

Town and Country Planning Act 1990

PAIN's Closing Statement

Planning Inspectorate Reference 2102006

Planning Application Reference ES1144

People Against Incineration (PAIN)

For a public inquiry into Veolia's proposal to build a waste incinerator on greenfield land intended for inclusion in the Sherwood Forest Regional Park, also known as "the former Rufford Colliery car park", Rainworth, Nottinghamshire NG21 0ET

26th October 2010

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1. Introduction

- 1.1. This application is neither plan-led nor policy-led. It is underpinned by neither national nor local waste strategies. Neither can this application possibly be described as “community-led”. Instead, this proposal for a waste incinerator in the heart of Sherwood Forest has been led by a contract (Contract B) which pre-dates, and is inconstant with, Waste Strategy 2007 and the PPS1 Supplement on Climate Change. Despite prolonged and concerted efforts, Veolia has yet to allow the release of an unredacted copy of this contract.
- 1.2. The construction and operation of this proposed incinerator would have perverse outcomes, including the burning of recyclable and compostable material. By contrast, the refusal of permission for this application would result in significant social, economic and environmental benefits.
- 1.3. There is a positive plan for the Former Rufford Colliery site. The site should be restored to heathland and woodland in line with its restoration conditions which require it to be restored, the promises made to the community that it would be restored, and the clearly expressed wishes of local residents that it should be restored.
- 1.4. Veolia’s application relies on a deeply flawed site selection process that failed to take account of either the site’s greenfield status or the true ecological value of the proposed development site.
- 1.5. Similarly, the application is based on waste predictions which are already vastly different from the actual data and year on year become increasingly out of step with reality. Furthermore the application depends on a technology that is not the most suitable to handle the feedstock upon which the proposed incinerator would rely – and which has not been demonstrated to be appropriate for commercial and industrial wastes in the unlikely event that any arisings suitable for incineration were to be secured.
- 1.6. Regardless of whether Contract B (for the incinerator) seemed like the best way of achieving the aims of the Waste PFI at the time based on what was then known about the site status and the waste arisings, since then things have moved on and the application before us should be refused as it is not a justifiable departure from the Development Plan, and as it conflicts with the objectives of local and national policies.
- 1.7. PAIN would once again like to express our sincere thanks to the Secretary of State and our lasting gratitude to the Planning Inspector for giving us the opportunity to participate fully in this inquiry as a Rule 6 Party, and we respectfully ask that this application be refused.

2. Whether the proposed development accords with the development plan for the area...in particular, the Secretary of State is interested in the degree of accordance or conflict with policies on provision of waste management facilities and on development in the countryside [CD62, SoS Matter a];

- 2.1. All parties now agree that the application site is properly classified as a greenfield site [XX Standen - acknowledging that RPS had only accepted this after the 9th of January 2009 NCC decision - and XX Hankin].
- 2.2. The WPA recognises that the application site is within the open countryside, on land which (because of the restoration conditions attached to the current permission) cannot be regarded as brownfield [CD94b Para 14].
- 2.3. The WPA also notes, in the Planning Officer's report, that: "The development is identified as having an impact on the landscape and therefore would intrude on the openness of the surrounding countryside, thus conflicting with criteria (2) of NSLP Policy E17" [CD4 Para 12.34], and that "...the development fails to comply with a number of landscape protection policies the most relevant of which are NSLP Policies NE8 & NE9 & WLP Policy W3.3" [CD4 Para 15.13].
- 2.4. Veolia's Planning Supporting Statement acknowledges that: "The proposal site is not identified within the Development Plan as a site for waste management development..." [CD1 Para 9.46].
- 2.5. In cross examination Mr. Hankin described how the Eastcroft expansion benefitted from policy support associated with the saved policies of the Waste Local Plan (CD10 and CD11), whilst accepting that the Rufford proposal does not benefit from such policy support.
- 2.6. According to Veolia's witness Mr. Standen: "Policy NE1 provides that planning permission will not be granted for development in the countryside except for: Agricultural, forestry and associated activities, recreation and tourist uses; utility installations; change of use of rural buildings; roadside services or dwellings for agricultural purposes. The ERF does not meet the exceptions listed and the proposal is a departure from this policy..." [VE10.2 Para 4.78].
- 2.7. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that proposals be determined in accordance with the Development Plan, unless material considerations indicate otherwise [PA23 Para 20 and SOCG11 Para 2.1.1.6].
- 2.8. Due to the revocation of Regional Strategies [SOCG11 Para 2.1.1.5] neither the Regional Spatial Strategy nor the Regional Waste Strategy form part of the Development Plan [CC16].
- 2.9. Therefore the statutory Development Plan to which regard must be had for the determination of this application is now those parts of the Nottinghamshire and Nottingham Waste Local Plan (January 2002, CD10 and CD11) and the Newark and Sherwood Local Plan (March 1999, CD13, CD14, CD14a and CD15) which have been saved [SOCG11 Para 2.1.1.6].

- 2.10. Waste Strategy 2007 (CD40), PPS10 (CD26), and the Development Plan form the “Article 7 plan” of the “Waste Framework Directive” (CD50) [PA23 Para 22].
- 2.11. Despite the rather bizarre assertion in their planning application (at CD1, Planning Supporting Statement, Para 5.25), under cross examination Mr. Mitchell conceded that the waste PFI contracts between Nottinghamshire County Council and Veolia Environmental Services do not in fact “effectively replace” the Municipal Waste Management Strategy for Nottinghamshire (CD42).
- 2.12. The Revocation Guidance (SOCG11, Appendix 2) states that the evidence that informed the preparation of the revoked Regional Strategies may also be a material consideration, depending on the facts of the case [SOCG11 Para 2.1.1.12] (emphasis PAIN's).
- 2.13. PAIN's position is that one should not confuse the underlying reports (which looked at a number of possible scenarios), the underlying data (which does not reflect current waste trends), and the decision to project future waste arisings based on a specific scenario tied to specific data.
- 2.14. As Mr. Kondakor explained in his oral evidence, one of the reports (PA62) that informed the Regional Spatial Strategy (CD7) and Regional Waste Strategy (CD41) outlined four different waste growth scenarios for the East Midlands, including a no-growth scenario. With reference to the latest East Midlands waste data (SOCG8) he noted that the no-growth scenario was very close to the current waste arisings data for the Region, whilst the scenario reflected in the Regional Spatial Strategy and the Regional Waste Strategy has proved demonstrably inaccurate.
- 2.15. The East Midlands Regional Assembly recognised the need to revisit these scenarios in light of more accurate waste data becoming available showing a departure from the anticipated upward trend:
- 2.15.1. “The PPS10 companion guide (CD27) emphasises the need for 'monitoring and regular review' to ensure that waste data used is robust and up-to-date. This requirement is particularly pertinent to the case of MSW arisings, for which, since 2003, there has been a marked departure from the steady historical upward trend. As depicted In Figure 6-1, this is true for both the East Midlands, and England as a whole. If MSW arisings data for future years continues to exhibit this feature, it is arguable that arisings forecasts should be re-evaluated to reflect the downturn” [CD96 Para 6.2].
- 2.16. Mr. Kondakor noted in his oral evidence that waste arisings have continued to exhibit the feature of departing from the historical upward trend.

3. Whether the appraisal of alternative sites is robust [CD62, SoS Matter b];

- 3.1. In terms of the appraisal of alternative sites, every one of Veolia's processes, from Veolia's original site selection through to their most recent appraisal of alternatives, has been shown at the Inquiry to have been far from robust.
- 3.2. PAIN agrees with Monsieur Mazaud and Defra's Designing Waste Facilities guidance that "Good site selection is fundamental and many design considerations stem from this core decision" [XX Mazaud and CD102 page 30].
- 3.3. The consultation response from NCC's Spatial Planning Team dated 25th February 2008 recognises that: "A key issue in the consideration of this application is whether the location of the site is acceptable" and that "the selection of this site is not in accordance with the sequential approach" and that "The criteria used in Stages 1 and 2 of the appraisal are largely supported, particularly the emphasis on previously developed land (PDL) in Stage 1 which reflects the high priority given to this in PPS10" [CD5.w].
- 3.4. PAIN believes that the Capel decision [the successful Judicial Review by Capel Parish Council and the decision of Collins J in Capel Parish Council v Surrey County Council [2009] EWHC 350 (Admin) (5th March 2009) (England and Wales High Court (Administrative Court) 2009), included as an Annex to this Closing Statement, and covered in PA23 Paras 165-173] is relevant to this case as it highlights the importance of robust site selection.
- 3.5. The Companion Guide to PPS10 (CD27 Para 8.13) emphasises that the PPS: "sets out a plan-led approach to the delivery of the waste management facilities. There is considerable emphasis on the identification of sites and areas suitable for waste management so as to secure confidence for industry and local communities in the forward planning process and to deliver obligations arising from the Waste Framework Directive" [PA23 Para 50].
- 3.6. In PPS10 (CD26 Para 21) we read: "In deciding which sites and areas to identify for waste management facilities, waste planning authorities should... (ii) give priority to the re-use of previously-developed land, and redundant agricultural and forestry buildings and their curtilages" [PA23 Para 55]. Contrary to the guidance, priority has not been given to the re-use of previously developed land [PA23 Para 56].
- 3.7. Planning policy at all levels indicates that the use of previously developed land should be prioritised. This is accepted in the application, which proceeded to select sites on the incorrect basis that the Rufford site was brownfield. The consequences that follow from the site being greenfield are that this process, and the conclusions that are drawn from it, are fatally flawed [PA23 Para 117].

- 3.8. This is not to say that greenfield land is completely ruled out for use for waste related uses or any other form of development. However, greenfield land should be used only if previously developed land is not available to meet the need. This is made clear in the paragraphs of PPS7 of interest to the Secretary of State, and also of the Companion Guide to PPS10 (CD27) which urges Local Planning Authorities to “avoid turning unnecessarily to greenfield locations” and “to give preference to suitable sites that are previously-developed land” [CD27 Para 7.33, page 77 and PA23 Para 118].
- 3.9. No ‘robust justification’ has been provided to explain why the Rufford site, which is in open countryside, is not co-located with other facilities and is in a location which is completely unsuitable for CHP operation should be favoured over alternative urban brownfield sites allocated for industrial use [PA23 Para 120].
- 3.10. Veolia seemed content to accept and embrace the Government’s preference for reusing previously developed land all the way through the process until some point after the application was submitted and prior to the Opening Submissions of this Inquiry, when Veolia finally lost confidence in the notion that their proposed development site was brownfield [Standen XX].
- 3.11. Veolia’s newfound disregard for giving appropriate weight to the Government’s preference for the reuse of brownfield sites is reflected in their Opening Statement, where they assert that: “Much ink has been expended in the evidence about the meaning of previously developed and previously used land. It matters not...” [CD94a Para 10].
- 3.12. It is significant that one of the key filters used at the first stage of Veolia’s alternative site assessment (CD1, Volume 2, Appendix 5.1) was based on the emphasis given in PPS10 to the need for Local Authorities to give priority to the identification of waste management facilities on previously developed land. The Stage 1 analysis therefore retained only those sites: “which could be considered to be previously developed (PDL) or allocated for employment / industrial development” [CD1, Volume 2, Appendix 5.1, Para 2.17 and PA23 Para 154].
- 3.13. In response to questions from the Planning Inspector both Mr. Hankin and Mr. Standen conceded that due to the Rufford site’s greenfield status the site should have been screened out at the earliest stage of this site selection process.
- 3.14. If the Secretary of State agrees with the Rule 6 Parties that the Rufford Colliery site is greenfield then it follows that the approach adopted by the applicant in relation to the screening of the Rufford site at the Stage 1 analysis was flawed. It is wrong to treat a greenfield site as previously developed land or land allocated for employment / industrial land for the purposes of the assessment. The consequence would be that the Rufford

- site should have been de-selected and not taken into the second stage of the selection process [PA23 Para 155].
- 3.15. The failure of the applicants and their consultants to recognise the significance of the restoration conditions on this site has therefore seriously prejudiced the site selection process. It follows that the conclusion reached in the application that “there are no better available sites for the proposed ERF” is not sound – by the correct application of their own selection criteria, each of the three alternative sites shortlisted in Stage 3 would have been better locations for an incinerator. To favour this greenfield site over the three brownfield options it would need to be established that: i. The brownfield sites performed much worse than the greenfield site, ii. No other greenfield sites (which had been screened out at the first stage filter) might be better than this site [PA23 Para 158].
- 3.16. In fact the other sites perform well – especially when allowance is made for the anomalous marking of the Rufford site¹.
- 3.17. Further detail of PAIN’s critique of Veolia’s site selection / appraisal of alternative sites is included within PA23 Paras 160 – 164, PA35 Paras 64 – 70, and PA39.
- 3.18. Rainworth was not Veolia’s first or second site for a Nottinghamshire incinerator. On 16th May 2005 Veolia submitted a bid that relied on Crown Farm Way, Forest Town, Mansfield as their incinerator site. The very next day site owners Mansfield District Council resolved not to sell the land for a waste incinerator. Veolia therefore needed a land owner prepared to sell or lease an alternative large plot in a hurry [PA38 Paras 16 – 19, supported by CD43, CD70 – CD77, VE1.3 Paras 3.1 and 3.3, and PA64].
- 3.19. As Mr. Mitchell says, Rufford was chosen because the site could be secured “in the agreed timeframe” [VE1.3 Paragraph 3.1], and “the alternative Rufford site was identified and accepted in time for PFI credits to be awarded” [VE1.3 Paragraph 3.3]. These references to the timeframe for PFI credits lends further support to PAIN’s understanding that the time pressures bearing down on Veolia adversely affected the quality of Veolia’s site selection process.
- 3.20. According to the 2006 Updated Revised Best and Final Offer report (CD76 and CD77) following the withdrawal of the Crown Farm, Forest Town, Mansfield site Veolia’s site assessment failed to look beyond their (by then outdated) shortlist to determine whether or not any new sites had become available that could have been considered suitable.
- 3.21. This point in time, early in 2006, seems to have been a crucial juncture in the site selection process. Veolia had a shortlist of 5 sites, only one of which they were confident would be available. PAIN contends that at this

¹ The original matrix is contained within CD1, Volume 2, Appendix 5.1, Table 3.3.1 which is reproduced in PA23 Para 159.

- point Veolia should have opted to ascertain whether there were additional sites that were suitable for inclusion in a revised long-list (such as the Portland Industrial Estate, Kirkby-in-Ashfield) and then examine this revised long-list to create a revised shortlist of available sites [PA39 Paras 29 – 31].
- 3.22. Veolia decided to effectively allow the Rufford site to be selected by default. PAIN does not consider a site selection process that fails to fully explain its rationale, that fails to make a reasonable effort to identify suitable sites for its long-list, and that fails to ensure that its shortlist consisted of more than one available site, could possibly be considered robust – and is certainly not sound [PA39 Paras 35 – 36].
- 3.23. Veolia's Updated Revised Best and final Offer report described the development of an incinerator on the Rufford site as according with "the locational criteria as set out in PPS10, in particular the re-use of previously-developed land" [CD77 Para 6.14].
- 3.24. This incorrect view of the Rufford site as a brownfield site influenced Veolia's site selection, and was subsequently cited by Veolia on numerous occasions to explain their choice of site [PA39 Paras 50 and 52].
- 3.25. PAIN does not consider that a site assessment containing significant factual errors, misleading statements and fundamental omissions could possibly be considered robust. Based on all of the information currently available to PAIN, we conclude that neither Veolia's site selection process nor the site assessment which *purportedly* informed the site selection could reasonably be considered to have been robust [PA39 Paras 67 – 68].
- 3.26. Mr. Downen updated his evidence (PA39 Para 68) to include the adverb "purportedly" because Monsieur Mazaud gave oral evidence in cross examination that whilst S'PACE was appointed by Veolia in November 2005 to provide incinerator proposals for the Rufford site, S'PACE was not appointed to provide incinerator proposals for all of the other sites short-listed in the Revised Best and Final Offer report (CD74 and CD75). This is significant because the Rufford site had not been selected through the recorded site selection process at that time (i.e. November 2005). It was not until the February 2006 Updated Revised Best and Final Offer report that Rufford was identified as the preferred site [CD76 Para 5.1].
- 3.27. The evidence shows that had Veolia approached the site selection process in a rigorous way, without the time pressures generated by the contractual arrangements, then this greenfield site (i.e. Rufford) would never have been chosen [PA20 Para 80].

4. The extent to which the proposed development is consistent with Government policies in PPS10: Planning for sustainable Waste Management, including the need for the proposal given that preparation of new waste development plan documents (DPDs) is at an early stage [CD62, SoS Matter c];

- 4.1. Despite Veolia's recognition of the PPS10 (CD26) Para 21 criteria "to give priority to the re-use of previously-developed land..." as "relevant to the consideration of a planning application's suitability against the policies of PPS10" [CD1, Environmental Statement Volume 1, Chapter 3, Para 3.5.15] Veolia failed to give priority to the reuse of previously-developed land (as outlined below in Section 3, above).
- 4.2. There is a difference between the legal definition (as disposal) which derives from the Waste Framework Directive and the policy definition (as recovery) in the English waste hierarchy. As it is the legal definition which gives rise to particular obligations, then clearly this is the most relevant. DEFRA acknowledges² that the existing Waste Framework Directive (2006/12/EC) (European Parliament and Council 2006) classifies "incineration on land" (at Point D10 of Annex IIA) as a disposal operation [PA23 Paras 511 and 512].
- 4.3. This matter is explored more deeply in PA23 Paras 513 – 536.
- 4.4. PAIN's position is that the proposed facility should be treated solely as a disposal operation (also see Section 12, below). However, if the proposed facility is to be treated as a recovery operation then it would still not be a justifiable departure from the Local Plan, and PAIN contests that various policies relating to disposal would still be relevant.
- 4.5. Veolia has no basis for claiming that the proposal would move waste up the waste hierarchy, or that their proposed facility would adhere to the waste hierarchy. As we argue in Section 11 (below), the facility would effectively drive waste down the waste hierarchy.
- 4.6. PPS10 Companion Guide (CD27) lays the foundations for the sequential approach to the waste hierarchy in the context of paragraphs 3, 6 and 16 of PPS10 (CD26). Paragraph 3.7 of the Companion Guide advises that: "In developing regional and local planning strategies, consideration should be given to all the levels of the waste management hierarchy. It will be helpful for these to be dealt with sequentially and to be linked, in order to address the Key Planning Objective of driving waste management up the waste hierarchy and addressing waste as a resource. Policies will need to be particularly supportive of the upper end of the hierarchy if they are to be effective in practice" [CD27 Para 3.7 and PA23 Para 43].

² Stage One: Consultation on the transposition of the revised Waste Framework Directive (Directive 2008/98/EC) A consultation document issued jointly by the Department for Environment, Food and Rural Affairs and the Welsh Assembly Government July 2009.

- 4.7. This is supplemented by the additional commentary at 3.43 of the Companion Guide: “It will be helpful for the tiers of the hierarchy to be dealt with sequentially, starting from the top, in order to address the Key Planning Objective of driving waste management up the waste hierarchy and addressing waste as a resource” [CD27 Para 3.43 and PA23 Para 44].
- 4.8. The sequential approach therefore follows the hierarchy of the supporting text. WS 2007 [CD40 Para 21 and PA23 Para 194] states that:
- 4.8.1. The most effective environmental solution is often to reduce the generation of waste – prevention
 - 4.8.2. Products and materials can sometimes be used again, for the same or different purpose – re-use
 - 4.8.3. Resources can often be recovered from waste – recycle or compost
 - 4.8.4. Value can also be recovered by generating energy from waste – energy recovery
 - 4.8.5. Only if none of the above offer an appropriate solution should waste be disposed of.
- 4.9. Veolia’s arguments are based on a “bottom up” approach, i.e. that recovery (which PAIN contends this incinerator is not) is higher in their simplistic interpretation of the waste hierarchy (ignoring per-stream and life cycle thinking) than landfill. However Veolia have failed to demonstrate that the discarded material would otherwise be landfilled and not recycled, composted, reused or reduced. The sequential approach must be applied from the “top down” and not from the “bottom up”.
- 4.10. PPS10 warns against over-provision of disposal options where these would undermine movement up the waste hierarchy [CD26 Para 4 and PA23 Para 46].
- 4.11. PPS10 goes on to state that: “In the case of waste disposal facilities, applicants should be able to demonstrate that the envisaged facility will not undermine the waste planning strategy through prejudicing movement up the waste hierarchy” [CD26 Para 25]. In order to consider whether there may be such overprovision it is necessary to consider the ‘need’ for the facility [PA23 Paras 47 and 48].
- 4.12. Veolia claim that this incinerator is a recovery operation and that these comments of PPS10 do not apply. This is an incorrect interpretation in law – as acknowledged by the confirmation to Mr Hankin from DEFRA, the Environment Agency, and in the legal advice from Counsel contacted before the Planning Committee meeting of 9th January 2009 [CC1 and XX Hankin]. The implications of the operation being properly classified as disposal rather than recovery, which include a requirement to consider the proximity principle, are expanded in Mr Watson’s proof (PA23 Paras 510 - 523).

- 5. Whether the application would deliver a sustainable form of development, as outlined in PPS1: Delivering Sustainable Development, with particular regard to policy in the Planning and Climate Change Supplement to PPS1 on renewable and low-carbon energy generation, and on the approach to determining planning applications before DPDs have been prepared to reflect the Supplement [CD62, SoS Matter d];**
- 5.1. Predicating this application on a dependence upon an increase in future waste arisings and depressed recycling and composting levels over the lifetime of the proposed incinerator is inherently unsustainable, and is incompatible with One Planet Living.
 - 5.2. We agree with Veolia that: “waste cannot be considered a truly renewable resource as ultimately it is produced from finite material resources” [CD1, Environmental Statement Volume 2, Appendix 5.3, Table 2].
 - 5.3. Waste Strategy 2007 (CD40) emphasises the goal of One Planet Living as follows: "As a society, we are consuming natural resources at an unsustainable rate. If every country consumed natural resources at the rate the UK does, we would need three planets to live on. The most crucial threat is from dangerous climate change. Our goal is to make the transition towards what the WWF and BioRegional call ‘One Planet Living’" (PAIN’s emphasis) [CD40 Paras i and 1, and PA23 Para 177].
 - 5.4. Low carbon and renewable energy are explored in detail at Paragraphs 554 – 584 of Mr. Watson’s Proof of Evidence (PA23).
 - 5.5. Regarding low carbon and renewable energy, the relevant paragraph of PPS1 Supplement on Climate Change (CD20) says: “In particular, planning authorities should not require applicants for energy development to demonstrate either the overall need for renewable energy and its distribution, nor question the energy justification for why a proposal for such development must be sited in a particular location [CD20 Para 20 and PA23 Para 559].
 - 5.6. This paragraph refers specifically to applicants not needing to demonstrate the “overall need for renewable energy” and not needing to demonstrate the “energy justification” for siting. It does not remove the requirement to demonstrate that the any waste that would be burned would be available without impacting on options higher up the waste hierarchy, or in the case of a disposal operation, having to travel long distances [PA23 Para 560].
 - 5.7. The paragraph is also silent on “low carbon energy” and removes neither the need to demonstrate the need for this energy, nor the need to demonstrate that the waste use would be consistent with waste policy, nor does it remove the need to demonstrate whether it would secure the highest viable resource and energy efficiency and reduction in emissions. Had CLG intended such exemptions to cover “low carbon” energy then the supplement would have said so [PA23 Para 560].

- 5.8. The Glossary of the PPS1 Supplement (CD20) makes it clear that ‘renewable’ energy and ‘low-carbon energy’ are different. Renewable energy: “covers those energy flows that occur naturally and repeatedly in the environment – from the wind, the fall of water, the movement of the oceans, from the sun and also from biomass”. Fossil fuels are, for practical purposes, finite and would be excluded from this coverage. Therefore processes which rely on fossil fuels or materials derived from them would not be consistent with this definition. Low carbon technologies: are, more generally all those “that can help reduce carbon emissions”. This would include all the technologies listed – including energy-from-waste, as (subject to conditions relating to sources, technology, and efficiency) energy from waste can reduce carbon emissions [CD20 Paras i-ii and PA23 Para 561].
- 5.9. Anaerobic digestion, for example, is an “energy from waste” technology which provides a low carbon treatment for food wastes. AD is supported by the Government in Waste Strategy 2007 (CD40), and is described by the then Minister as the best option for food waste [PA23 Para 561].
- 5.10. In her oral evidence Ms. Demmar confirmed that this proposal is not for renewable energy and therefore it does not benefit from policy support afforded to renewable energy.

6. The extent to which the proposed development is consistent with Government policies in PPS7: Sustainable Development in Rural Areas, including the principles at paragraph 1 (iv), (v) and (vi) [CD62, SoS Matter e];

- 6.1. Veolia state that: "The restoration of the coal stocking yard and surrounding colliery area would have gone a long way to restoring the traditional Sherwood characteristics, in line with the current planning consent. The development proposed would therefore have a detrimental effect on the restoration and landscape character of the former colliery site, dominating what would have become an open area of heathland, surrounded by woodland" [CD2, Appendix 23 Para 8.4.6].
- 6.2. The consultation response dated 10th December 2007 from NCC's Urban Design Officer records that: "I still have worries about the height of the building. It is now 39m in the highest point which I think is an increase from the 33m we've been looking at in pre application stage. The chimneys are 79m tall which is very high. The visuals cleverly make the chimneys look lower but in reality they will be very high in the landscape. To me the ideal site for this development would be in a disused quarry. The main central section of the building section, looking like a telephone hand set, is going to be massive in the landscape..." [CD5.x, Paras 3 and 4].
- 6.3. The consultation response dated 9th April 2008 from NCC's Landscape and Reclamation Team, states that: "The proposed development would be a large alien feature in the countryside" [CD5.v].
- 6.4. In their consultation response of 13th November 2008 Natural England state: "Natural England continues to believe that the development will cause significant adverse affects on an essentially rural landscape and that plume visibility will significantly increase the distance from which the facility will be noticeable" [CD5.p].
- 6.5. Veolia themselves recognise that "the surrounding character of the landscape...is of a high sensitivity, being particularly sensitive to tall development" [CD2, Appendix 23 Para 8.4.7 and PA23 Para 126].
- 6.6. The application therefore offends the requirements of PPS7 (CD24) Para 1(vi) that any development should be "inclusive, in keeping and scale with its location, and sensitive to the character of the countryside and local distinctiveness" [CD24 Para 1 and PA23 Para 127].
- 6.7. Para 1(iv) of PPS7 (CD24) was cancelled by PPS4 [CD22a, Annex A, Bullet Point 4]. PPS4 EC6.1 and EC6.2(a) cover some of the same ground, as follows:
 - 6.7.1. EC6.1 – Local planning authorities should ensure that the countryside is protected for the sake of its intrinsic character and beauty, the diversity of its landscapes, heritage and wildlife, the wealth of its natural resources and to ensure it may be enjoyed by all.

- 6.7.2. EC6.2(a) – In rural areas, local planning authorities should strictly control economic development in open countryside away from existing settlements, or outside areas allocated for development in development plans
- 6.8. There can be no dispute that this proposal is in “the open countryside away from existing settlements”, nor is the site allocated for development in the development plan. It follows that any proposals for development should be strictly controlled [PA23 Para 122].
- 6.9. Furthermore, the restoration conditions mean that the appropriate comparator for the “intrinsic character” and the “beauty”, “diversity”, “heritage”, “wildlife” and “wealth of natural resources” of the landscape is not the current condition of the land, but the restored landscape [PA23 Para 123].

7. The need for an energy from waste facility of this capacity, given the importance of treating waste as close to its source as possible and bearing in mind the Secretary of State's recent (12 February 2009) decision to grant planning permission to Waste Recycling Group Ltd for an additional 100,000 tonne capacity at the Eastcroft combined heat and power plant in Nottingham. In this respect, I will want to understand what opportunity exists to make greater use of the Eastcroft facility, given the Council's PFI contract with Veolia, and how this might affect the arrangements for managing residual waste that are set out in Table 3 of the officer's report to the 9 January meeting of the Planning and Liaison Committee [CD63, SoS Matter g];

7.1. For the purpose of our Closing Statement PAIN has split our response to this matter into three parts:

7.1.1. Flexibility of contractual arrangements and the Eastcroft permit (Section 8)

7.1.2. Future availability of capacity at Eastcroft (Section 9)

7.1.3. The need or otherwise for the proposed Rufford facility (Section 10)

7.2. The urgency or otherwise for this incinerator is addressed in Section 17, below.

8. Flexibility of contractual arrangements and the Eastcroft permit (Part 1 of PAIN's response to the matter outlined in Section 7 above)

- 8.1. The contractual arrangements relating to the Nottinghamshire Waste PFI and to WRG's Eastcroft facility, along with the Environment Agency permit for the Eastcroft facility, are sufficiently flexible to allow greater use of Eastcroft to manage the County's residual municipal waste (i.e. sending more than the c 60,000 tonnes per annum) currently sent to Eastcroft by Nottinghamshire County Council [SOCG8, Para 4.1.36].
- 8.2. PAIN's understanding, based on Nottinghamshire County Council's PFI Outline Business Case (CD43) submitted to Defra on 6th June 2003 [PA20 Para 69], is that the Eastcroft expansion (i.e. the third line) was originally intended primarily for Municipal Waste. Out of the 100,000 tonne expansion 50ktpa was to have been allocated for Nottinghamshire's MSW and 40ktpa to Nottingham City's MSW.
- 8.3. "It is proposed that this [new capacity] be achieved by expanding capacity at the existing Eastcroft Energy from Waste plant, from the current level of 150,000 tonnes per annum to 250,000 tonnes per annum. An expansion of the plant will be considerably cheaper than building a new plant. However, the County will only have some 50,000 [additional] tonnes available from the Greater Nottingham area [of the County of Nottinghamshire]. Accordingly we would have to let a joint contract with the City who also require a new facility for some 40,000 tonnes of waste" [CD43, OBC Para 2.1.4 and PA23 Para 229].
- 8.4. Appendix A of the Report to Nottinghamshire County Council's 27th July 2005 Cabinet meeting, entitled *Recommendation of a Preferred Bidder For The Waste PFI Contract*, submitted as PA64, includes the following contract proposal from the Waste Recycling Group who operate the Eastcroft incinerator:
- 8.4.1. "100ktpa extension to the existing Eastcroft Energy from waste plant in the city of Nottingham of which NCC is offered 50ktpa by way of a 'Key subcontract'" [PA64]
- 8.5. According to the Eastcroft Inspector's Report: "...The waste that would be accepted at the extended facility would be non-hazardous MSW and C&I waste. No restriction is being sought on the proportions of MSW and C&I waste that would be treated, within the overall 100,000t of new capacity per annum..." [CD61 Para 39].
- 8.6. The permit for Eastcroft allows for 160,000 tonnes of Mixed Municipal Waste to be burned per year at present and 260,000 tonnes per annum to be burned after the third line commences operation [PA65 Page 2].
- 8.7. Veolia has used excess capacity for waste disposal at the Eastcroft incinerator for "non-Eastcroft" waste, outside the contract between Nottinghamshire County Council (NCC) and Waste Recycling Group (WRG) [PA40 Paras 2.1.3 and 10.4].

- 8.8. It was revealed that around 2,500 tonnes of Eastcroft capacity freed up by increased recycling in the City was given to the County. In cross-examination Veolia admitted this capacity was provided free of charge to Veolia [Mitchell XX].
- 8.9. It is also worth noting that in 2007/08 MSW from Newark & Sherwood District Council was sent to Eastcroft for incineration. This fell outside the definition of “Eastcroft Waste” contained within the Waste PFI Contract (CD43, Contract A Schedule 1 – Definitions), and fell outside the area historically agreed between Nottinghamshire County Council and WRG as the minimum anticipated waste catchment area for waste to be sent to Eastcroft, i.e. Broxtowe, Gedling and Rushcliffe Borough Councils [CD43, Contract A Schedule 1 and PA40 Paras 10.9 – 10.11].
- 8.10. The whole of Section 10 of PA40, *Flexibility in relation to sending more waste to Eastcroft and/or for anaerobic digestion*, demonstrates that more than 60,000 tpa can be sent to Eastcroft, if necessary, to treat Nottinghamshire’s MSW [PA40 Para 2.1.3 and Paras 10.1 – 10.21].
- 8.11. The Nottinghamshire Waste PFI contract allows waste which would otherwise have gone to a Veolia incinerator to be sent to WRG’s Eastcroft incinerator should Contract B become null and void (e.g. should Veolia fail to secure planning permission) [CD43, FBC Section 8.1, page 32, and CD43, Contract A, Schedule 1 – Definitions, definition of “ERF” and PA40 Paras 2.1.4, 10.12 and 10.15].

9. Future availability of capacity at Eastcroft (Part 2 of PAIN's response to the matter outlined in Section 7 above)

- 9.1. When considering the need for a new incinerator in Nottinghamshire, the existing capacity at the Eastcroft incinerator is clearly important. Not only has a large extension of that facility recently been approved, some capacity from which would almost certainly be available to the County, but the potential increase in future availability of incineration capacity (as the City of Nottingham increases recycling levels and thus reduces the local demand for incineration capacity) must also be considered [PA22 Paras 2.1.6, 5.12.1 and 5.12.2].
- 9.2. Sufficient capacity already exists in Nottingham, particularly taking into account the already approved extension of Eastcroft. The barrier to the use of this capacity appears to be purely a competition issue between Veolia and WRG. This is not an adequate reason to allow a new development which would demonstrably cause harm to open countryside [PA23 Para 233].
- 9.3. The permitted capacity of Eastcroft is 160,000 tonnes per annum which will increase to 260,000 tonnes permitted for municipal waste per annum once the third line becomes operational. [PA40 Para 9.1]
- 9.4. The 260,000 tonne figure represents 83% uptime at nominal capacity for 3 lines [PA40 Para 9.2].
- 9.5. Assuming 100% uptime the facility would be able to process 315,000 tonnes per annum based on the nominal capacity for 3 lines (assuming the permit was varied to allow for this) [PA40 Para 9.3].
- 9.6. At the 92% theoretical capacity outlined in SOCG1 the facility would be able to process 290,131 tonnes per annum (assuming the permit was varied to allow for this) [PA40 Para 9.4].
- 9.7. The Eastcroft incinerator had spare capacity in 2008 that resulted in waste being received from Derby for the first time (see Table 6 in PA40, page 22) [PA40 Para 9.9].
- 9.8. In 2010 the Eastcroft incinerator should have increased availability and may need a permit change to allow it to burn more than 160,000 tonnes on its modernised two original lines [PA40 Para 9.10].
- 9.9. In June 2010 Nottingham City Council released a draft Municipal Waste Management Strategy entitled "A Waste-Less Nottingham: Waste Strategy 2010-2030" (CD115) for consultation. Nottingham City Council subsequently released the underlying data used to prepare the draft strategy (PA59 and PA60), including the City Council's estimates for anticipated waste arisings, treatment capacity and treatment method. These show the City Council expects to massively increase recycling and composting and to use anaerobic digestion for food waste [PA52 Paras 5.1 – 5.3].

- 9.10. The chart from Nottingham City Council's draft strategy shows residual household waste falling from 75,600 tonnes in 2009/10 to 48,974 tonnes in 2029/30 [PA52, Chart 18: Nottingham City Council's Household Waste Management for the Period 2010 – 2030, page 13. Also see PA59 and PA60 for the underlying data].
- 9.11. Nottingham City's draft waste strategy (CD115) states that: "The impact of the measures outlined in this draft strategy will dramatically reduce the amount of both household and municipal (including trade and non household wastes) left over for residual waste treatment and disposal..." [CD115 page 48 and PA52 Para 5.5].
- 9.12. Nottingham City Council is projecting a drop in non-household waste from 39,838 tonnes in 2009/10 to 30,345 in 2029/30. They aim to recycle or compost at least 55% of trade waste and at least 50% of in-house waste in 2029/30 [PA52 Para 5.6].
- 9.13. The combined tonnage of MSW (comprising Nottingham City's households and trade waste) available for landfill or incineration would therefore drop to around 63,000 tonnes [PA52 Para 5.7].
- 9.14. The City's waste strategy would free-up capacity on the existing two lines at the Eastcroft incinerator for around 100,000 tonnes to be incinerated from the County Council [PA52 Para 5.8].
- 9.15. CD115 demonstrates that higher recycling and composting rates in the City of Nottingham are expected to result in additional capacity for Eastcroft to accept more waste from the County [PA52 Para 5.10].

10. The need or otherwise for the proposed Rufford facility (Part 3 of PAIN's response to the matter outlined in Section 7 above)

- 10.1. PA22, PA40, PA52, Mr. Kondakor's evidence in chief and cross-examination, and the cross-examinations of Mr. Standen and of Mr. Hankin robustly demonstrate that there is no need for this facility.
- 10.2. The Waste PFI Contract and Veolia's application were based on a set of flawed assumptions:
 - 10.2.1. That Nottinghamshire's MSW would rise to 513,806 tonnes by 2019/20 (rising from 498,253 tonnes predicted for 2009/10);
 - 10.2.2. That no more than 60,000 tpa would ever be sent to Eastcroft; and
 - 10.2.3. That recycling would never exceed 52% [CD4].
- 10.3. The discrepancy between Veolia's projected figure for 2009/10 and the actual figure is 90,000 tonnes, which equates to around half the capacity of the proposed incinerator.
- 10.4. PAIN anticipates that as waste continues not to rise as predicted this discrepancy will become larger, and that the actual quantity of residual waste available for incineration at Rufford will be less than Veolia had anticipated when higher recycling rates are achieved, as Mr. Mitchell now predicts, and/or should more than 60,000 tonnes of residual waste be sent to Eastcroft.
- 10.5. Using the 1.7% growth rate through 2017, as suggested by Mr. Standen [VE10.12], which is actually higher than the growth rate assumed in Veolia's application (CD1) and the Officer's report (CD4), and a 52% cap on recycling, with 4% non-combustible material sent to landfill, Mr. Kondakor's model shows that there would still be a significant shortfall – thus Veolia have failed to justify the need to build a new incinerator with a capacity of 180,000 tpa [PA52 Para 2.8].
- 10.6. As of 2009, household waste per head had dropped 10% relative to the peak in 2002/03 (from 520Kg to 468Kg) and has dropped dramatically since 2004/05 [PA40 Para 3.1.2 and PA52 Table 1C, page 3].
- 10.7. Nottinghamshire's MSW peaked in 2004/05 at 466,665 tonnes [SOCG8 Para 4.1.28.3 (a)] and in 2009/10 the County's MSW was around 408,000 tonnes [PA52 Para 2.2].
- 10.8. East Midlands' MSW also peaked in 2004/05, and in 2008/09 waste arisings in the Region were lower than those in 2001/02 despite the huge increase in garden waste collection [SOCG8 Para 4.1.28.8 and PA22 page 6, Paras 5.2.6 and 5.2.7].
- 10.9. Veolia and PAIN agree that the average percent change for Nottinghamshire's MSW arisings over the period 2001/02 – 2008/09 was -0.9% [SOCG8 Para 4.1.28.3 (a)].
- 10.10. Nottinghamshire's MSW continued to fall in 2009/10 [PA52 Para 2.2].

- 10.11. When Nottinghamshire has optimised recycling and composting there will be insufficient residual waste available to operate the proposed incinerator as detailed in the application [PA22 Para 2.1.5].
- 10.12. There is currently no need to build a new 180,000+ tpa municipal waste incinerator for Nottinghamshire, nor is there expected to be, even if the current disappointing waste trends for Nottinghamshire continue, because even Nottinghamshire's recent poor recycling performance in relation to its peers is far better than that predicted in the Waste PFI contract [PA40 Para 2.1.5].
- 10.13. There are plenty of opportunities for Nottinghamshire to further reduce, reuse and recycle especially biodegradable waste. These improvements would result in there being little or no municipal waste suitable for incineration available to feed the proposed incinerator, especially considering the prospect of sending more waste to Eastcroft if necessary [PA40 Paras 2.1.6 and 2.1.7].
- 10.14. The City's waste strategy consultation document (CD115) points to how a more modern waste strategy for the County could look, with anaerobic digestion of organic waste, the majority of trade waste being recycled and an overall downward trend in total waste arising [PA52 Para 5.9].
- 10.15. Turning to the prospect of a Rufford incinerator that would be reliant upon burning C&I waste to make up a significant shortfall in MSW, we note that Veolia anticipated that a change to increased reliance of C&I "would be subject to the suitability / availability of these waste streams at the unspecified gate fee, and to the undisclosed contractual obligations with NCC. It is agreed that the application - and the accompanying Environmental Statement - did not contain any detailed data about the arisings of commercial and industrial wastes nor detail about their availability or specific suitability for incineration" [SOCG3 page 4].
- 10.16. Long ago Veolia accepted that: "Only residual waste suitable for management within an Energy Recovery Facility is relevant to the selection of plant size. For it to be suitable it must be compatible with the likely requirement of a Pollution Prevention and Control (PPC) permit, must be combustible and of a physical nature to allow handling and feeding into the ERF plant..." [CD1, Planning Supporting Statement, Para 5.81]. Thus, the scope for burning C&I waste at a Rufford facility would be severely limited.
- 10.17. PAIN notes that according to the Environment Agency: "When it is permitted, the name of the installation is likely to be Rufford Municipal Waste Incinerator" [PA20 Para 146.5].
- 10.18. PAIN also notes the Environment Agency's response to Issue 6, *Veolia's planning application refers to their intention to burn commercial and industrial waste, which does not appear in the PPC application:*

- 10.18.1. “Schedule 3 of the Permit specifies the types of wastes that can be burned at the facility...Burning industrial wastes with a waste code other than those listed in Schedule 3 would not be Permitted” [CD44 Decision Document, page 120].
- 10.19. In response to Issue 18 the EA state: “Burning industrial wastes with a waste code other than those listed in Schedule 3 would be a breach of the permit conditions and subject to appropriate enforcement action” [CD44 EA Decision Document, pages 184 – 185].
- 10.20. Mr. Kondakor noted in his oral evidence that much of the C&I stream for Nottinghamshire would be unsuitable for incineration [as confirmed by Hankin XX when he accepted that less than 25% of the C&I waste arisings were suitable for incineration in the proposed facility – even if available to Veolia], and would fall outside of what it is permitted for the Rufford facility. Much of the waste that could potentially be incinerated would be better suited for recycling and composting.
- 10.21. Mr. Kondakor cited both the North West Study (PA61, which showed that up to 97.5% of landfilled C&I waste was potentially recyclable) and PA63 (which demonstrated the potential for MRFs that cater for commercial waste).
- 10.22. Veolia have not demonstrated that the C&I waste stream can be relied upon to supply sufficient incinerator feedstock to justify their Rufford application.
- 10.23. Finally, PAIN draws attention to Veolia’s experience in Sheffield to highlight that operational problems occur when feedstock for which an incineration facility was not designed to handle is used. This is detailed in Section 13, below.

11. Whether operation of the proposed facility would effectively discourage the reduction, re-use, recycling and composting of waste, or whether measures would be put in place to ensure that only residual waste would be burnt [CD63, SoS Matter g];

- 11.1. Veolia seems to have not even attempted to demonstrate that there would be any effective measures in place to ensure that only non-recyclable material would be burnt at Rufford.
- 11.2. Increased incinerator capacity for the County at Rufford is not needed and would only serve to undermine efforts to manage waste at higher tiers of the waste hierarchy [PA40 Para 2.1.8].
- 11.3. The proposed incinerator would undermine preferred alternative treatments – including anaerobic digestion and recycling – of household and/or commercial biodegradable waste [PA22 Para 2.1.7].
- 11.4. The Inspector considering the Ridham Dock Incinerator application (Secretary of State 2002) (a facility Mr. Watson confirmed in his oral evidence was designed with a primary combustion chamber designed to cope with higher proportions of commercial and industrial waste) concluded that if permission were granted the “provision of greater incineration capacity than necessary would tend to undermine efforts to increase waste recycling and recovery locally, and encourage the transportation of waste from a more widespread catchment area” [PA23 Para 301].
- 11.5. According to Waste Strategy 2007 (CD40), key to preventing incineration from undermining the achievement of high levels of recycling is: “planning and **building facilities with an appropriate amount of flexibility built in**. This means flexible – e.g. modular – buildings, and also flexible contracts, which do not lock in fixed amounts of waste for treatment which might become obsolete” (**emphasis** in original) [CD40, Chapter 5, Para 23 and PA77].
- 11.6. In Mr. Mitchell’s oral evidence he explained how throughout the lifetime of Contract B Nottinghamshire County Council would be charged substantial fixed costs regardless of whether or not the County ever uses the full 180,000 tonne incinerator capacity. He went on to explain how even if third party waste was found to address a shortfall in incinerator feedstock, this would amount to, at best, only a partial rebate for the County Council.
- 11.7. Mr. Kondakor, in his oral evidence, drew upon his experience of Veolia’s Shropshire contract (PA55 and PA56) to illustrate the sort of financial disincentive to recycling and composting that such contracts produce.
- 11.8. Mr. Kondakor explained that were the incinerator to be built, Nottinghamshire County Council would be obliged to pay the fixed costs associated with Contract B regardless of whether or not NCC used the capacity. The effective variable cost, i.e. per tonne, of sending material for

- incineration would therefore be artificially low setting aside these fixed costs.
- 11.9. This means that material which in a commercial environment, i.e. in the absence of Contract B, would be cheaper to recycle or compost, would instead appear attractive as incinerator feedstock.
- 11.10. Similarly, sending no material for a Rufford incinerator would still result in substantial costs to the County Council, thus disincentivising investment in waste minimisation.
- 11.11. “It is possible that mixed municipal waste, which is the waste stream that the facility will be designed to burn, may contain some food waste that has not been segregated at source” [CD44 EA (Permit) Decision Document, page 119 ref 3 and page 150 Para 134, and SOCG3 page 11 Para 4.1.24].
- 11.12. Mr. Kirkman conceded that he had not considered alternative collection methodologies, such as the separate collection of food waste, in his appraisal of alternative technologies [XX Kirkman].
- 11.13. A December 2007 consultation paper by the National Assembly for Wales estimated that up to 93.3% of municipal waste could either be recycled or composted / anaerobically digested [PA23 Para 279].
- 11.14. Using the waste composition figures supplied in Veolia’s July 2008 Carbon Analysis Final Report (CD2, Appendix 3, Page 4, Table 1: Assumed Composition of Waste), Veolia assumes that the composition of the 180,000 tonnes of material that they propose to incinerate would be (excluding plastics which could also be re-used/recycled but not digested): 30.5% garden and kitchen waste (putrescibles), 14% paper, 7% cardboard, and 5.8% glass. This would amount to 57.3% (103,140 tonnes) of the proposed input to the incinerator. With the exception of the glass, which is recyclable in any case, this material is all potentially suitable for digestion [CD2, Appendix 3, Page 4, Table 1 and PA23 Paras 656 and 657].
- 11.15. If we include the 7.3% of plastic (mentioned in CD2, Appendix 3, Page 4, Table 1) then we arrive at a figure of nearly 65%, or about 117,000 tonnes out of the 180,000 tonne capacity that would obviously be better recycled, composted, or even landfilled (if life cycle thinking were applied).
- 11.16. As this constitutes Veolia’s assumed waste composition for their proposed incinerator, it is reasonable to assume that operational problems could arise were a different waste composition to be used (see Section 13, below).
- 11.17. In VE1.1, Para 4.40 Mr. Mitchell states that: “It is anticipated that this 52% [recycling] target will be reached and exceeded by utilising collection methodology that does not currently include separate food waste collections. NCC is aware that if they wish to consider such a system Veolia Environmental Services are happy to discuss this...”.

- 11.18. Thus, although Veolia has offered the potential of separate collection of food waste, it is assumed that were the Rufford incinerator to be built, the incinerator would rely upon kitchen waste for its feedstock.
- 11.19. Veolia does not see residual waste as material which cannot be recycled / composted, but only as material that has not been recycled / composted. Veolia's position as stated in the Statement of Common Ground (SOCG3) is that "Residual Waste" is "the term used to describe waste remaining and requiring disposal or treatment after other upstream recovery activities. This is so, regardless of its composition and what potential treatment options exist thereafter" [SOCG3, Para 4.1.30.2].
- 11.20. PAIN notes the minutes of Nottinghamshire's Joint [Waste] Officer Board meeting of Wednesday 28th November 2007 which records how the representative from Gedling Borough Council asked "if there were any plans to look at food waste collection in the future". In reply, NCC's Mick Allen confirmed "not at the present time as the contract can deliver targets promised to Defra without food waste" [PA23 Para 653 and PA40 Paras 144.3 and 144.4].
- 11.21. Further evidence that higher levels of incineration undermine recycling, including specific references to the situation in Nottinghamshire, can be found in PA23, e.g. Paras 290 – 303, PA35 Paras 25 and 26, PA76 and PA77.
- 11.22. Finally, Mr. Allen, representing the Waste Disposal Authority, informed the Inspector that if the application is refused and Contract B was terminated Nottinghamshire County Council would respond by making a greater effort to maximise recycling and composting.

12. Whether the proposed plant would be considered a recovery operation when judged against the formula set out in Annex II to the revised Waste Framework Directive. In particular, I will want to understand why the Environment Agency believe that the plant could potentially be classified as a recovery facility and what factors this would depend on [CD63, SoS Matter g];

- 12.1. The qualifying requirement of the R1 formula is to demonstrate operation at a minimum relative efficiency factor of 0.65 [PA23 Para 526].
- 12.2. Using the figures supplied by Veolia as part of their Permit application for the Rufford facility, the facility would not achieve the 0.65 relative efficiency threshold.
- 12.3. Veolia claim that their proposed Rufford incinerator would be similar in performance to their existing Portsmouth incinerator [CC10].
- 12.4. Applying the 2007 Portsmouth data to the R1 formula would also produce a relative efficiency that falls below 0.65 [PA23 Para 533].
- 12.5. The R1 formula is explained in greater detail in Mr. Watsons Proof of Evidence, PA23 Para 525.

13. How throughput rates would affect the efficiency and power output of the proposed facility [CD63, SoS Matter g];

- 13.1. The Stoker Capacity Diagram from the IPPC application (reproduced in PA23 Para 265) shows that the proposed incinerator can only operate if the throughput rate and the calorific value of the feedstock remain within a fairly narrow range. The Nominal Design Point is a municipal waste throughput of 12 tonnes per hour at a LHV of 9,200 kJ/kg which is equal to a thermal input of 30.67 MW. The municipal waste LHV range can vary from 7,000 kJ/kg up to 12,500 kJ/kg. Municipal waste with a LHV below 7,000 kJ/kg can be incinerated only with the support of auxiliary fuel [PA23 Paras 265 and 266].
- 13.2. There are constraints on the operating ranges in terms of plant inputs / outputs and efficiency. If the calorific value of waste rises above 9,200 kJ/kg then throughput must be progressively reduced from 12 tonnes/hour @ 9,200 kJ/kg to c.8.75 tonnes/hr @ 12,500 kJ/kg. If waste calorific value falls below 9,200 kJ/kg then there is only a small mechanical over-load, of 0.5 tonnes/hour, possible. If waste calorific value falls below 8,832 kJ/kg then the heat input to the incinerator falls as would the electrical output [PA23 Para 267].
- 13.3. It is important to be confident, therefore, that the quantities and calorific value of the waste would fall within the operating parameters of the stoker diagram, and ideally be close to the 'nominal point' over the lifetime of the facility, which Mr. Mitchell puts at about 50 years [VE1.3 Para 5.1 and PA23 Para 268].
- 13.4. As Mr. Smyth explained to the Inspector, burning paper and plastic would increase the efficiency of the proposed incinerator. Conversely, this means that removing paper and plastic from the incinerator feedstock would make it less efficient. This supports the statement by Mr. Watson that incinerators rely particularly on paper and plastic to provide the homogenous waste stream with a stable calorific value that is necessary to achieve stable combustion [PA23 Para 290].
- 13.5. The experiences of Veolia with their application in Sheffield provides a warning to how failure to address the waste stream properly at the application stage can prejudice local management of waste in the future and increase transport distances [PA23 Paras 269 and 27, and PA50]. This is detailed in PA23 Paras 269 – 272.
- 13.6. Mr. Standen's letter dated 13th May 2008 includes Sheffield City Council's comment that: "When the original application was considered the incinerator capacity was tested against higher recycling rates, up to 45%. It was argued that if this waste were to occur that the capacity gap could be filled with up to 80,000 tonnes of commercial waste. It is now being argued that this level of waste is a problem" [PA50].

13.7. If by 2008, as Veolia indicates in PA50, the composition of commercial waste had really changed to the extent that it was a problem to incinerate waste assessed to be suitable for incineration in 2001, then it is practically inevitable that the changes over the lifespan of the proposed Rufford incinerator will have even more serious implications [PA23 Para 272].

14. Whether this infrastructure provision would secure the highest viable resource and energy efficiency and reduction in emissions [CD63, SoS Matter g];

- 14.1. Mr. Hankin explained to the Inspector that the WPA had not re-assessed the application in light of the revocation of the RSS to take account of the duty under PPS1 Supplement Paras 9 and 11 to "secure the highest viable resource and energy efficiency and reduction in emissions".
- 14.2. According to the January 2009 report to Nottinghamshire County Council's Planning and Licensing Committee: "it may be possible to achieve lower net carbon emissions if other waste treatment options were pursued" [CD4 Para 15.15], and: "The current absence of proposals for the beneficial use of hot water by CHP, which could increase the efficiency of the plant and therefore off-set the climate change impact even more is a disadvantage" [CD4 Para 15.17].
- 14.3. In the Statement of Common Ground between Veolia and PAIN (SOCG3) Veolia stated their position regarding the Carbon Assessments as follows: "The results demonstrate that other forms of residual waste management may outperform an ERF in terms of its estimated carbon footprint, in particular an MBT which achieves a high stabilisation of rejects..." [SOCG3, 4.1.31.2].
- 14.4. The detailed BPEO assessment for Nottinghamshire County Council carried out by Enviro and published in August 2004 found "Option 5 performing better than all other options". Option 5 was based on MBT [PA23 Para 219].
- 14.5. Mr. Smyth informed the Inspector that in climate change terms it is better to landfill plastics than to incinerate plastics.
- 14.6. Mr. Watson comprehensively addresses the climate change, CHP, and other relevant energy efficiency and emissions issues raised by Veolia's proposed Rufford incinerator in PA23 Paras 284 – 289 and 547 – 689, and PA35 Paras 25 – 45 and 52 – 57.
- 14.7. Suffice it to say, the evidence clearly shows that this incinerator would neither secure the highest viable resource and energy efficiency, nor the highest reduction in emissions.

15. The availability of sites where a combined heat and power plant might be provided [CD63, SoS Matter g];

- 15.1. According to Waste Strategy 2007: "Although the Government is not generally expressing a preference for one type of technology over another for EfW, it does believe that any given technology is (where applicable) more beneficial if both heat and electricity can be recovered. Particular attention should therefore be given to the siting of plant to maximise opportunities for combined heat and power (CHP)" [CD40 Annex E Para 4].
- 15.2. Both the Portland Industrial and Land off old Newark Road sites were scored by Mr. Standen as "B" [CD84 Para 3.3] for energy utilisation which means "A site with potential to provide heat to existing or prospective heat users" [CD84 Para 2.38]. Mr. Standen accepted that both of these shortlisted sites were viable alternatives to the Rufford site [XX Standen].
- 15.3. Veolia's selection of the Rufford site cannot possibly be justified in terms of potential for heat use. The Rufford site offers no significant heat users. There is little certainty that the nearby business park proposal would be granted planning permission, or that if approved the business park would ever be built. To date, there have been no firm agreements to ensure that even if it were built occupants would use some, let alone all, of the heat.
- 15.4. A potentially significant heat user has appeared since the last heat user survey at one of the alternative sites, yet the survey has not been refreshed to reflect this.
- 15.5. Veolia have therefore failed to do a thorough potential heat user study for the viable alternative sites and so have not ruled out the possibility that there are existing developments near those sites with occupants that would sign a heat use agreement which would mean that those sites would have "guaranteed heat users".

16. What weight the Secretary of State should give to the fact that this energy from waste plant would rely on incineration, rather than anaerobic digestion, gasification or pyrolysis [CD63, SoS Matter g];

- 16.1. According to Waste Strategy 2007: "Apart from AD, the Government does not generally think it appropriate to express a preference for one technology over another, since local circumstances differ so much" [CD40 Annex E]. The Government's preference for AD is explored in PA23 Paras 184 – 186.
- 16.2. As waste which could be anaerobically digested is anticipated to be used as feedstock for the incinerator (see Section 11), PAIN feels that the past and present Governments' strong preference for anaerobic digestion should be afforded significant weight.
- 16.3. As outlined above in Section 11, Waste Strategy 2007 (CD40) states that key to preventing incineration from undermining the achievement of high levels of recycling is "planning and **building facilities with an appropriate amount of flexibility built in**. This means flexible – e.g. modular – buildings, and also flexible contracts, which do not lock in fixed amounts of waste for treatment which might become obsolete" (**emphasis in original**) [CD40 Chapter 5, Para 23 and PA77].
- 16.4. Unlike mass burn incineration, gasification and pyrolysis do not rely upon a constant feedstock and thus have more flexibility built in.
- 16.5. As Mr. Watson explained in his oral testimony, fluidised bed incinerators (e.g. the type proposed for Ince Marshes, CC110-CD100D) rely upon Refuse Derived Fuels and therefore there would necessarily therefore have to be a degree of pre-sorting prior to the waste being burned. The Rufford proposal is for mass burn incineration, which means the facility would treat mixed waste which could include recyclable material.
- 16.6. Mass burn incineration, pyrolysis and gasification all produce Persistent Organic Pollutants, and this gives rise to obligations under the Stockholm Convention and related agreements and legislation.
- 16.7. The implications of this were discussed by Mr. Watson at Paras 660 – 689 of PA23. This evidence has not been rebutted, and the issue has at no stage been addressed. The Saltend challenge (VE51) showed that it was not the duty of the Environment Agency to give preference to alternatives to incineration. The Environment Agency argued that this obligation fell upon planners. NCC did not discharge this obligation, and this Inquiry is the only remaining point at which proper consideration can be given to this matter.

17. Whether there are good reasons for making a decision on the location of a strategic facility such as this in advance of consideration being given to it as part of the Waste Development Framework [CD63, SoS Matter g];

- 17.1. Both Veolia and NCC, as WPA and WDA, have in the past claimed that there is urgency to this application due to a supposed “landfill crisis”. PAIN does not believe that this is the case.
- 17.2. The Inquiry has heard evidence from Mr. Kondakor robustly demonstrating that the County has made sufficient provision for landfill capacity to meet relevant Government guidelines.
- 17.3. In cross examination, both Mr. Hankin and Mr. Standen conceded that there were flaws in their respective approaches to calculating remaining landfill capacity. These errors led each of them to underestimate landfill capacity.
- 17.4. PAIN’s position regarding landfill is also supported by the comments made by Mr. Allen on behalf of the Waste Disposal Authority.
- 17.5. Veolia said in oral testimony on behalf of both themselves and Nottinghamshire County Council as the Waste Disposal Authority that they would not even begin work on a ‘Plan B’ alternative waste solution unless this application was refused. They also said that the ‘Plan B’ might be an alternative to incineration rather than a new incinerator on another site. We take this to mean that there is no need for an incinerator and that a refusal of this application would not lead to any waste crisis or other calamity.
- 17.6. PAIN believes that there are no good reasons for making a decision on the location of a strategic facility such as this in advance of consideration being given to it as part of the Waste Development Framework.

18. Other Matter: Public Perception of Health Impacts

- 18.1. PAIN would also like to draw attention to PA23 Paras 357 – 505, where Mr. Watson argues that public perception of health impacts is a material planning consideration.
- 18.2. Mr. Watson concludes at Para 504 of PA23 that:
 - 18.2.1. Perception of risk, especially if well founded, can be a material planning consideration.
 - 18.2.2. A range of studies have shown that concerns generated by perceptions of risk, even if unfounded, can have real health effects within the WHO definition.
 - 18.2.3. There are significant uncertainties about the emissions from the proposed facility – particularly during start-up (and shut-down) and upset conditions.
 - 18.2.4. The effects of secondary particulates have not been evaluated in the application.
 - 18.2.5. The external costs of the emissions from the proposal, as assessed using UK specific CAFE external costs would be €6.77 - €18.53 per tonne of waste burned.
 - 18.2.6. The serious health impacts associated with secondary pollutant generation from the proposed incinerator have not been assessed by the Environment Agency as part of the Environmental Permit determination.
- 18.3. In this instance, the weight that public concern should be afforded by the Secretary of State's should take account of:
 - 18.3.1. the views of the community expressed at the community evening (CD111), covering both their genuine health concerns and their lack of trust in Veolia;
 - 18.3.2. the comments made by Prof. Bridges in cross-examination, that not only does uncertainty remain regarding the health impacts of waste incineration, but that were the incinerator to be causing health impacts it would be highly unlikely that the community, or indeed the regulators, would be able to determine that the incinerator was the source of these impacts; and
 - 18.3.3. Veolia's acknowledgement in the planning application that: "The HIA has concluded that, understandably, the provision of a new ERF engenders a number of perceived health impacts (associated with potential emissions from the ERF and the associated traffic and the potential for noise and increased accidents resulting from increased traffic) and associated community concerns..." [CD1, Planning Supporting Statement, Para 7.7].

19. Consequences of Refusal

- 19.1. As detailed in Sections 8 and 9 above, and as confirmed by Mr. Allen, if this application were turned down then more waste could potentially be sent to Eastcroft.
- 19.2. If this application is refused, as detailed in Section 11 above, Nottinghamshire would optimise recycling beyond the recycling rates anticipated in the application, and the County Council could opt to promote separate collection of food waste.
- 19.3. Section 11 also explains why approval would effectively discourage the reduction, reuse, recycling and composting of discarded material. The majority of waste that Veolia hopes to burn is recyclable, therefore an obvious beneficial outcome of refusal would be the creation of an opportunity for closer adherence to the waste hierarchy.
- 19.4. As outlined in Sections 10 and 17 above, a Rufford incinerator is not needed, and refusal of this application would not result in a landfill crisis or waste calamity.
- 19.5. Furthermore, refusal would avert the damage that the facility would have inflicted upon Sherwood Forest.
- 19.6. Refusal would mean the site would be restored to heathland and woodland in line with its restoration conditions which require it to be restored, the promises made to the community that it would be restored, and the clearly expressed wishes of local residents that it should be restored.