

Respondents: Shlomo and Josh Downen

Main Matter 4 – Strategic Policies – Supplementary comments in light of WS4/1 (23rd September 2024)

These comments should be read alongside WS4/2 from August 2024.

Issue: Do the Strategic Policies reflect the Vision of the Plan and deliver the Strategic Objectives; and are they justified and consistent with national policy?

Policy SP5: Climate Change

6. Should the policy and/or the justification text make reference to the effect of managing waste higher up the waste hierarchy on climate change?

In WS 4/1 the Council states: “Paragraph 7.42 of the introduction text for Policy SP5 recognises that reducing the amount of waste produced and moving towards a more circular economy is a key part of achieving net zero. It does not though explicitly state that managing waste higher up the waste hierarchy is a key part of reducing greenhouse gas emissions and so achieving net zero. We will propose an additional modification to this paragraph to make this clear”.

While the proposed additional modification for Paragraph 7.42 set out in the August 2024 version of EXAM 1 represents an improvement over the current text in some respects, we are concerned about the statement that “...managing waste higher up the waste hierarchy... is a key part of reducing greenhouse gas emissions and achieving net zero”.

While it is surely the case that managing waste at the *top tiers* of the waste hierarchy supports the reduction of greenhouse gas emissions (GHG) and the achievement of net zero, there are circumstances where diverting waste from landfill to energy recovery / incineration can result in higher levels of GHG emissions impeding the move to net zero.

This is due to the adverse climate impacts associated with burning fossil-derived materials such as plastics which remain inert in landfill, but which release significant quantities of CO₂ when combusted.

For example, as we note in WS4/2 in response to question 7, the Medworth NSIP decision by the Secretary of State gave negative weight to the climate change impacts of the proposed energy recovery incinerator.

There is also the risk of material being locked into incineration / energy recovery, as acknowledged by the updated EN-1 and EN-3 and as recognised as part of the Wheelabrator Kemsley North (WKN) NSIP decision which found that the proposed WKN plant could end up relying on waste that would otherwise be recycled.

As such, we propose that the text be modified to state: “managing waste at the top tiers of the waste hierarchy” rather than “managing waste higher up the waste hierarchy”.

7. Should the justification text explain the relationship between the planning regime and the pollution control/permitting regime in relation to climate change?

In WS4/1 the Council set out how: “we will propose an additional modification to add a paragraph after 7.48 of the justification text that explains the control of pollution is a matter for the pollution control authorities and the Councils will assume that the relevant pollution control regime will be properly applied and enforced, as per paragraph 7 of the NPPW”.

Nowhere in NPPW paragraph 7 does it specifically mention the Environment Agency having a key role with respect to regulating climate change emissions, and to imply that this is the case in the updated wording is highly misleading.

As we set out in WS4/2, the Environment Agency has explicitly set out how their role with respect to regulating climate change is very limited and that assessing the overall GHG impacts of a proposed waste development “are matters for the waste planning authority” to address within the context of the planning, and not the permitting, regime.

As such, the newly proposed paragraph that would follow paragraph 7.48 overstates the Environment Agency’s role. Adopting this proposed change therefore risks leaving any planning decisions reliant upon this supporting text open to judicial review on the grounds of irrationally misapplying NPPW paragraph 7 and failing to account for material planning considerations.

This would be far from an ideal position, and as such we suggest that either no amendment be made or that any amendment be required to accurately reflect the situation taking into account the points made in WS4/2 that the supporting text should set out how the Environment Agency pollution control/permitting regime does not control overall GHG emissions and that it is open to planning decision-makers to ascribe limited, neutral, or indeed negative weight to the applicant’s claimed overall GHG impacts of an Energy from Waste incineration scheme depending on the relevant circumstances of the proposal.