

**Consideration of Whether New Factors Have Emerged Between the Committee's Resolution in March 2014 and the Issue of the Decision Notice in September 2014**

**Charlton Lane Waste Management Facility, Charlton Lane, Shepperton,  
Application No: SP13/01553/SCC**

**Changes to the planning conditions attached to the Charlton Lane Eco Park planning permission (Ref: SP10/0947, dated 15 March 2012) in order to incorporate minor material amendments to the approved scheme comprising a revised gasification technology, 3 new sub stations, other minor material amendments to the layout, buildings, structures and ancillary elements of the scheme, and a minor reduction in the tonnage of waste that would be managed at the site.**

The application went before the Planning & Regulatory Committee on 17 March 2014 when Members resolved to permit the application subject to the planning conditions set out in the Officer report and referral to the National Planning Casework Unit as a Departure from the development plan. The National Planning Casework Unit has now confirmed that they do not wish to 'call in' the application and we can therefore proceed to issue a planning permission.

As a result of the need to refer the application to the National Planning Casework Unit, a period of over five months has elapsed between the committee resolution and the issue of the decision notice. As such, consideration is given below as to whether any new factors have emerged in the intervening period.

<b>Background Papers Referred to Within the Committee Report &amp; Update Sheets</b>	<b>Unchanged</b>	<b>Revised / Changed</b>	<b>Comments</b>
<b><i>Government Guidance</i></b>			
National Planning Policy Framework 2012	✓		
National Planning Policy Framework Practice Guide 2012	✓		
National Planning Practice Guidance 2014		✓	On 12 June 2014, guidance on the Community Infrastructure Levy was added to the planning practice guidance web-based resource on 12 June 2014. This replaced the stand-alone guidance that was published in PDF format when amendments to the Community Infrastructure Levy Regulations came into effect in February 2014. It is not considered that this update to the National Planning Practice Guidance introduces any change in circumstances that would be material to the decision taken by Members.

The Waste Strategy for England 2007	✓		
Planning Policy Statement 10	✓		
Government Review of Waste Policy in England 2011	✓		
Government Review of Waste Policy in England Action Plan 2011	✓		
<b><i>The Development Plan</i></b>			
Surrey Waste Plan 2008	✓		
Surrey Minerals Plan Core Strategy DPD 2011	✓		
Spelthorne Borough Core Strategy and Policies DPD 2009	✓		
Spelthorne Borough Local Plan 2001 (saved policies)	✓		
Spelthorne Borough Council Flooding SPD 2012	✓		
<b><i>Other Documents</i></b>			
Planning and Regulatory Committee meeting and Committee Report to the 30 June 2011 Planning and Regulatory Committee meeting.	✓		
Environmental Impact Assessment Regulations 2011	✓		
Inspector's Decision on Public Footpath 70 (Sunbury) Diversion Order, 22 May 2013	✓		
Environmental Permitting Regulations 2010	✓		
Environmental Permitting Guidance The Waste Incineration Directive 2010, DEFRA	✓		
Revised Waste Framework Directive 2008	✓		
Response with Responsibility - Policy	✓		

Making for Public Risk in the 21st Century May 2009 (The Risk and Regulation Advisory Council)			
The UK Health Protection Agency's Position Paper on Municipal Waste Incineration (2009)	✓		
DEFRA Waste Management Plan for England – Consultation Plan (July 2013)	✓		
National Policy Statement for Renewable Energy Infrastructure (EN-3) 2011	✓		
Overarching National Policy Statement for Energy (EN1) 2011	✓		
DCLG Planning Practice Guidance for Renewable and Low Carbon Energy	✓		
DEFRA Energy from Waste – A Guide to the Debate (Feb 2013 & revised edition Feb 2014)	✓		
Environment Agency Guidance on Stage 1 and 2 Assessment of New Process Industry	✓		
Regulations (PIR) Permissions (Ref. 12) under the Habitats Regulations	✓		
The Environment Agency H1 Guidance	✓		
The Environmental Protection UK guidance	✓		
Human Health Risk Assessment Protocol “Human Health Toxicological Assessment of Contaminants in Soil”, United States Environment Protection Agency 2005	✓		
European Union ATEX Workplace Directive 99/92/EC & ATEX Equipment Directive 94/9/EC	✓		
GLVIA3, IEMA April 2013.	✓		
2009 Birds Directive	✓		
Town and County Planning Act 1990	✓		

Planning and Compulsory Purchase Act 2004	✓		
A Plan for Waste Management (Joint Municipal Waste Strategy) September 2010 (Surrey Waste Partnership)	✓		
The World Class Waste Solutions (WCWS - Action Plan for the JMWMS Officer Report to Cabinet dated 2 February 2010)	✓		
Health & Safety at Work Act 1974	✓		
Government Review of Waste Policy in England 2011	✓		
Guidelines for Noise Control Minerals and Waste Disposal, SCC 1994	✓		
Guidance Notes for the Reduction of Obtrusive Light 2005 (The Institution of Lighting Engineers)	✓		
Letter plus enclosures from James Waterhouse (Iceni Projects) dated 21/02/14 relating to planning application ref EL13/1251	✓		Application ref EL13/1251 was refused on 23/04/14, to date no appeal has been made to the Planning Inspectorate.

#### Key Considerations Identified within the Report and Highlighted at the Committee Meeting

Issue	Unchanged	Revised / Changed	Comments
Role of the Surrey Waste Contract	✓		
Publicity Issues	✓		
Committee Issues	✓		
Environmental Impact Assessment	✓		
Waste Process Description	✓		

Waste Management Issues	✓		
Renewable Energy	✓		On 18 August 2014, the County Waste Management and Energy Recovery Consultant stated: <i>"We can confirm that in the normal course of our professional practice in these disciplines, this practice is not aware of any new factors that could be described as material considerations in the Eco Park Application."</i>
Highways, Traffic & Access		✓	<p>County Highway Authority confirmed on 7 August 2014 that: <i>"Surrey Police has requested that Surrey County Council increase the speed limit of Charlton Lane to 40mph in the immediate vicinity of the Eco Park site. A decision on this has not yet been made and it would need to be subject to public consultation prior to any Traffic Regulation Order being made to amend the speed limit. At this stage, it is a possibility not a certainty. I'm not sure whether this would be considered a material consideration but as I have become aware of this since the Planning and Regulatory Committee meeting on 17 March, I thought I had better bring it to your attention. As Surrey Police have requested the change in the speed limit, they must consider that the road is suitable for a 40mph limit as it is with the current levels of traffic generation of the Eco Park site and the current levels of queuing on the public highway. The Eco Park will result in a reduction in HGV generation and increased queuing capacity within the site, which is a net benefit of the proposal. Any future increase in the speed limit would therefore have no impact on the Eco Park."</i></p> <p>The Highways Agency confirmed on 7 August 2014 that: <i>"On behalf of the Highways Agency I can confirm that there are no new material considerations and the position is unchanged."</i></p>
Environment Impact Assessment	✓		On 20 August 2014, the County Environmental Assessment Officer stated that she is: <i>"...not aware of anything that has changed in respect of EIA that would raise any new issues to be considered in respect of the Eco Park application. The current technical consultation on planning (Section 5, pp. 74-80, July 2014) proposes changes to the thresholds given in Schedule 2 of the EIA Regulations 2011 for urban development and industrial estate projects, but those changes have no relevance to or bearing on the Eco Park application."</i>
Air Quality		✓	On 7 August 2014, the County Air Quality Consultant (CAQC) responded to each of the factors that may potentially affect the conclusions of the original assessment as follows:

		<p><i>“i. Sources of emissions - assuming that there have been no changes to the design of the scheme since the resolution, the sources of emissions remain unchanged;</i></p> <p><i>ii. Legislation and policy - there have been no changes to the relevant air quality legislation and policy since the resolution;</i></p> <p><i>iii. Best practice/technical guidance – the only new air quality technical guidance introduced in the intervening period relevant to this application is the Institute of Air Quality Management (IAQM) ‘Guidance on the assessment of odour for planning’ published in May 2014.</i></p> <p><i>The application was supported by a risk-based odour impact assessment using a source-pathway-receptor conceptual model. This approach forms the basis of the new IAQM guidance and, in our view, this guidance does not significantly affect the interpretation of the odour impacts; and</i></p> <p><i>iv. Characteristics of the site (including baseline conditions, prevailing meteorological conditions and the introduction/removal of potentially sensitive receptors) – there have been no significant changes to the characteristics of the site since the resolution.”</i></p> <p>In summary, on 7 August 2014, the CAQC had not identified any new factors.</p> <p>On 20 August 2014, Spelthorne Borough Council stated that following matters should be considered by the County Planning Authority:</p> <p><i>“1. In April 2014 Public Health England published a document ‘Estimating Local Mortality Burdens associated with particulate Air Pollution’ It shows that, apart from London, Spelthorne ranks 11<sup>th</sup> from bottom across the whole country for concentrations of PM2.5. This is worse than any other Surrey District. The applicant’s consultants need to re-evaluate the proposal in the light of this serious position. A copy of the document is attached.</i></p> <p><i>2. Spelthorne Council has published updated air quality information on its web</i></p>
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		<p><i>Regulations were made under section 2 of the Pollution Prevention and Control Act 1999 (the PPC Act 1999) and are therefore relevant to section 79(10). Section 79(10) sets out the circumstances in which the Secretary of State or Welsh Ministers' consent is required before a local authority can institute summary proceedings for the specified types of statutory nuisance. Its purpose is to avoid the operator of a regulated facility or exempt waste operation being exposed to regulatory action by both the Environment Agency and the local authority for the same incident, i.e. to avoid 'double jeopardy'."</i></p> <p><i>This is designed to avoid the operators of regulated facilities being exposed to action by both the EA and the local authority for the same incident (i.e. to avoid 'double jeopardy'). As far as we understand, the Eco Park would only be regulated by the EA under the EPA and would not also be regulated under the Clean Air Act so there would be no need to amend the Smoke Control Zone.</i></p> <p><i>4. As discussed, the number of HGV movements is expected to reduce when compared with the existing use and traffic-related pollutant concentrations are predicted to decrease. On that basis, the development is likely to make a positive contribution to reducing congestion."</i></p> <p><i>Additionally, on 26 August 2014, the CAQC advised that:</i></p> <p><i>"There is no specific guidance for describing baseline air quality in the Environmental Impact Assessment Regulations, the National Planning Policy Framework or the national Planning Practice Guidance. Defra's Local Air Quality Management Technical Guidance (LAQM.TG(09)) and the Environment Agency's Horizontal Guidance Note 1 (H1) both advocate the use of either representative monitoring data or Defra maps. Neither document refers to the use of most recent monitored data for describing data. Moreover, it has historically been the case that forecast background concentrations have been derived by applying a reduction to current concentrations; however, it is generally accepted that such a reduction is no longer appropriate. Both monitored concentrations and the Defra mapped data were considered in the ES, which is consistent with LAQM.TG(09) and H1.</i></p> <p><i>Appendix 13.1, Table 8.3 of the October 2013 ES provides the predicted annual-</i></p>
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			<p>mean NO<sub>2</sub> Process Contribution (PC) and the ambient concentration (labelled Bg in the table) at each of the monitoring locations. The PC and the Bg have been totalled to give a Predicted Environmental Concentration (PEC) at each location.</p> <p>If the ambient concentration used in Table 8.3 is compared with the most recent measured concentration provided by Spelthorne Borough Council, the measured concentration is higher than the value for Bg used in the ES at the following locations: SP8, SP10, SP21, SP22, SP23, SP34, SP35 and SP36. The highest PC at any of these locations is 0.4% of the Air Quality Strategy objective, i.e. All PCs are <u>well below</u> the 1% threshold above which the impacts cannot be screened out as insignificant. In summary, consideration of the most recently monitored concentrations does not alter the conclusions of the assessment.</p> <p>Taking the new Spelthorne monitoring locations (where the applicant has not specifically tabulated Bg), we have examined these in the context of the contour map provided in Appendix 13.1, Figure A.5 of the October 2013 ES. The only monitoring locations within the extents of Figure A.5 are SP55 (1.2 km to the south-east of the Application Site) and SP50 (1 km to the north of the Application Site). It should be clear from Figure A.5 that SP50 is located between the 0.1 µg.m<sup>-3</sup> and 0.2 µg.m<sup>-3</sup> contour and SP55 is outside the 0.1 µg.m<sup>-3</sup>, i.e. Both PCs are <u>well below</u> the 1% (or 0.4 µg.m<sup>-3</sup>) threshold above which the impacts cannot be screened out as insignificant. Attached is an illustration showing the approximate locations of the monitors super-imposed onto Figure A.5.</p> <p>In summary, consideration of the most recently monitored concentrations does not alter the conclusions of the assessment.”</p>
Landscape and visual amenity	✓		County Landscape Officer confirmed on 12 August 2014 that: “I would consider that there are no new factors or changes that would have any bearing on the Eco Park decision from a landscape perspective.”
Noise and Vibration	✓		On 6 August 2014, the County Noise Consultant confirmed that: “I do not know of anything that would affect noise and vibration and cause me to change my advice.”
Surface Water and Flood Risk	✓		On 18 August 2014, the County Geotechnical Consultants stated: “We can confirm that in the normal course of our professional practice in these disciplines, this practice is not aware of any new factors that could be described as material

			<i>considerations in the Eco Park Application.”</i>
Geology and Groundwater	✓		On 18 August 2014, the County Geotechnical Consultants stated: “We can confirm that in the normal course of our professional practice in these disciplines, this practice is not aware of any new factors that could be described as material considerations in the Eco Park Application.”
Ecology and Nature Conservation	✓		On 18 August 2014, the County Ecology Officer stated that: “I can confirm that I am not aware of any such new factors since 17 March.”  Natural England confirmed on 8 August 2014 that: “I can confirm that no new factors have come to light since Natural England’s previous responses to this application.”
Lighting	✓		On 18 August 2014, the County Lighting Consultant stated that: “I am unaware of any alterations in terms of the lighting.”
Archaeology & Cultural Heritage	✓		County Archaeological Officer confirmed on 7 August 2014 that: “I am not aware of any factors/changes/updates arising in the last four months relating to archaeology which would have a bearing on the Eco Park decision.”
Cumulative Impacts	✓		
Human Health Impacts; Perception of Health Risk; Technology Concerns; Other Environmental Issues; Socio-Economic issues.	✓		On 18 August 2014, BAA Safeguarding stated that: “No new factors have arisen from Heathrow Airport point of view. Therefore as long as all current Aerodrome Safeguarding criteria are adhered too we have no further comments to make.”
Green Belt	✓		(But see Case Law below)

### Case Law

	Consulted Legal Dept./EIA Officer	Changes	No changes	Details/Comments
Have any relevant new legal issues arisen since the resolution by Committee?	✓	✓		The County Environmental Assessment Officer is not aware of any new issues.  The County Planning Authority’s Counsel has drawn our attention to <i>Redhill Aerodrome Ltd v. Secretary of State for Communities &amp; Local</i>

			<p><i>Government</i> [2014] EWHC 2476 (Admin). NPPF paragraph 88 provides that: <i>'When considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. 'Very special circumstances' ('VSC') will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations'</i> (emphasis added). <i>Redhill</i> determined that non Green Belt harm is not <i>'any other harm'</i> within NPPF paragraph 88 and that this position is changed from PPG2.</p> <p>The County Council has attached substantial weight to the harm recognised to result to the Green Belt through the course of its decision-making process including at 17 March 2014. It has also addressed compliance with Green Belt policy by reference to whether VSC <i>'clearly outweigh'</i> harm to the Green Belt. Officers consider that the VSC referred to at 17 March 17 2014 are unchanged. The County Council weighed, on the other hand, non Green Belt harm against VSC in the course of its decision at 17 March 2014 (see the discussion at paragraphs 324-333). Officers consider that the removal of non Green Belt harm from the Green Belt planning policy balance, in accordance with NPPF paragraph 88 and <i>Redhill</i>, does not amount to a circumstance that suggests that the County Council would have or should now consider that VSC do not clearly outweigh harm to the Green Belt. It is important to note that the matters concerned have been assessed on their individual merits through the County Council's decision-making process and considered not to justify the refusal of planning permission.</p>
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**Other Matters**

The Planning Portal, DCLG, DEFRA, Natural England and WRAP websites have been checked for any new legislation, policy documents, circulars and official letters, speeches, statements and articles, good practice and guidance and consultation documents relevant to this application which may have been issued between March 2014 and September 2014.

Annual update of data on concentrations of major air pollutants in the UK:

On 23 April 2014, the Department for Environment, Food & Rural Affairs (DEFRA) published 'ENV02 – Air quality statistics' (Air quality statistics in the UK 1987 to 2013). This publication summarised the concentrations of major air pollutants as measured by the Automatic Urban and Rural Network (AURN). This release covers annual average concentrations in the UK of: particulates (PM10) and ozone (O3). The release also covers the number of days when air pollution was 'moderate or higher' for any one of five pollutants listed below: particulates (PM2.5); nitrogen dioxide (NO2); ozone (O3); particulates (PM10); sulphur dioxide (SO2). The CAQC advised on 20 August 2014 that this DEFRA report is a summary of air quality statistics over the period between 1987 and 2013 and is based on the results of monitoring across the UK. The relevant headline points are as follows: 1) Urban background and roadside particulate pollution has shown long-term improvement but remained stable since 2008; 2) There were on average fewer days of moderate or higher pollution at urban pollution monitoring sites in 2013 compared with 2012. There is a long-term decline in days of moderate or higher pollution at urban sites; and 3) There were on average more days of moderate or higher pollution at rural pollution monitoring sites in 2013 compared with 2012, reversing the decrease in the previous year. However, there is a great deal of year-on-year variability and there is no clear long-term trend.

The CAQC notes that that the assessment undertaken by the applicant for Charlton Lane considers the results of local monitoring (not UK-wide); however, the findings of the DEFRA report are generally beneficial. On the basis of the CAQC's comments, it is not considered that this update introduces any change in circumstances that would be material to the decision taken by Members.

#### Waste and recycling statistics and ENV19 - Local authority collected waste: quarterly tables

On 22 May 2014, DEFRA published Provisional Statistics on waste managed by local authorities in England including October to December 2013. This showed that: the annual rate of recycling of 'waste from households' was 44.2 per cent in 2013 and continues to be stable with just a slight increase from 44.1 per cent in 2012; the quarterly rate of recycling of 'waste from households' reached 42.7 per cent in October to December 2013, increasing from 41.5 per cent in the same quarter in 2012; total 'waste from households' dropped 1.8 per cent to 21.6 million tonnes in 2013 (which amounts to 403 kg per person); and that local authority managed waste to landfill and incineration fell by 5.2 per cent in 2013. The statistics are not considered to introduce any change in circumstances that would be material to the decision taken by Members.

#### National Audit Office (NAO) report

17 June 2014 Report on oversight of three local authority Private Finance Initiative waste contracts by the Department for Environment, Food and Rural Affairs. The report notes that three contracts were entered into by Surrey County Council (i.e. with SITA for the Charlton Lane Eco Park), by Norfolk County Council and, jointly, by Herefordshire Council and Worcestershire County Council. All three projects were noted to have experienced significant delays stemming from a range of problems, including difficulties obtaining planning permission, complex commercial considerations, and opposition from local groups and uncertainty over technology. It was clear from correspondence received by the NAO that there was a lack of clarity over both the facts and figures relating to these three projects, and the roles and responsibilities of the parties involved. The report finds that the Department had given good support and guidance to the local authorities involved, but that the nature of the Department's funding agreements with Surrey and Herefordshire and Worcestershire, which the Department inherited from predecessor departments, made it difficult for it to withdraw or amend its financial support to these contracts, even when significant infrastructure had not

been delivered as planned. The NAO had not sought to conclude on the value for money of the three contracts as these matters are for local authorities' auditors to examine. Nor does it examine the value for money of the overall Waste Infrastructure Delivery Programme managed by the Department. The report sets out the roles and responsibilities of the parties involved in the three contracts and examines those issues over which the Department for Environment, Food and Rural Affairs has direct influence or involvement.

This NAO report is not considered to introduce any change in circumstances that would be material to the decision taken by Members. As noted in paragraph 113 of the 17 March 2014 Planning & Regulatory Committee Report, whilst the existence of the Surrey Waste Contract is background information, the significance that this Eco Park proposal in terms of the performance of that contract – whether, for example, it results in gains pursuant to the contract (in the event that planning permission is granted), or penalties (if it is not), or other contractual issues arise (whatever the decision on this planning application may be) - is not a material consideration in the determination of this planning application.

#### Technical consultation on planning:

On 31 July 2014, Department for Communities & Local Government (DCLG) consulted on a range of proposals to further improve the planning system, seeking views on proposals to: make it even easier for residents and business to come together to produce a neighbourhood plan; expand permitted development rights; improve engagement with statutory consultees so they are consulted in a proportionate way; raising the environmental impact assessment screening thresholds for industrial estate and urban development projects; and expand the number of non-planning consents which can be included within a development consent order. As noted above, *the County Environmental Assessment Officer advises that the technical consultation on planning* (Section 5, pp.74-80, July 2014) proposes changes to the thresholds given in Schedule 2 of the EIA Regulations 2011 for urban development and industrial estate projects, but those changes have no relevance to or bearing on the Eco Park application. This document relates to a consultation, and is not considered to introduce any change in circumstances that would be material to the decision taken by Members.

#### Guidance on the pre-application process for major infrastructure projects

On 29 August 2014, DCLG published guidance setting out the requirements and procedures for the pre-application process and consultation for major infrastructure projects. However, as the Eco Park is under the threshold of infrastructure development considered to be nationally significant in The 2008 Planning Act, this guidance is not relevant to this application.

To my knowledge no additional material to this application has been published since 17 March 2014.

11 September 2014