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Preston
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Our Ref: 22/00056/NEI

Your Ref: LCC/2022/0003

Date: 2 December 2022

Dear Mr Haine

TOWN AND COUNTRY PLANNING ACT 1990

PROPOSAL: DEMOLITION OF EXISTING BUILDING AND ERECTION OF PURPOSE BUILT BUILDING (AND ANCILLARY STRUCTURES) TO HOUSE HIGH TEMPERATURE TREATMENT FACILITY FOR THE MANAGEMENT OF MEDICAL WASTE.

LOCATION: Tower House, Stopgate Lane, Simonswood

Knowsley Council previously objected to the above planning application on 10 February 2022 and 28 July 2022. Further to the publication of the officer report for the 7 December Development Management Committee meeting, I write to reaffirm and clearly explain Knowsley Council's detailed and strong objections to the proposed medical waste incinerator, specifically addressing the contents of the most recent officer report.

1- Policies WM2 and WM3 should have limited weight when deciding the application

Paragraph 7 of the [National Planning Policy for Waste](#) states that when determining a planning application for a waste use, the Council should expect applicants to demonstrate the quantitative or market need for new or enhanced waste management facilities where proposals are not consistent with an up to date local plan. When making their assessment Councils should consider the extent to which the capacity of existing facilities would satisfy the need. The policy is reproduced below.

Determining planning applications

7. When determining waste planning applications, waste planning authorities should:

- only expect applicants to demonstrate the quantitative or market need for new or enhanced waste management facilities where proposals are not consistent with an up-to-date Local Plan. In such cases, waste planning authorities should consider the extent to which the capacity of existing operational facilities would satisfy any identified need;

The first paragraph of the [officer report from the 7 September](#) states that the proposal is acceptable in relation to [Policy WM2 of the Lancashire Minerals and Waste Local Plan](#). This is reproduced below.

In conclusion, the proposal is considered to comply with policy EC1 of the Borough Local Plan. The proposal is also considered to be acceptable in relation to Policy WM2 of the Lancashire Minerals and Waste Local Plan. The proposal would provide a facility for the management of medical wastes produced in the local area and would therefore satisfy the proximity principle and would not prejudice the movement of waste up the waste hierarchy.

The fifth paragraph of the officer report from 7 September explains why Lancashire officers believe WM2 is a relevant consideration. It states that:

“the purpose of policy WM2 is to identify sites, including the Simonswood Industrial Estate, that would be suitable for large scale waste development including thermal treatment plants. The Policy does not specifically exclude smaller scale development.”

This is reproduced below.

The objections of both Councils are noted. However, the total capacity requirements and the distribution of this requirement within policies WM2 and WM3 are based upon data for the period up until 2020. Accordingly, it is considered that these policies are no longer up to date and less weight should now be attached to these particular policies. Even if they did still carry full weight, the purpose of policy WM2 is to identify sites, including the Simonswood Industrial Estate, that would be suitable for large scale waste developments including thermal treatment plants. The policy does not specifically exclude smaller scale development. If a site is considered suitable for large scale plants, it must also be considered suitable for thermal treatment plants of considerably smaller scale where the environmental impacts would be considerably reduced. The policy objections of the Borough Councils are therefore not supported.

The report’s suggestion that the policy does not specifically exclude smaller scale development is **incorrect**. What Policy WM2 (which is entitled ‘Large Scale Built Waste Management Facilities’) actually says is:

3.2 Built Waste Management Facilities

Policy WM2 - Large Scale Built Waste Management Facilities

Development involving individual large scale built waste management facilities around a capacity of 200,000 tonnes per year for recycling, transfer, materials recovery and processing (including mechanical and biological treatment and thermal treatment), as defined in Appendix B, will be supported at the sites listed below subject to the total capacity of all new waste management facilities developed during the plan period at the sites within the catchment area not exceeding the need within that catchment as set out in the table below.

As you can see from the highlighted sections of the policy above, the policy relates to **individual** large scale built waste management facilities and not multiple waste management facilities.

More importantly, the policy explains that large scale waste management facilities are defined in [Appendix B of the Plan](#).

Appendix B Facilities Suitable for Strategic Locations

B.1 The following types of waste management facilities, with capacities of more than 50,000 tonnes per year up to around 200,000 tonnes per year, would be appropriate to the Strategic locations identified in Policy WM2 - Large Scale Waste Management Facilities:

- Waste Transfer Station
- Material Recovery Facility (MRF)
- Construction and Demolition Waste Recycling Plants
- In Vessel Composting Plant (IVC)
- Thermal Treatment (EfW)
- Advanced Thermal Treatment (pyrolysis and/or gassification)
- Mechanical Biological Treatment (MBT)
- Anaerobic Digestion
- Mechanical Heat Treatment (MHT)

B.2 Details of the physical and operational characteristics of such sites are detailed in the Indicative Waste Site Profiles document.

Appendix B is replicated above, and you can see that it clearly states that large scale built waste management facilities are defined as developments with capacities of **more than 50,000 tonnes per year** up to around 200,000 tonnes per year. There is, therefore, a lower limit and this is contrary to the 7 September report's assertion that policy WM2 does not specifically exclude smaller scale development (see below); in fact, it does.

particular policies. Even if they did still carry full weight, the purpose of policy WM2 is to identify sites, including the Simonswood Industrial Estate, that would be suitable for large scale waste developments including thermal treatment plants. The policy does not specifically exclude smaller scale development. If a site is considered

The application proposes that the medical waste incinerator would process 4,000 tonnes of waste per year and, **therefore**, Policy WM2 is not a relevant consideration.

The fifth paragraph of the officer report from 7 September states that:

"If a site is considered suitable for large scale plants, it must also be considered suitable for thermal treatment plants of considerably smaller scale where the environmental impacts would be considerably reduced"

The objections of both Councils are noted. However, the total capacity requirements and the distribution of this requirement within policies WM2 and WM3 are based upon data for the period up until 2020. Accordingly, it is considered that these policies are no longer up to date and less weight should now be attached to these particular policies. Even if they did still carry full weight, the purpose of policy WM2 is to identify sites, including the Simonswood Industrial Estate, that would be suitable for large scale waste developments including thermal treatment plants. The policy does not specifically exclude smaller scale development. If a site is considered suitable for large scale plants, it must also be considered suitable for thermal treatment plants of considerably smaller scale where the environmental impacts would be considerably reduced. The policy objections of the Borough Councils are therefore not supported.

However, this is **not** what the development plan says, and as set out on page 6 of the [7 December officer report](#) planning applications **must** be determined in accordance with the development plan, unless material considerations indicate otherwise.

2. Planning Policy Position

Section 38(6) of the Planning and Compulsory Purchase Act requires that applications for planning permission be determined in accordance with the development plan unless material considerations indicate otherwise.

[Policy DM1 in the development plan](#) says that developments will be supported in accordance with the site-specific policies contained within the plan for provision of a network of new waste management facilities based on strategic locations and local sites:

Policy DM1 - Management of Waste and Extraction of Minerals

To achieve the Spatial Vision, and to provide for the level of need and spatial distribution for the provision of minerals and waste treatment and disposal as set out in the Core Strategy, developments will be supported in accordance with the site specific policies contained within this plan for;

- Safeguarding of mineral resources.
- Provision of a network of sites for fixed recycling facilities.
- Extraction of sufficient minerals to meet our subregional apportionment.
- Increase in the sustainability of minerals operations and transport.
- Provision of a network of new waste management facilities based on strategic locations and local sites.
- Management of a limited and declining number of existing landfill facilities.

Subject to the developments not exceeding the overall capacity as set out in the Core Strategy, and for the individual catchment area as set out in Policy WM1.

Policy WM2 is relevant to *strategic* sites and WM3 is relevant for *local* sites. Policy WM3 is titled 'Local Built Waste Management Facilities' and it states that:

Policy WM3 - Local Built Waste Management Facilities

Development involving individual local waste management facilities, of a capacity of around 50,000 tonnes per year, for the recycling, transfer, and materials recovery (excluding thermal treatment) as defined in Appendix C, will be supported at the strategic locations identified in Policy WM2 and at the following sites:

The policy clearly tells the decision maker that it is the relevant policy for smaller scale development (here, Appendix C does not define a lower limit) on the sites identified in Policy WM3 and in Policy WM2 (like Simonswood). The policy very clearly states that it does not support applications for thermal treatment (such as a medical waste incinerator).

The 7 September report's argument (repeated below) that "*if a site is considered suitable for large scale plants, it must also be considered suitable for thermal treatment plants of considerably smaller scale*" is, therefore, incorrect. That is not what the development plan policies say, and the proposal is, therefore, not consistent with an up-to-date local plan.

for large scale waste developments including thermal treatment plants. The policy does not specifically exclude smaller scale development. If a site is considered suitable for large scale plants, it must also be considered suitable for thermal treatment plants of considerably smaller scale where the environmental impacts would be considerably reduced. The policy objections of the Borough Councils are therefore not supported.

As set out earlier in this letter, [Paragraph 7 of the National Planning Policy for Waste](#) states that when a waste proposal does not accord with an up-to-date local plan the Council must ask the applicant to demonstrate the need for the development and then assess whether existing facilities can meet the need.

Determining planning applications

7. When determining waste planning applications, waste planning authorities should:

- only expect applicants to demonstrate the quantitative or market need for new or enhanced waste management facilities **where proposals are not consistent with an up-to-date Local Plan**. In such cases, waste planning authorities should consider the extent to which the capacity of existing operational facilities would satisfy any identified need;

2 The Development Plan is out of date

The fifth paragraph of the [officer report from 7 September](#) states that policies WM2 and WM3 are no longer up to date.

and the distribution of this requirement within **policies WM2 and WM3 are based** upon data for the period up until 2020. Accordingly, it is considered that these policies **are no longer up to date** and less weight should now be attached to these particular policies. Even if they did still carry full weight, the purpose of policy WM2 is to identify sites, including the Simonswood Industrial Estate, that would be suitable

As I set out when I spoke at the 7 September meeting, if this is the case then even if the Council believes that Policy WM2 is a relevant consideration it should assess the *need* for the development in accordance with National Waste Planning Policy, which states that when a waste proposal does not accord with an up to date local plan the Council must ask the applicant to demonstrate the need for the development and then assess whether existing facilities can meet the need.

The first paragraph on page 8 of the [7 December officer report](#) tries to explain that only the parts of policies WM2 and WM3, which says how much waste should be processed on particular sites or within a district council's administrative area is out of date, but that the part of the policies which identifies where that waste processing should take place are still up to date.

However, Lancashire County Council cannot pick and choose parts of policies - the policy is either out-of-date or it isn't. In this regard, Knowsley Council has very significant concerns about Lancashire County Council's approach to assessing the application.

Knowsley Council will demonstrate below that significantly more waste planning permissions have been granted on Simonswood Industrial Estate and in West Lancashire than the plan allows or ever envisaged when the plan was being prepared (including the Habitats Regulations Assessment and Sustainability Assessment); and for this reason alone, the plan as a whole is out of date.

The need for waste development and the amount of waste which should be handled at each site and within each district is a fundamental part of [Policies DM1, WM2 and WM3](#) (highlighted below). If the Council has to say ignore that part of the policy, then the policy as a whole is out of date and should carry little weight.

If a policy which is fundamental to making a planning decision is out of date, then a development cannot be said to be consistent with an up-to-date local plan and an assessment of need must be undertaken as required by National Waste Planning Policy.

To illustrate the importance of the capacity parts of the policies; DM1 states that waste uses will be supported in accordance with the site-specific policies contained within this plan for provision of a network of new waste management facilities based on strategic locations and local sites. **Subject to the developments not exceeding the overall capacity as set out in the Core Strategy, and for the individual catchment area as set out in Policy WM1.**

Policy DM1 - Management of Waste and Extraction of Minerals

To achieve the Spatial Vision, and to provide for the level of need and spatial distribution for the provision of minerals and waste treatment and disposal as set out in the Core Strategy, developments will be supported in accordance with the site specific policies contained within this plan for;

- Safeguarding of mineral resources.
- Provision of a network of sites for fixed recycling facilities.
- Extraction of sufficient minerals to meet our subregional apportionment.
- Increase in the sustainability of minerals operations and transport.
- Provision of a network of new waste management facilities based on strategic locations and local sites.
- Management of a limited and declining number of existing landfill facilities.

Subject to the developments not exceeding the overall capacity as set out in the Core Strategy, and for the individual catchment area as set out in Policy WM1.

Unfortunately, Policy WM1 does not set out any individual catchment areas, it identifies the amount of waste which is envisaged to be processed in the County as a whole but does not give a spatial breakdown of where the waste should be processed.

Policy WM1 - Capacity of Waste Management Facilities

Development will be supported for waste management facilities to provide for the requirements of the Plan area identified below⁽²⁾, subject to the other policies of the Development Plan:

Municipal Waste

Period	Annual Average Arisings (tonnes)	Recyclable	Compostable	Recovery	Residual/Landfill
2006-10	843,000	213,000	142,000	0	488,000
2011-15	886,000	277,000	184,000	156,000	268,000
2016-20	931,000	330,000	220,000	175,000	206,000

Commercial and Industrial Waste

Period	Annual Average Arisings (tonnes)	Recyclable	Compostable	Recovery	Residual/Landfill
2006-10	1,782,000	512,000	90,000	535,000	645,000
2010-15	1,782,000	576,000	101,000	535,000	570,000
2016-20	1,782,000	650,000	115,000	481,000	535,000

Construction, Demolition and Excavation Waste

Period	Annual Average Arising (tonnes)	Recyclable	Residual/Landfill
2006-10	2,358,500	1,151,000	1,207,500
2011-15	2,479,000	1,314,000	1,164,500
2016-20	2,605,000	1,512,500	1,093,500

However, in relation to capacity, Policy WM2 states that:

“(new developments) will be supported provided that the total capacity of all new waste management facilities developed during the plan period at the sites within the catchment area not

exceeding the need within that catchment as set out in the table below (the table sets out that West Lancashire's capacity is 130,000 tonnes and is allocated to Simonswood)."

The Policy goes on to state:

"In measuring the total capacity of the developments within a catchment, all waste permissions granted during the plan period on sites identified within Policy WM2 and WM3 will be aggregated, together with any other sites granted permission under the exceptional provisions of this policy. Applications for the redevelopment of existing facilities on the identified sites will not count towards the annual capacity identified."

Policy WM2 - Large Scale Built Waste Management Facilities			
Development involving individual large scale built waste management facilities around a capacity of 200,000 tonnes per year for recycling, transfer, materials recovery and processing (including mechanical and biological treatment and thermal treatment), as defined in Appendix B, will be supported at the sites listed below subject to the total capacity of all new waste management facilities developed during the plan period at the sites within the catchment area not exceeding the need within that catchment as set out in the table below.			
Catchment Area and Annual Capacity	Equivalent Area (ha)	Strategic Site	Map Ref no.
Lancaster/Morecambe 160,000 tonnes	5.0	Land at Lancaster West Business Park	BMF7
Fylde Coastal Towns 400,000 tonnes	9.0	Land at Hillhouse Industrial Estate - Subject to the provision of access improvements identified in Policy SA2	BMF5
Central Lancashire 500,000 tonnes	11.0	Land at Redscar Industrial Estate Land at Riversway	BMF1 BMF2
West Lancashire 130,000 tonnes	4.0	Land at Simonswood Industrial Estate	BMF3
Blackburn with Darwen/Ribble Valley 330,000 tonnes	7.0	Land at Whitebirk Industrial Estate Former Wolstenholme Bronze/Goosehouse Lane Site	BMF6 BMF7
East Lancashire 330,000 tonnes	11.0	Altham Industrial Estate Lomeshaye Industrial Estate	BMF5 BMF8
In measuring the total capacity of the developments within a catchment, all waste permissions granted during the plan period on sites identified within Policy WM2 and WM3 will be aggregated, together with any other sites granted permission under the exceptional provisions of this policy. Applications for the redevelopment of existing facilities on the identified sites will not count towards the annual capacity identified.			
Exceptionally, development will be supported on other vacant, previously developed or greenfield sites, excluding sites identified in Policy WM3, subject to the other policies of the development plan where the applicant can demonstrate:			

Lancashire County Council's committee reports are clear that they believe WM2 is the relevant policy when deciding the application for the medical waste incinerator. Nonetheless, we fundamentally disagree with this point, and even if we did agree then Policy WM2 states that the total capacity of all new waste management facilities developed during the plan period at the sites within the catchment area should not exceed the need within that catchment. The policy also says that in measuring the total capacity of the developments within a catchment, **all waste permissions granted during the plan period on sites WM2 & WM3 will be aggregated.**

The introduction to the Joint Lancashire Minerals and Waste Local Plan Site Allocation and Development Management Policies states that it should be read in accordance with the Joint Lancashire Minerals and Waste Local Plan Core Strategy, adopted in 2009 and makes it clear that the plan relies on the evidence collected to inform the 2009 Core Strategy. Therefore, the plan period runs between 2009 and 2021.

1 Introduction

1.0.1 This plan provides site specific policies and allocations, and detailed development management policies for minerals and waste planning in the areas covered by the Councils of Lancashire, Blackpool and Blackburn with Darwen. It should be read together with the Joint Lancashire Minerals and Waste Local Plan Core Strategy adopted in 2009 and the individual local plans of the two unitaries and the twelve districts which make up the Plan area.

1.0.2 It should be stressed that the evidence and strategy on which this plan is based has previously been tested in the production of the Core Strategy which plans for development up to 2021. This has taken into account issues such as the relationship with community strategies within the Plan area, as well as other relevant local strategies and initiatives including the need to reduce carbon emissions. It also accords with national planning policies and does not seek to replicate them.

Policy WM2 states that the annual waste capacity is 130,000 (one hundred and thirty thousand) tonnes. [Lancashire County Council's 2022 Annual Monitoring Report](#) confirms that since 2009 (and not including applications for the redevelopment of existing facilities), planning permission has been granted for the development of 828,000 tonnes of waste uses in West Lancashire, including 600,550 tonnes on Simonswood Industrial Estate. OVER SIX TIMES THE IDENTIFIED NEED IN POLICY WM2

If the redevelopment of existing sites is included, planning permission has been granted for the development of 1,178,500 (one million, one hundred and seventy-eight thousand) tonnes of waste uses in West Lancashire, including 940,500 tonnes on Simonswood Industrial Estate.

This level of waste development is significantly greater than what the development plan identifies as appropriate in West Lancashire and Simonswood Industrial Estate.

It is clear that this level of development was never envisaged when the plan was adopted and that **any application for waste development in West Lancashire would conflict with Policies DM1, WM2 and WM3.**

The plan policies are no longer fit for purpose and in the context of the amount of waste uses allowed on Simonswood and in West Lancashire as a whole, it is irrational and wrong to simply say ignore (or give less weight) to the part of the policies that you don't like or that development may conflict with.

The proposed development is not consistent with an up-to-date development plan and, therefore, it should only be allowed if, as required by Paragraph 7 of the [National Planning Policy for Waste](#) the applicant has demonstrated a *need* and the Council believes that the capacity of existing facilities would not satisfy the need.

3 It has not been demonstrated that there is a need for the facility

Knowsley Council has clearly set out why the proposed development must be considered against Paragraph 7 of the National Planning Policy for Waste. However:

- The committee reports do not discuss the need for the development.
- The applicant does not provide any evidence demonstrating that there is a need for the development. Paragraph 3.8.3 of the applicant's Planning Statement suggests that Aintree Hospital could be a focal point for sourcing the waste, although Knowsley Council is aware that Aintree Hospital would *not* be a source of waste should the development be granted planning permission as it has existing arrangements in place and has had no dialogue with the applicant. The hospital is also of the view that within the North west region there is current significant spare incineration capacity..
- The committee reports provide no evidence to demonstrate that existing facilities would not be able to satisfy the need.

Therefore, the proposed development conflicts with the development plan and national waste planning policy. Knowsley Council respectfully suggests that the application is refused for the following reason:

“The application proposes a waste use which is not consistent with an up-to-date local plan and there is no evidence to demonstrate that there is a need for the facility or that the capacity of any existing operational facilities would satisfy any identified need. The proposed development is, therefore, contrary to the National Planning Policy for Waste, Policies DM1, WM1, WM2 and WM3 in the Joint Lancashire Minerals and Waste Local Plan Site Allocation and Development Management Policies - Part One and Policies CS8 and CS9 in the Joint Lancashire Minerals and Waste Development Framework Core Strategy DPD”

4 The Environmental Effects of the Development – breaches of planning and permit Control

As explained when I spoke at the 7 September committee meeting, Simonswood Industrial Estate is in a disgraceful condition and the operations of several businesses on the estate have a significant detrimental effect on the residents of the Shevington area of Kirkby. It was pleasing to hear members of the committee also acknowledge and voice their concerns about the poor conditions at the Estate when visited.

After researching the planning history of Simonswood it appears that Simonswood Industrial Estate and West Lancashire as a whole have already dealt with their fair share of waste processing developments.

If permission is granted for such a significant additional amount of waste uses in such a small area, then it is not unreasonable to expect the regulatory authorities to keep a close eye on the site given that:

- There are a number of ‘environmentally messy’ operations operating within a small area, which if not appropriately checked are likely to have a negative cumulative impact on the local environment in terms of dust, noise, mud, HGV movements and visual impact, and;
- It would be an efficient way to monitor a number of businesses in say one afternoon.

Nevertheless, in my opinion the regulatory authorities in this case have potentially breached their ‘duty of care’ because they have failed to monitor the Industrial Estate appropriately.

Knowsley Council has lodged a formal planning enforcement complaint with Lancashire County Council in addition to a complaint to the Environment Agency about suspected breaches of planning and environmental permit control on the industrial estate, which have clearly occurred over several years. The complaint is included as an appendix to this letter.

Knowsley’s concerns about each site and the responses from Lancashire County Council and the Environment Agency are set out below.

Breaches of Planning Control

Three waste sites which process aggregates operating without planning permission

Lancashire County Council has no evidence of the amount of waste processed on these sites and has no means of controlling the potentially negative environmental effects, such as inadequate

dust management, extended hours of work, a lack of wheel wash facilities, inadequate checks of compliance with routing agreements and a failure to ensure that wagons are sheeted, etc.

In October 2022 Lancashire County Council acknowledged that three sites are operating without planning permission and noted that the sites should be subject to controls through a planning permission.

The letter stated that a planning enforcement notice **could** be a potential remedy, and then **incorrectly** stated that the principle of using the area for inert waste processing would be acceptable in accordance with Policy WM3 (similar to thermal treatment, the processing of inert waste is excluded from the definition of appropriate uses in Appendix C which defines the uses appropriate for individual waste uses of 50,000 tonnes or less):

Appendix C Facilities Suitable for Local Sites

C.1 The following types of waste management facilities, with capacity around 50,000 tonnes per year, would be appropriate to the local Sites identified in Policy WM3 - Local Built Waste Management Facilities:

- Waste Transfer Station
- Material Recovery Facility
- In Vessel Composting Plant
- Anaerobic Digestion

C.2 Details of the physical and operational characteristics of such sites are detailed in the Indicative Waste Site Profiles document.

Breaches of planning conditions at Windmill Services

The stockpile heights are approximately four times (four times!) higher than the maximum height that the planning permission allows. Lancashire County Council served a 'breach of condition' notice in 2020; but the height of the stockpiles has, since then, actually increased and the Council has only recently referred the matter to the Magistrates Court.

Knowsley Council is also concerned about breaches of planning conditions relating to hours of operation, dust management, wheel wash facilities, the type of material which could be processed, the sheeting of vehicles and the protection of Simonswood Brook.

The County Council did not comment on these matters.

Breaches of planning conditions at CCC

Knowsley Council raised several concerns regarding the planning conditions which control the site, including:

- whether the stockpile heights exceeded what was permitted?
- that only the permitted tonnage/volume of material was being processed?
- that dust suppression measures were in place and being implemented?
- that processing activities are only taking place where they are permitted to take place?
- that vehicles are securely sheeted?
- that routing agreements are being adhered to and asked for an assurance that material actually leaves the site, and
- that the site is not simply a large landfill?

In response to the points raised, Lancashire County Council acknowledged that there are issues with stockpile heights and stated that a recently permitted aggregate washing plant would help CCC to work through stockpiles at the site. Lancashire County Council did not propose any enforcement action to reduce the height of the unauthorised stockpiles.

The County Council also stated that very rarely have any CCC vehicles been seen using roads in Lancashire subject to Traffic Regulation Orders, but that Knowsley may have had a different

experience. Routing agreements on recent planning permissions include roads within Knowsley and the County Council's lack of investigation about whether routing agreements have been breached is disappointing.

The County Council failed to comment on the other matters raised.

Breaches of planning conditions at Mahers

Knowsley Council raised concerns that stockpile heights may be higher than what is permitted, and asked for confirmation that:

- only appropriate material is being processed?
- dust control measures are being implemented?;
- wheel cleaning facilities are in place and available for use?
- all vehicles are sheeted?
- the internal haul roads are hard surfaced with concrete, and;
- that no more than 25 vehicles leave the site in any one day (Monday to Saturday) ?

Lancashire County Council have acknowledged that there is a breach of planning control because the height of some stockpiles exceeded what is permitted; however, they were considered by the County Council 'not significantly' over what is permitted so no action appears to have been proposed.

The County Council also acknowledged that vehicular movements 'may not' be in accordance with the planning permission and this may have implications for hard surfacing and wheel cleaning arrangements, which are required by planning conditions.

The County Council did not comment on whether appropriate materials are processed and whether dust control measures are being implemented, and Knowsley Council is still waiting to hear whether Lancashire County Council has investigated the HGV movements from the site.

Breaches of planning control at Kealshore

Knowsley Council acknowledges that Lancashire County Council have been in dialogue with Kealshore, and this is welcomed. The County Council notes that there have been the following breaches of planning control:

- Erection of an unauthorised aggregate washing plant;
- Breach of an hours of work condition and Traffic Regulation Orders in Lancashire ;
- Breach of planning conditions restricting stockpile heights;
- Unauthorised use of land for waste processing, and;
- Failure to provide wheel cleaning facilities as required by planning condition.

Summary on breaches of planning control

Knowsley Council has identified significant breaches of planning control on almost all of the waste uses on Simonswood Industrial Estate and is concerned that many of the matters it has raised remain to be investigated by Lancashire County Council. As identified and referenced earlier the volume of 'permitted' waste processing operations at Simonswood far exceeds the limit imposed in policy WM2 and that this is before the exceedances in the stockpile heights referenced above. Consequently it is logical to assume that the significant quantities of waste are being processed over and above the levels permitted which are in themselves over 6 times the identified need for West Lancashire

Breaches of Environmental Permits

The Environment Agency has yet to formally respond to Knowsley Council's letter raising its concerns about breaches of permit control on Simonswood Industrial Estate. However, it is noted that following Knowsley's correspondence a team of officers visited the waste sites on

Simonswood in October 2022 and that some breaches and potentially illegal activities were identified, these are currently the subject of ongoing investigations by the Agency.

Consideration of Relevant Policy

A significant amount of waste related development has been granted planning permission at Simonswood Industrial Estate and Knowsley Council believes that there is evidence of persistent breaches of planning and permit controls. The amount of waste being processed on the Industrial Estate and lack of enforcement have contributed to the site's terrible environmental condition.

Policy DM2 in the Joint Lancashire Minerals and Waste Local Plan Site Allocation and Development Management Policies states that:

Policy DM2 - Development Management

Development for minerals or waste management operations will be supported where it can be demonstrated to the satisfaction of the mineral and waste planning authority, by the provision of appropriate information, that all material, social, economic or environmental impacts that would cause demonstrable harm can be eliminated or reduced to acceptable levels. In assessing proposals account will be taken of the proposal's setting, baseline environmental conditions and neighbouring land uses, together with the extent to which its impacts can be controlled in accordance with current best practice and recognised standards.

Members of the Development Control Committee agree with Knowsley Council that the Simonswood Industrial Estate is a very poor environment and frankly, it has had more than its fair share of waste developments.

Policy DM2 requires decision makers to be certain that all impacts that would cause demonstrable harm can be eliminated or reduced to acceptable levels. In assessing the harm, the policy requires the decision maker to take account of the setting of the application site, the baseline environmental conditions and neighbouring land uses.

Given the context of the site, its baseline conditions and neighbouring land uses as mentioned above, even additional minor negative effects would be unacceptable.

The proposed development has the potential to cause the following harm:

1. emissions being exhausted that cause harm to local residents;
2. odours could be generated from waste stored on site were it to accumulate;
3. HGVs using Shevington's Lane and Headbolt Lane adding to the unacceptable harm already caused to Knowsley residents. Any poorly loaded vehicles may also lead to unacceptable odours affecting people's amenity;
4. Fear of adverse health effects due to the nature of the use, the visual impact of the flue and the lack of enforcement of planning controls and permit conditions on the industrial estate (which the County Council and Environment Agency may say is perceived), and;
5. The visual harm of the flue.

The County Council argue that points 1 – 2 will be addressed by planning and permit conditions and are, therefore, not relevant considerations because paragraph 188 of the National Planning Policy Framework states that planning decisions **should** assume that permitting regimes will operate effectively.

188. 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.

Knowsley Council acknowledges that in almost all cases where there is an environmental permit which would control emissions or the management of a site, the planning decision **should** assume it will operate effectively. However, the use of the word 'should' rather than 'shall' means that planning authorities are not always required to follow this assumption, and I would suggest especially where there is unequivocal evidence to the contrary.

At Simonswood Industrial Estate operators are not complying with planning or permit conditions as is clear to anybody who undertakes a visit and from the evidence set out above.

Furthermore, when the Joint Lancashire Minerals and Waste Local Plan - Site Allocation and Development Management Policies plan was adopted, in 2013, the Inspector's Report notes that enforcement of waste uses on the estate was a problem. Similar problems are still occurring 9 years later, and it is simply insufficient and unfair to say that there should be more enforcement; it demonstrates a fundamental problem with control and compliance on the estate.

This is a relevant, '**material**', planning consideration and in this instance Knowsley Council believes that it is likely that if there were breaches of the environmental permit they would go unnoticed or unchecked, resulting in harm to health and amenity. Given the already existing poor environment of the area, the harm would be unacceptable.

In terms of point 3, it is clear from Lancashire County Council's response to Knowsley Council's enforcement complaint about HGV's breaching routing agreements and travelling along Shevington's Lane and Headbolt Lane (both in Knowsley) that any breaches would not be investigated, nor action taken. A planning condition would, therefore, be insufficient to ensure that HGVs would not use these roads (which have environmental weight limits) and unacceptable harm would be caused to Kirkby residents due to noise, disturbance, odours and dust.

With regard to point 4, fear of adverse effects on health is a relevant material planning consideration. In the context of the application site's baseline conditions, the lack of enforcement action by regulatory agencies on the estate (even if the County Council believe this is what residents perceive) and the significant number of objectors who have raised concerns that the proposed development would adversely affect their health – this should be given significant weight against the proposal. Knowsley Council does not believe that this social and environmental harm could be eliminated or reduced to an acceptable level.

With regard to point 5, the application proposes a 26m high emissions stack, almost double the height originally proposed. Although it is acknowledged that the site is in an industrial setting, a 26m high stack would appear as an incongruous feature in an area where the buildings are significantly lower (around 10/12m high), with the consequence that it would be visible from a significant distance away from the estate.

The stack would sit in the context of nearby mounds of aggregate waste, which extend to 20m in height. However, the mounds are unlawful (in planning terms) and should, in fact, be no more than 5/7m high. Therefore, their presence at this height should be ignored by Members of the Development Control Committee when considering the visual effects of the emissions stack and in considering the overall application decision.

It is accepted that there is a large wind turbine in views of the estate, which is already visually harmful to the local area. Nevertheless, its presence does not make the development of additional harmful structures acceptable.

Therefore, for the reasons set out above, Knowsley Council, respectfully requests that the application is refused for the following reason:

“In the context of the baseline conditions in Simonswood Industrial Estate, the proposed use would cause unacceptable harm to amenity and health by way of emissions, odours, noise and disturbance from HGVs, fear of adverse health effects and the adverse visual effects of the flue. The proposed development is, therefore, contrary to the National Planning Policy Framework, the National Planning Policy for Waste, Policy DM2 in the Joint Lancashire Minerals and Waste Local Plan Site Allocation and Development Management Policies - Part One, Policy CS9 in the Joint Lancashire Minerals and Waste Development Framework Core Strategy DPD and policies SP1, GN3 in the West Lancashire Local Plan.”

5 Compliance with Policy WM4

Policy WM4 deals with proposals which recover energy from waste the policy is replicated below:

Policy DM 4 - Energy from Waste

All developments that include processes capable of recovering energy from waste will be required to include measures to capture any heat or electricity produced directly or as a byproduct of the waste treatment process and either use it on site or export it to the national grid or a local energy or heat consumer.

The supporting text for the Policy states that:

2.4.2 Proposals will be required to demonstrate that the scheme offers the best practicable use of the energy resource, through the submission of a Combined Heat and Power Feasibility Review in support of an application, assessing potential commercial opportunities for the use of heat from the development. Every effort should be made to find an end user for the heat in order to ensure the process occurs with the highest possible efficiency. Where relevant the Minerals and Waste Planning Authority may either ensure through condition future use of heat is implemented, or that any proposal for Combined Heat and Power ensures heat is used straight away, or at least that infrastructure is laid down in readiness for future heat users. The design should ensure that there are no barriers to the future supply of heat to the boundary of the site.

Paragraphs 3 and 4 on page 14 of the 7 September officer report states that the proposed process would generate electricity to power itself, with the surplus electricity used to power an aggregate washing plant.

However, it is very difficult to understand how this is accurate given that the incinerator would operate for 24 hours a day, 7 days a week but the washing plant is only permitted to operate between 7.30am and 6pm on weekdays and 7.30am to midday on Saturdays. Furthermore, there is no evidence about the amount of energy which would be exported to or used by the plant or about how often the plant would operate.

It has not been demonstrated in a combined heat and power feasibility review that this is the best use of the energy resource, and the proposed development is, therefore, contrary to Policy WM4.

Knowsley Council respectfully requests that planning permission is refused for the following reason:

“The proposed development is contrary to Policies DM1, WM4 in the Joint Lancashire Minerals and Waste Local Plan Site Allocation and Development Management Policies - Part One because the proposed development does not make best practicable use of the energy resource generated by the energy recover process”

Were members minded to grant planning permission for the development, Knowsley Council also has concerns about conditions 3 and 4 (which are proposed to secure the use of the energy generated by the process), because the conditions:

- do not require details of the infrastructure to be submitted to and agreed with the Council. As was pointed out at the last committee meeting, a domestic electrical wire could be installed under the provisions of the condition;
- do not require any form of agreement between the parties to ensure that energy will be produced and exported, or specify how much energy would be exported;
- do not require the electricity to be exported for any length of time;
- only require a combined heat and power review to be submitted to the Council if the aggregates processing and washing plant on the City Centre Commercials Ltd waste transfer station is removed from the site (not if it ceases to be operational). Furthermore, given the ongoing issues with enforcement on Simonswood Industrial Estate it is very unlikely that the County Council would ever become aware when the aggregates processing and washing plant is removed from the site, and;
- do not require the combined heat and power review to be agreed by the Council once it has been submitted. The user of the facility could simply submit a one-page document with a heading and the condition would be satisfied.

6 Failure to Comply with the requirements of the Town & Country Planning (Environmental Impact Regulations) 2017

The application was amended on 14 July 2022 and the principal changes to the application were:

- the increased height of the emissions stack, from 14m to 26m high, and;
- the inclusion of an engine and generator to allow electricity to be produced and distributed using residual heat generated as part of the process.

The applicant's submission also included revised noise and dispersion modelling assessments.

Knowsley Council is concerned that the relevant chapters of the Environmental Impact Assessment (EIA) have not been updated based on these revised assessments. Given that an additional process is included in the noise modelling and the height of the stack is significantly changed, Knowsley Council is concerned that the EIA is not a sound basis on which to assess the application.

7 Concerns with the 'Atkins Report'

Knowsley Council's Environmental Health Department has repeatedly raised concerns about the air quality monitoring information submitted with the application. In particular, whether there would be exceedances of Chromium V (CrVI).

The application documents show that there will be an exceedance of the Environmental Advisory Limit (EAL), at the various receptors in Knowsley, even without the proposed development in place. The main reason for this is that the predicted background level is already higher than the EAL, so no matter what is added into the environment, it will further increase the exceedance.

The applicant attempts to justify that the background reading is not representative because of the data they had to use (as this was data from Runcorn, Weston point); and it is still an assumption they are making.

Atkins argue that the monitoring of the background Cr(VI), to ascertain a more accurate figure, is not proportionate to the risk presented by the emissions. We disagree. An emission limit has been set, and the applicant has shown it will be breached, even without the development in place. Carrying out real time monitoring for Cr(VI) will prove whether or not the applicant's assumptions are correct, and if that is the case, allow them to update their assessment to demonstrate that the EAL for Cr(VI) will not be exceeded.

Unless the modelling is update, Knowsley Council do not believe that Lancashire County Council have sufficient information to determine the application and respectfully suggest that it is refused for the following reason:


“The application fails to demonstrate that the proposed development’s environmental impacts, which would cause demonstrable harm, can be eliminated or reduced to acceptable levels. This is contrary to the requirements of Policy DM2 in the Joint Lancashire Minerals and Waste Local Plan Site Allocation and Development Management Policies - Part One, Policy CS9 in the Joint Lancashire Minerals and Waste Development Framework Core Strategy DPD, Policies SP1, GN3 in the West Lancashire Local Plan, The National Planning Policy Framework and the National Planning Policy for Waste.”

8 Summary

Knowsley Council has clearly explained four reasons why the proposed development is unacceptable; it fails to comply with national and local planning policy and and there are genuine concerns about the validity of the Environmental Statement. Notwithstanding the officer recommendation that planning permission should be granted subject to the signing of a S106 agreement, Knowsley Council respectfully asks that the planning application is refused.

Please note that a copy of this letter along with a covering letter from Cllr Tony Brennan – Ward Member for Shevington Ward in Knowsley and Knowsley’s Cabinet Member for Regeneration and Economic Development has been sent to members of the Development Control Committee.

Yours faithfully



Dale Milburn
Executive Director (Regeneration and Economic Development)