract technology solution may not be deliverable on the very limited number of sites allocated in the plan. This goes mainly to the **effective (deliverability)** test of soundness, particularly

with regard to the residual MSW contract and, to a lesser extent, the C+I waste stream if this is to be managed via strategic sites in Zone C.

There is no contingency plan for dealing with any of these potential outcomes. This also goes to the **effective** test of soundness.

The one exception that I refer to above is the absence of any landfill policy. The issue of non-hazardous and hazardous landfill capacity being exhausted is very clearly stated in the evidence base. The only issue that is contentious is timing. The vision and strategic objectives require that capacity to be augmented and the core strategy is the place for the difficult decisions about how and where to be addressed. The plan is wholly silent on this issue and therefore, in my view, unsound.

Formal notice of the PHM needs to be given and invitations sent out during the week commencing 10 October if adequate time is to be given to potential attendees to make the necessary arrangements. I appreciate that what I have set out above will require a considerable amount of thought on your part and it seems unlikely that the PHM can now take place as initially planned. It may be possible to rearrange it for the week commencing 21 November with hearing sessions in late January or February 2012. However, this will depend on your response which should take into account that, to be of value for the hearing sessions, the additional papers that you will have to prepare will need to be available within a few days of the PHM so that participants can prepare their own additional statements in the light of your further contributions. I would therefore be grateful if you could respond to Yvonne as soon as possible and no later than **14 October** with your view on the implications for the draft timetable. You should also indicate in that response how and by when you intend to deal with the substantive issues raised. A formal suspension of the examination may need to be considered.

This letter should be placed on the examination web site with your responses added as and when available.

Yours sincerely,

Brian Cook

Brian Cook, Appointed Inspector