Contact Officer: John Hamilton, tel. 01865 815584

Division(s): All

PLANNING & REGULATION COMMITTEE – 19 OCTOBER 2009

PLANNING APPLICATIONS FOR ENERGY FROM WASTE INCINERATORS - COVERING REPORT

Report by Head of Sustainable Development

Introduction

1. The following two reports consider two separate planning applications for energy from waste incinerators: by Viridor at Ardley (PN5(a), in the north east of the county and by Waste Recycling Group (WRG) at Sutton Courtenay (PN5(b) to the south of Oxford.

2. Cabinet on the 7 September 2009 considered the bids from the two competing companies for the Council's residual waste contract. The procurement process is totally separate from the procedures involved in the determination of planning applications.

3. Although Cabinet identified a preferred bidder for the waste contract, the other planning application has not been withdrawn. Planning applications by both companies are therefore to be considered by this Committee on their own merits, without regard to the procurement process, which is not a material planning consideration. There is no 'in principle' reason why one, both or neither of the planning applications may be approved.

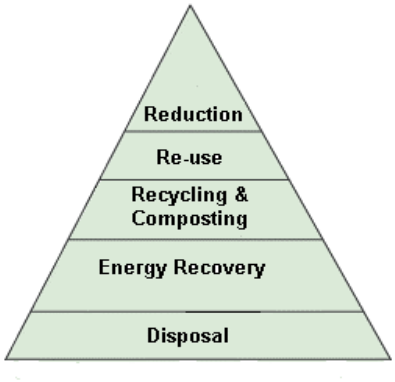
4. In the event that planning permission is given to both developments, agreements and conditions would be attached to the consents to limit the source of waste processed. In the case of Sutton Courtenay the proposal is that only waste arising from within Oxfordshire would be processed. In the case of Ardley the applicants have agreed that all of Oxfordshire's residual MSW would be treated together with a minimum of 50,000 tpa of commercial and industrial waste from within Oxfordshire.

5. There is some common background between the two proposals, in terms of the reasons why the applications have been submitted now, the drivers behind the need to divert residual waste from landfill, the planning policy context, and in terms of the regulatory processes involved. To avoid repetition, these issues are dealt with below in this covering report. A list of acronyms used in this and the two site specific reports is attached (Annex 1).

Need

National Waste Strategy

6. The **Waste Strategy for England 2007** (http://.defra.gov.uk/environment/waste/strategy/strategy07/pdf/waste07-strategy.pdf) sets out the Government's approach on this matter, and seeks to divert waste away from landfill. The strategy highlights the fact that landfill accounts for some 40% of the country's methane emissions. Methane is a greenhouse gas 23 times as damaging as carbon dioxide. For this and other reasons, the strategy proposes that landfill should be "the home of last resort for waste" (page 46, paragraph 34). It sets out a number of measures aimed at moving waste up the "waste hierarchy":



For example, the strategy sets out various measures for producers and others to reduce the amount of waste they generate. It also proposes rising rates of household waste recycling, moving from 40% in 2010 to 50% in 2020. It states that "recovering energy from waste (EfW) that cannot sensibly be recycled is an essential component of a well-balanced energy policy" (page 15).

The strategy sets out the European Landfill Directive targets for reductions in the disposal to landfill of biodegradable municipal waste, as follows:

Table 8.4: Landfill Directive targets for biodegradable municipal waste, England (2010, 2013, 2020)

Target year	Target in Directive	Amount of limit
2010	75% of that produced in 1995	11.2 million tonnes
2013	50% of that produced in 1995	7.4 million tonnes
2020	35% of that produced in 1995	5.2 million tonnes

7. At the national level, the UK faces fines from the European Union should it, in aggregate, fail to meet its landfill diversion targets. At the local level, any waste disposal authority failing to meet its landfill diversion targets could be facing landfill tax and fines of over £200 per tonne by 2012/13 (in Oxfordshire in 2005/6 some 200,000 tonnes of municipal solid waste were sent to landfill) – before one factors in any contract costs for disposal.

Oxfordshire Waste Strategy

8. At the local level, in 2006 the Oxfordshire Waste Partnership published the **Oxfordshire Joint Municipal Waste Management Strategy** ("No Time to Waste"). http://portal.oxfordshire.gov.uk/content/publicnet/council_services/environment_planning/waste_recycling/alternative/joint-municipal-waste-management-strategy-2006.pdf The strategy was drawn up by the partnership representing all five district councils and the county council, and was subsequently endorsed by each authority separately. This strategy reflects much of what is in the national strategy. (Although the national strategy was published after the local strategy, the general direction was already clear from both the landfill directive and consultation on the national strategy.)

9. The strategy has moving waste up the hierarchy at its heart, and contains fourteen separate policies in pursuit of its aims. Of particular relevance is policy 9: "The Oxfordshire Waste Partnership will provide a system for recovering value from residual wastes in order to meet Landfill Allowance Trading Scheme (LATS) targets." The strategy goes on to explain the rationale for this approach: "Even if we take the most optimistic view on what we can achieve through reducing, reusing, recycling and composting our rubbish, we will still be short of meeting the requirements of our LATS targets."

10. Waste projections for municipal solid waste (MSW) prepared as part of this strategy have been recently updated. From these figures it is possible to estimate the amounts of waste that will be required to be recycled and composted in Oxfordshire and the amount of residual waste (waste that is not recycled) that will need to be treated in some way over the next 15 years (in order that the South East Plan targets are met). They conclude that there is a need for 291,000 tonnes per annum (tpa) of waste treatment capacity for MSW and (commercial and industrial) (C&I) waste in Oxfordshire (in addition to composting and recycling capacity) but a significantly greater amount (in the order of 430,000-460,000 tpa) of waste could be diverted from landfill if sufficient waste treatment capacity was available. There are currently no facilities in Oxfordshire for treating residual MSW and C&I waste. There is therefore a clear justification for one residual waste treatment facility of the size proposed in either of the two applications based on the capacity required for Oxfordshire to meet the South East Plan landfill diversion targets and the major policy objective of moving waste management up the waste hierarchy arising from landfill and recovery resources from waste.

11. The Oxfordshire Waste Partnership's strategy goes on to say: "Countries with high recycling elsewhere face similar problems and have recognised that some form of 'waste treatment' will be necessary. Indeed waste is increasingly seen as a resource to be exploited rather than as a problem to be solved, and as a result a number of possible treatment technologies and initiatives are coming forward including high temperature incineration, pyrolysis and gasification. In the case of food wastes, technologies are

available through in-vessel composting and anaerobic digestion.[1] All of these result in rubbish being converted into a useful product (such as electricity, heat or compost) and reduce pressure on natural resources. Our policy is to use treatment technologies that recover value to reduce our reliance on landfill and meet our LATS targets. Whatever we choose must:

- Be safe for the environment and human health;
- Recover value from the waste; and
- Not be a substitute for reuse, recycling and composting."

12. Oxfordshire is amongst the top performing counties in the country both in terms of the limited amount of waste generated by each person (i.e. others produce more waste) and in terms of recycling rates. There is nonetheless more to be done, and the strategy aims both to pursue initiatives for waste reduction and reuse and also increase recycling and composting rates further.

13. As part of the evidence base for the Minerals & Waste Development Framework, the Council commissioned a report by Environmental Resources Management (ERM) on 'Site Selection for Strategic Waste Management Facilities'. The ERM report considered 130 sites in Oxfordshire and concluded that 8 of these sites offer potential for the development of a strategic waste management facility. The two sites, the subject of these applications are included in this list of 8 sites.

14. The report was published in 3 parts during 2007 and was put on the Council's website. It has therefore been generally available, including for use by companies bidding for the waste treatment contract. However, it has been for each participant company to use the report as they see fit to come to their own view on the conclusions reached by ERM and to determine which site they felt was most appropriate. The conclusions of the ERM report were reached independently of the Council, which has yet to formally consider its findings. While some of the sites on the final list may be as good as the two sites currently proposed, at present there is no indication that planning applications for any of these other sites will be submitted in the foreseeable future. The two current applications have been submitted and the County Council as waste planning authority (WPA) is required to make a planning decision on them.

The Development Plan

15. Each of these applications needs to be determined on its own merits, in accordance with the Development Plan unless material planning considerations indicate otherwise. Material considerations include any relevant national and regional planning guidance.

16. The Development Plan consists of the recently adopted South East Plan (SEP), the saved policies from the Oxfordshire Structure Plan, and saved

[1] The County Council has recently let a contract for the treatment of food and garden wastes which uses both technologies and which will assist with diverting those wastes from landfill.

policies from the relevant District Local Plan and the Oxfordshire Minerals & Waste Local Plan. Development Plan policies relevant to each planning application are set out in the relevant Annexes to each application report.

17. The argument for the need for this type of facility is the same for both applications.

18. South East Plan (SEP) policies W3 and W4 require that each waste planning authority should provide for waste management capacity sufficient to handle an amount of waste equivalent to that arising and requiring management in its own area. SEP policy W5 sets out targets for the diversion of waste from landfill and requires WPAs to ensure that policies and proposals are in place to contribute to the delivery of these targets. The optimal management solution may well vary according to the individual resource streams and local circumstances but the policy states that it will usually involve one or more of the following:

- reuse
- recycling
- mechanical and/or biological processing
- thermal treatment.

19. Waste planning authorities are expected to contribute to or assist in meeting these targets. By 2015 the SEP expects that 50% of Oxfordshire's municipal solid waste (MSW) will be recycled and composted and for commercial and industrial (C&I) waste 55%. These figures rise to 60% and 65% respectively by 2025.

20. The targets for recycling and composting in policy W6 are lower than those for diversion in policy W5, so that the expectation is that other methods will also be required to achieve the diversion targets.

Prematurity

21. Some objectors argue that the determination of these applications would prejudice the outcome of the current Waste Development Framework (WDF) process and is therefore premature.

22. The Planning System: General Principles (the companion guide to PPS1) advises (paragraph 17) that "In some circumstances, it may be justifiable to refuse planning permission on grounds of prematurity where a DPD [Development Plan Document] is being prepared or is under review, but it has not yet been adopted. This may be appropriate where a proposed development is so substantial, or where the cumulative effect would be so significant, that granting permission could prejudice the DPD by predetermining decisions about the scale, location or phasing of new development which are being addressed in the policy in the DPD."

23. The guide goes on to advise (paragraph 18) that "Otherwise refusal of planning permission on grounds of prematurity will not usually be justified.

Planning applications should continue to be considered in the light of current policies. However, account can also be taken of policies in emerging DPDs. The weight to be attached to such policies depends on the stage of preparation or review, increasing as successive stages are reached. Where a DPD is at the consultation stage, with no early prospect of submission for examination, then refusal on prematurity grounds would seldom be justified because of the delay which this would impose in determining the future use of the land in question."

24. The WDF process has still a considerable way to go before adoption. Bearing in mind the policies in the South East Plan, it is my view that making a decision on these proposals now would be unlikely to undermine the strategy for waste management that emerges through the WDF process. Taking account of government advice I do not consider that refusal of these applications on grounds of prematurity would be justified.

Process/Roles/ Responsibilities

25. Any proposal for an energy from waste incinerator is subject to two separate but complementary regulatory regimes: applications for planning permission, which are made to the county council as waste planning authority (WPA) and applications for environmental permits, which are made to the Environment Agency. Energy from waste plants must have both planning permission and an environmental permit for the development to proceed.

26. As already mentioned, the WPA must determine the planning applications in accordance with the development plan and any other material considerations, including relevant national and regional policy guidance. As part of the planning process the council consults a number of statutory bodies e.g. Natural England, Environment Agency, Health Protection Agency, Primary Care Trust and seeks advice from various experts on ecology, archaeology, transport, rights of way etc. In addition the views of local people are actively sought.

27. In considering the applications, the WPA should focus on issues such as the need for the development and how it relates to the waste strategy and waste hierarchy, visual impact and transport. It should not seek to duplicate controls that are dealt with by the environmental permitting regime. For example, the Environment Agency is responsible for dealing with matters relating to air pollution. PPS23 states that any air quality consideration that relates to land use and its development is capable of being a material consideration in the determination of a planning application. Under the system of Integrated Pollution Prevention & Control introduced by the Pollution & Prevention Control Act 1999, facilities of the type proposed in these applications are regulated by the Environment Agency in relation to emissions to air, water and land. Although such emissions may well be material considerations they will be subject to the rigorous pollution prevention procedures of the Agency as part of their Environmental Permit process. PPS23 states: "The planning system should focus on whether the development itself is an acceptable use of the land, and the impacts of those uses, rather than the control of

processes or emissions themselves. Planning authorities should work on the assumption that the relevant pollution control regime will be properly applied and enforced. They should act to complement but not seek to duplicate it."

28. The Environment Agency acts as a statutory consultee in the planning process and provides advice to the WPA on issues relating to drainage and flood risk, land contamination and biodiversity. It does not provide comments regarding matters about the impact of a development on human health. The assessment of the impact of emissions from a development on human health is undertaken as part of the Agency's consideration of the application for an environmental permit for the development. The Environment Agency will not grant the permit if it considers the development proposed would cause significant pollution to the environment or harm human health.

29. The Environment Agency consult the Primary Care Trust (PCT), who in turn consult the Health Protection Agency (HPA), as part of the environmental permit process. The HPA have been set up (in 2002) to protect the public from threats to their health from infectious diseases and environmental hazards. Their comments are incorporated into the PCT's response to the Agency on the health risks of the proposal.

30. For information, the HPA issued a press statement last month (September) indicating that it had considered the latest scientific evidence on the health effects of modern municipal waste incinerators. It concluded that while it is not possible to rule out adverse health effects completely, any potential damage from modern, well run and regulated incinerators is likely to be so small that it would be undetectable.

31. Whilst this report covers a number of matters that are common to both planning proposals. The individual application reports deal with those matters which are specific to each proposal and conclude with separate recommendations.

CHRIS COUSINS
Head of Sustainable Development
Environment & Economy

Background papers:

October 2009

ANNEX 1

List of Acronyms

Technical:

Air Pollution Control Residue	APC
Combined Heat and Power	CHP
Energy from Waste	EfW
Incinerator Bottom Ash	IBA
Household Waste Recycling Centre	HWRC
Biodegradable Municipal Waste	BMW
Municipal Solid Waste	MSW
EU Waste Incineration Directive	WID
Mechanical and Biological Treatment	MBT
Commercial and Industrial Waste	C&IW
Advanced Thermal Treatment	ATT
In Vessel Composting	IVC
Materials Recovery Facility	MRF
Pulverised Fuel Ash	PFA

Ecological:

Biodiversity Action Plan	BAP
County Wildlife Site (also known as Local Wildlife Sites)	CWS
Site of Scientific Interest	SSSI
Special Area of Conservation	SAC
Special Protection Area	SPA

Consultees

Berkshire, Buckinghamshire and Oxfordshire Wildlife Trust	BBOWT
Commission for the Built Environment	CABE
Ministry of Defence	MOD
South East England Development Agency	SEEDA
South East England Regional Assembly	SEERA
Environmental Health Officer	EHO
Development Control	DC
Primary Care Trust	PCT
Health Protection Agency	HPA

Development Plan

Oxfordshire Minerals and Waste Local Plan	OMWLP
Oxfordshire Structure Plan	OSP
Planning Policy Guidance Note	PPG
Planning Policy Statement	PPS
South East Plan	SEP
Cherwell Local Plan	CLP
Non-Statutory Cherwell Local Plan	NSCLP
Regional Planning Guidance 9 (superseded by the South East Plan)	RPG9

Local Development Framework	LDF
Waste Development Framework	WDF
Development Plan Document	DPD

Others

Environmental Impact Assessment	EIA
Environmental Statement	ES
Heavy Goods Vehicle	HGV
Scheduled Ancient Monument	SAM
Life Cycle Assessment	WRATE
BRE Environmental Assessment Method	BREEAM
Environmental Resources Management	ERM
Waste Recycling Group	WRG
Waste Planning Authority	WPA
Landfill Allowance Trading Scheme	LATS