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# UNITED KINGDOM WITHOUT INCINERATION NETWORK

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## UKWIN guide to site-specific non-waste planning arguments (England)

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*This document is part of the UKWIN Campaign Guide series created with the support of UKWIN members. This Guide has been updated to reflect changes such as the replacement of PPS10 with the National Planning Policy for Waste (NPPW). Campaigners for sustainable waste management are free to use content from this UKWIN document for their campaign so long as there is proper attribution.*

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<http://ukwin.org.uk/resources/>

## 1. INTRODUCTION

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Whilst UKWIN typically focuses on the broader waste arguments against incineration, it is often the site-specific non-waste arguments that succeed in preventing individual planning applications from being granted planning permission. These non-waste arguments relate to the impacts of a proposal on the area in which it would be located, and how a proposal therefore goes against local/regional/national planning policy, rather than the demerits of incineration or whether a site would be well placed geographically as part of a waste management network.

This guide is intended to focus on arguments that are only peripherally related to waste management. This guide does not cover locational waste arguments, such as the potential of a site for Combined Heat and Power, the position of a proposal on the waste hierarchy (e.g. other recovery vs. disposal), or the potential of a proposed or alternative site for co-location and/or transporting waste via means other than road (e.g. water or rail). This guide is focussed on the English planning system, and as such citations of planning principles and related documents may not be relevant elsewhere.

Arguments relating to a site being inappropriate for an incinerator are most effective when tied to planning policies, strategies and site designations. Furthermore, many of the interests that require protection already have one or more organisations representing that interest. It is helpful to know the views of these organisations and to ensure that they have properly critiqued the application and, if they have identified valid concerns, that they have made a formal planning objection. The consultees' representations may help you to identify and find out more about the particular problems of the proposal. They may also help you identify potential allies in fighting the application.

The Waste Planning Authority is legally obliged to consult with a number of organisations ('statutory consultees') and to take their views into account. A submission from a statutory consultee relating to their area of expertise is typically given far more weight than the representations on that matter from other consultees. It is not, however, unusual for an issue-specific consultee to withdraw an objection if the applicant proposes to provide some form of mitigation or compensation pertaining to their issue. If an authoritative consultee objects or raises concerns then it is important to ensure that they give due consideration to the shortcomings of any mitigation or compensation proposed by the applicant so that the consultee does not accept any proposal that does not fully address all of the concerns that they raised.

In terms of environmental protection, many environmental bodies (such as the local Wildlife Trust) and internal experts (such as the County Ecologist) would have been consulted prior to a planning application being submitted regarding whether an Environmental Statement was needed to accompany the application and the scope of the impacts to be assessed within that Environmental Statement. These processes are known as 'screening' and 'scoping'.

If the details of scoping responses, reports and opinions (and indeed consultation responses to the planning application) are not available from the Waste Planning Authority's website then they can be requested under the Environmental Information Regulations (EIR). See Annex for e-mail templates requesting scoping and planning application consultation responses.

## **2. NPPW APPENDIX B: LOCATIONAL CRITERIA & OTHER CRITERIA**

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On 16<sup>th</sup> October 2014 the Department for Communities and Local Government (DCLG) replaced Planning Policy Statement 10 (PPS10) with the National Planning Policy for Waste (NPPW). The NPPW is available from: <https://www.gov.uk/government/publications/national-planning-policy-for-waste>

Appendix B of the NPPW is framed in terms of locational considerations that Waste Planning Authorities must take into account when searching for sites and areas suitable for new or enhanced waste management facilities. However, it is also relevant for considering an individual planning application.

Paragraph 7 of the NPPW states that: “When determining waste planning applications, waste planning authorities should... consider the likely impact on the local environment and on amenity against the criteria set out in Appendix B...”

The locational criteria set out within NPPW Appendix B are as follows:

- **a. protection of water quality and resources and flood risk management** – “Considerations will include the proximity of vulnerable surface and groundwater or aquifers. For landfill or land-raising, geological conditions and the behaviour of surface water and groundwater should be assessed both for the site under consideration and the surrounding area. The suitability of locations subject to flooding, with consequent issues relating to the management of potential risk posed to water quality from waste contamination, will also need particular care.”
- **b. land instability** – “Locations, and/or the environs of locations, that are liable to be affected by land instability, will not normally be suitable for waste management facilities.”
- **c. landscape and visual impacts** – “Considerations will include (i) the potential for design-led solutions to produce acceptable development which respects landscape character; (ii) the need to protect landscapes or designated areas of national importance (National Parks, the Broads, Areas of Outstanding Natural Beauty and Heritage Coasts) (iii) localised height restrictions.”
- **d. nature conservation** – “Considerations will include any adverse effect on a site of international importance for nature conservation (Special Protection Areas, Special Areas of Conservation and RAMSAR Sites), a site with a nationally recognised designation (Sites of Special Scientific Interest, National Nature Reserves), Nature Improvement Areas and ecological networks and protected species.”
- **e. conserving the historic environment** – “Considerations will include the potential effects on the significance of heritage assets, whether designated or not, including any contribution made by their setting.”
- **f. traffic and access** – “Considerations will include the suitability of the road network and the extent to which access would require reliance on local roads, the rail network and transport links to ports.”

- **g. air emissions, including dust** – “Considerations will include the proximity of sensitive receptors, including ecological as well as human receptors, and the extent to which adverse emissions can be controlled through the use of appropriate and well-maintained and managed equipment and vehicles.”
- **h. odours** – “Considerations will include the proximity of sensitive receptors and the extent to which adverse odours can be controlled through the use of appropriate and well-maintained and managed equipment.”
- **i. vermin and birds** – “Considerations will include the proximity of sensitive receptors. Some waste management facilities, especially landfills which accept putrescible waste, can attract vermin and birds. The numbers, and movements of some species of birds, may be influenced by the distribution of landfill sites. Where birds congregate in large numbers, they may be a major nuisance to people living nearby. They can also provide a hazard to aircraft at locations close to aerodromes or low flying areas. As part of the aerodrome safeguarding procedure (ODPM Circular 1/2003) local planning authorities are required to consult aerodrome operators on proposed developments likely to attract birds. Consultation arrangements apply within safeguarded areas (which should be shown on the policies map in the Local Plan). The primary aim is to guard against new or increased hazards caused by development. The most important types of development in this respect include facilities intended for the handling, compaction, treatment or disposal of household or commercial wastes.”
- **j. noise, light and vibration** – “Considerations will include the proximity of sensitive receptors. The operation of large waste management facilities in particular can produce noise affecting both the inside and outside of buildings, including noise and vibration from goods vehicle traffic movements to and from a site. Intermittent and sustained operating noise may be a problem if not properly managed particularly if night-time working is involved. Potential light pollution aspects will also need to be considered.”
- **k. litter** – “Litter can be a concern at some waste management facilities.”
- **l. potential land use conflict** – “Likely proposed development in the vicinity of the location under consideration should be taken into account in considering site suitability and the envisaged waste management facility.”

When dismissing an appeal for an incinerator proposed by Covanta for Middlewich (Cheshire) in July 2012 (ref 2129865), the Secretary of State considered the inconsistency of a proposal with the policy aims of PPS10 Annex E locational criteria (the predecessor to NPPW Appendix B locational criteria) to be relevant to his refusal of planning permission.

According to Paragraph 35 of the Decision Letter: “The Secretary of State also considers that the proposal would conflict with the policy aims of Annex E of PPS10 in terms of visual intrusion, nature conservation, traffic and access, and air emissions (as they apply to traffic)”. The Cheshire Decision Letter and Inspector’s Report are available from the planning portal: <https://acp.planningportal.gov.uk/ViewCase.aspx?Caseid=2129865>

At Paragraph 111 of the "Green Lane Eco Park" decision (ref 2162115) the Planning Inspector explains how a proposal could be considered to not represent sustainable development if it is inappropriate for the location: "...I do not consider that the appeal site is the right place for the proposed facilities. I note that the Framework provides that development should be permitted if its impacts are, or can be made, acceptable. However, in this case the proposals would not respond to the local character, and the impact of the proposed facilities could not be made acceptable. Having regard to the core principles of the Framework, I find that the proposed development in both Appeal A and Appeal B would not represent sustainable development to which the presumption in favour set out in the Framework would apply".

An argument could be made that if a proposal does not represent sustainable development, e.g. because the proposal is inappropriate for the location, then the National Planning Policy Framework (NPPF) would expect that proposal to be refused planning permission. Such a view would be supported by the statement made by Greg Clark, then Minister of State for Communities and Local Government (CLG), who was appointed Secretary of State for Communities and Local Government on 11<sup>th</sup> May 2015 (HC Deb, 27 March 2012, c1344), that: "...No development can take place that is unsustainable. That is the commitment that we give on that point...".

More recently we read, at Paragraph 71 of the Government response to the CLG Select Committee Inquiry into the Operation of the National Planning Policy Framework, presented to Parliament by the Secretary of State for Communities and Local Government by Command of Her Majesty in February 2015, that: "The [National Planning Policy] Framework is clear that **it is the purpose of planning to enable only truly sustainable development**, not development at any cost. It strikes a careful balance between enabling sustainable development and conserving and enhancing our natural environment, even in the absence of an up-to-date Local Plan" (**emphasis UKWIN's**).

The Waste Regulations 2011 state that: "18. A planning authority must have regard to the following provisions of the Waste Framework Directive when exercising its planning functions to the extent that those functions relate to waste management - (a) Article 13; ..."

According to Article 13 of the Waste Framework Directive: "Member States shall take the necessary measures to ensure that waste management is carried out without endangering human health, without harming the environment and, in particular:

- (a) without risk to water, air, soil, plants or animals;
- (b) without causing a nuisance through noise or odours; and
- (c) without adversely affecting the countryside or places of special interest."

This is recognised in Annex 1 (Paragraph 055 of the Waste Section) of the Planning Practice Guidance, which states: "Planning Authorities must have regard to the provisions of Article 13 when exercising planning functions to the extent that those functions relate to waste management. This is to ensure that any waste is handled in a manner which guards against harm to human health and the environment when exercising their planning functions to the extent that those functions relate to waste management".

The National Planning Practice Guidance (NPPG) is available from:

<http://planningguidance.planningportal.gov.uk/>

Paragraph 007 of the National Planning Policy Guidance states that: “In shaping local criteria for inclusion in Local Plans and considering planning applications in the meantime, it is important to be clear that:

- the need for renewable or low carbon energy does not automatically override environmental protections;
- cumulative impacts require particular attention...; ...
- great care should be taken to ensure heritage assets are conserved in a manner appropriate to their significance, including the impact of proposals on views important to their setting;
- proposals in National Parks and Areas of Outstanding Natural Beauty, and in areas close to them where there could be an adverse impact on the protected area, will need careful consideration;
- protecting local amenity is an important consideration which should be given proper weight in planning decisions.” (Reference ID: 5-007-20140306)

### **3. PROTECTION OF WATER RESOURCES AND RISK OF FLOODING**

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NPPW Appendix B Criterion A ('protection of water quality and resources and flood risk management') states: "Considerations will include the proximity of vulnerable surface and groundwater or aquifers... The suitability of locations subject to flooding, with consequent issues relating to the management of potential risk posed to water quality from waste contamination, will also need particular care".

The Environment Agency only very rarely raise concerns about planning applications for incinerators, but when they do it usually relates to water. For example, the Environment Agency warned that the safety of the source protection zone for groundwater abstraction could not be assured for an incinerator proposed by E.ON in Hertfordshire and temporarily objected to an incinerator in King's Lynn on grounds of flood risk.

A piece of land can fall into one of three flood zones, with Flood Zone 1 at the lowest assumed risk of flooding and Flood Zone 3 at the highest assumed risk of flooding. That land can also fall into one of three groundwater source catchments or 'Source Protection Zones', with SPZ3 afforded the least protection and SPZ1 afforded the most protection.

NPPF Paragraph 14 states that the 'presumption in favour of sustainable development' does not apply where "specific policies in this Framework indicate development should be restricted", and according to Footnote 9 this includes policies relating to "locations at risk of flooding or coastal erosion".

Policies on flood risk are scattered throughout the NPPF, and further guidance is contained in the Planning Practice Guidance at:

<http://planningguidance.planningportal.gov.uk/blog/guidance/flood-risk-and-coastal-change/>

Further guidance on water supply, wastewater and water quality are contained in the Planning Practice Guidance at:

<http://planningguidance.planningportal.gov.uk/blog/guidance/water-supply-wastewater-and-water-quality/>

## 4. LAND INSTABILITY AND SUBSIDENCE

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NPPW Appendix B criterion ('land instability') states: "Locations, and/or the environs of locations, that are liable to be affected by land instability, will not normally be suitable for waste management facilities".

This issue may be especially important for facilities proposed at landfill sites, former collieries, or in mining areas.

NPPF Paragraph 109 states: "The planning system should contribute to and enhance the natural and local environment by: ...preventing both new and existing development from contributing to or being put at unacceptable risk from, or being adversely affected by unacceptable levels of soil, air, water or noise pollution or land instability;..."

NPPF Paragraph 120 states: "To prevent unacceptable risks from pollution and land instability, planning policies and decisions should ensure that new development is appropriate for its location. The effects (including cumulative effects) of pollution on health, the natural environment or general amenity, and the potential sensitivity of the area or proposed development to adverse effects from pollution, should be taken into account. Where a site is affected by contamination or land stability issues, responsibility for securing a safe development rests with the developer and/or landowner".

NPPF Paragraph 121 states: "Planning policies and decisions should also ensure that: the site is suitable for its new use taking account of ground conditions and land instability, including from natural hazards or former activities such as mining, pollution arising from previous uses and any proposals for mitigation including land remediation or impacts on the natural environment arising from that remediation;...and adequate site investigation information, prepared by a competent person, is presented".

Further guidance 'Land Stability' is contained within the Planning Practice Guidance at: <http://planningguidance.planningportal.gov.uk/blog/guidance/land-stability/>



## 5. VISUAL INTRUSION AND RELATED AMENITY ARGUMENTS

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NPPW Annex B criterion C ('landscape and visual impacts') states: "Considerations will include (i) the potential for design-led solutions to produce acceptable development which respects landscape character; (ii) the need to protect landscapes or designated areas of national importance (National Parks, the Broads, Areas of Outstanding Natural Beauty and Heritage Coasts) (iii) localised height restrictions".

Visual amenity can be described as the pleasantness of the view or outlook of an identified receptor or group of receptors, with a receptor being either a viewpoint (e.g. a road) or someone who would experience that viewpoint (e.g. the pedestrians and drivers). This is usually assessed in terms of the sensitivity of the receptor (high/medium/low) and the magnitude of the impact (major/moderate/slight/negligible). One must ensure that applicants do not 'double count' the lessening effect of distance on a receptor by lowering both the 'magnitude' and the 'sensitivity'.

In addition to the visual intrusion from the buildings, stack, plume, etc, one should consider:

- Loss of light from the buildings, stack plume, etc;
- The visible presence of large (often branded) heavy goods vehicles;
- Whether a proposal is out of keeping with the character of the area;
- Adverse impact on enjoyment of the countryside; and
- Adverse impacts on regeneration caused by the above factors.

Section 7 of the National Planning Policy Framework (NPPF), subtitled 'Requiring good design', covers general design issues, such as the aim to ensure that development responds to local character and history.

Paragraph 7 of the National Planning Policy for Waste (NPPW) specifically states that: "When determining waste planning applications, waste planning authorities should...ensure that waste management facilities in themselves are well-designed, so that they contribute positively to the character and quality of the area in which they are located..."

Overarching National Policy Statement for Energy (EN-1) Paragraph 5.9.20 states: "The IPC should ensure applicants have taken into account the landscape and visual impacts of visible plumes from chimney stacks and/or the cooling assembly".

As noted above, the National Planning Policy Guidance states that: "protecting local amenity is an important consideration which should be given proper weight in planning decisions" and that: "cumulative impacts require particular attention..."

Paragraph 47 of the Inspector's decision to refuse an incinerator proposed by Manchester Properties for the "Green Lane Eco Park" (ref 2162115) states: "The proposed EfW would comprise large structures and a 55m high stack. The activity and movement of distinctive waste carrying HGVs would again identify the use as processing waste, notwithstanding that the plant would be set back from Green Lane. These vehicles would use the same access off

Green Lane as that proposed for the MRF/AD facility. The stack would have an adverse influence on the residential and recreation area the other side of the motorway because it would be prominent in views above the motorway embankment... This activity and land use would be out of keeping with the mixed industrial/residential character of the area. It would create an awkward juxtaposition of waste processing with nearby residential development and the tourism/leisure use of the Canal. This would result in a high magnitude of change to the townscape. I consider that the proposed EfW facility and activity associated with it would have a substantial adverse impact on the character of the area”.

The Planning Inquiry into the incinerator (‘ERF’) proposed for the Former Rufford Colliery in Nottinghamshire (ref 2102006) also considered visual impact. Paragraph 1231 of the Inspector’s Report stated: “...It is in the open countryside and away from Rainworth. However, the ERF would be prominent in residents’ views and it would detract from their enjoyment of the area. It would also undermine efforts being made to develop Sherwood Forest as a tourist destination, because of the harm that would be caused to the rural landscape. This is clearly at odds with the need to protect the countryside for the sake of its intrinsic character and beauty, so that it may be enjoyed by all”.

Paragraphs 1233, 1234 and 1284 of the same Inspector’s Report state that: “...Given the size of building and height of stacks needed to accommodate a 180,000 tpa energy from waste incineration facility, the proposed design succeeds in minimising the development’s scale and visual impact so far as is possible at this location. Nevertheless, despite the architect’s skill, the ERF would not be in keeping with its rural surroundings or sensitive to the unspoilt character that is rapidly returning to this part of the Forest as former colliery land is being restored...the ERF would provide only 36 jobs, whereas the development’s impact on the countryside, and people’s enjoyment of it, would be substantial...the proposed scheme would be harmful to the landscape”.

The Secretary of State refused planning permission for the Sherwood Forest (Rufford) incinerator and agreed with the reasoning and conclusions of these paragraphs of the Inspector’s Report at Paragraph 18 of his Decision Letter. Whilst this decision pre-dated the introduction of the NPPF, which replaced various Planning Policy Statements, it is still a useful decision because it establishes principles regarding the potential adverse impact of an incinerator that have been accepted by the Secretary of State.

Separately, the Secretary of State’s decision letter for Appeal A in Middlewich, Cheshire (ref 2129865) stated at Paragraph 30 that: “...due to its scale, height and industrial character, the proposal would have a substantially significant landscape and visual impact within Midpoint 18 and on the countryside around up to 30km distant. He also agrees that, within Middlewich, the impact would vary, but from where it would be visible the impact would be of moderate to significant magnitude and of intermediate to substantial significance; that the scope for mitigation measures would be limited; and that there would also be harm to the character and appearance of the conservation area along the Trent and Mersey canal”.

In addition to local planning policies and site masterplans, it can also be worthwhile trying to determine whether past planning decisions on or near the application site could help demonstrate a precedent regarding what would not be appropriate in the area. For example, the Secretary of State may have imposed a planning condition imposing a height restriction on a nearby development which could support the argument that a large chimney would be out of keeping with the character of the area. It should be noted that a blimp placed at the point where the top of the stack is a method to help determine the true extent of visual intrusion.

## 6. NATURE CONSERVATION AND WILDLIFE PROTECTION

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NPPW Appendix B criterion D ('nature conservation') states: "Considerations will include any adverse effect on a site of international importance for nature conservation (Special Protection Areas, Special Areas of Conservation and RAMSAR Sites), a site with a nationally recognised designation (Sites of Special Scientific Interest, National Nature Reserves), Nature Improvement Areas and ecological networks and protected species".

NPPW Appendix B criterion G ('air emissions, including dust') states: "Considerations will include the proximity of sensitive receptors, including ecological as well as human receptors, and the extent to which adverse emissions can be controlled through the use of appropriate and well-maintained and managed equipment and vehicles".

NPPW Appendix B criterion J ('noise, light and vibration') states: "Considerations will include the proximity of sensitive receptors. The operation of large waste management facilities in particular can produce noise affecting both the inside and outside of buildings, including noise and vibration from goods vehicle traffic movements to and from a site. Intermittent and sustained operating noise may be a problem if not properly managed particularly if night-time working is involved. Potential light pollution aspects will also need to be considered".

### Wildlife and nature conservation designations

In addition to the NPPF, local plans and strategies often include environmental protections. Whilst there are many sites of importance to nature that are undesignated, when it comes to the planning system there are typically more protections afforded to sites that have a formal designation. The designated sites in your area are usually set out in local planning documents. It should be noted that some sites may benefit from multiple designations.

Designated sites typically have at least one organisation responsible for them, and it is important to engage with these organisations where possible as their objections are taken more seriously than those from a group that is not focussed on nature conservation.

According to Paragraph 113 of the NPPF: "Local planning authorities should set criteria based policies against which proposals for any development on or affecting protected wildlife or geodiversity sites or landscape areas will be judged. Distinctions should be made between the hierarchy of international, national and locally designated sites, so that protection is commensurate with their status and gives appropriate weight to their importance and the contribution that they make to wider ecological networks".

The footnote to NPPF Paragraph 113 states that: "Circular 06/2005 provides further guidance in respect of statutory obligations for biodiversity and geological conservation and their impact within the planning system". The circular (which remains a material planning consideration), published to accompany PPS9 (now cancelled), is available from:

<https://www.gov.uk/government/publications/biodiversity-and-geological-conservation-circular-06-2005>

## ***PRIORITY HABITATS AND SPECIES***

Some species have additional protection irrespective of whether or not the site in which they reside is designated for nature conservation. However, in some instances the presence of a protected species on a site might not be a barrier to development, e.g. where that species can be safely translocated elsewhere.

According to NPPF Paragraph 117: “To minimise impacts on biodiversity and geodiversity, planning policies should:...promote the preservation, restoration and re-creation of priority habitats, ecological networks and the protection and recovery of priority species populations, linked to national and local targets...”

The glossary to the NPPF defines ‘priority habitats and species’ as: “Species and Habitats of Principle Importance included in the England Biodiversity List published by the Secretary of State under section 41 of the Natural Environment and Rural Communities Act 2006”.

It is also worth determining whether a species present on or near the application site is listed as a European Protected Species under the Habitats Directive, and whether a species is listed in the UK Biodiversity Action Plan and local biodiversity action plans. For more details see: <http://jncc.defra.gov.uk/page-5705>

## ***INTERNATIONAL DESIGNATIONS FOR NATURE CONSERVATION***

There are three international designations:

- **Special Protection Area (SPA)** – Defined in the glossary to the NPPF as: “Areas which have been identified as being of international importance for the breeding, feeding, wintering or the migration of rare and vulnerable species of birds found within European Union countries. They are European designated sites, classified under the Birds Directive”.
- **Special Areas for Conservation (SAC)** – European designation to protect the important habitats and species considered to be most in need of conservation (other than birds).

Defined in the glossary to the NPPF as: “Areas given special protection under the European Union’s Habitats Directive, which is transposed into UK law by the Habitats and Conservation of Species Regulations 2010”.

- **Ramsar Sites** – Defined in the glossary to the NPPF as: “Wetlands of international importance, designated under the 1971 Ramsar Convention”.

European Protected Species and their habitats are protected under The Conservation of Habitats and Species Regulations 2010. Regulation 9A(8) of the Conservation of Habitats and Species Regulations 2010 (as amended) states: "A competent authority [e.g. waste planning authority] in exercising any function in or in relation to the United Kingdom must use all reasonable endeavours to avoid any pollution or deterioration of habitats of wild birds". This is a transposition of Article 4(4) of the Wild Birds Directive, which includes protection both for designated Special Protection Areas and proposed Special Protection Areas and habitats that are used by protected wild birds that have not been designated.

As per Paragraph 118 of the National Planning Policy Framework, the following wildlife sites should, as a matter of policy, be given the same protection as European sites:

- Potential Special Protection Areas and possible Special Areas of Conservation;
- Listed or proposed Ramsar sites; and
- Sites identified, or required, as compensatory measures for adverse effects on European sites, potential Special Protection Areas, possible Special Areas of Conservation, and listed or proposed Ramsar sites.

If an incinerator would be located on or near such a site then the planning authority cannot lawfully grant planning permission unless either it is satisfied that adverse effects of the facility on the integrity (conservation objectives) of the site, either alone or in-combination with other plans and projects, can be ruled out, or if it carries out an appropriate assessment (also known as a 'Habitats Regulations Assessment') which concludes that either there will be no harm, or that if there would be harm then such harm is minimised, there are no alternative solutions which would have no or lesser effect on the integrity of the protected site, and that the proposal is justified by imperative reasons of overriding public interest.

According to Paragraph 119 of the National Planning Policy Framework: "The presumption in favour of sustainable development (paragraph 14) does not apply where development requiring appropriate assessment under the Birds or Habitats Directives is being considered, planned or determined".

The protection of foraging and breeding areas for European protected species (Woodlark and Nightjar) on a suggested Special Protection Area (not yet even a potential SPA) was a primary ground for the Secretary of State's May 2011 refusal of Veolia's proposed Sherwood Forest incinerator at the Former Rufford Colliery in Rainworth, Nottinghamshire.

For more details on protected species/habitats and the planning system please refer to:

- Natural England's Standing Advice on Protected Species:  
<https://www.gov.uk/protected-species-and-sites-how-to-review-planning-proposals#standing-advice-for-protected-species>
- The Secretary of State's Decision Letter and the Inspector's Report in relation to Veolia's proposals for the Sherwood Forest incinerator at the Former Rufford Colliery in Rainworth, Nottinghamshire:  
<http://webarchive.nationalarchives.gov.uk/20120919132719/www.communities.gov.uk/documents/planning-callins/pdf/1914959.pdf>

The Joint Nature Conservation Committee (JNCC) protected sites designation directory is available from: <http://jncc.defra.gov.uk/page-1527>

## ***NATIONAL DESIGNATIONS FOR NATURE CONSERVATION***

The following are the most relevant national designations for nature conservation:

- **Sites of Special Scientific Interest (SSSI)** – Most, if not all, internationally designated sites are also SSSIs. Natural England is the official guardian of SSSIs in England, and as such it is important that they are aware of any concerns relating to the impact of a proposed incinerator on a SSSI.

According to NPPF Paragraph 14 the ‘presumption in favour of sustainable development’ does not apply where “specific policies in this Framework indicate development should be restricted”, and according to Footnote 9 this includes policies relating to “Sites of Special Scientific Interest”.

According to Paragraph 118 of the NPPF: “...proposed development on land within or outside a Site of Special Scientific Interest likely to have an adverse effect on a Site of Special Scientific Interest (either individually or in combination with other developments) should not normally be permitted. Where an adverse effect on the site’s notified special interest features is likely, an exception should only be made where the benefits of the development, at this site, clearly outweigh both the impacts that it is likely to have on the features of the site that make it of special scientific interest and any broader impacts on the national network of Sites of Special Scientific Interest...”

- **National Parks, the Broads and Areas of Outstanding Natural Beauty** – Whilst not purely a nature conservation designation, NPPF Paragraph 115 does state that: “...The conservation of wildlife and cultural heritage are important considerations in all these areas, and should be given great weight in National Parks and the Broads”.

As noted above, the National Planning Policy Guidance states that: “proposals in National Parks and Areas of Outstanding Natural Beauty, and in areas close to them where there could be an adverse impact on the protected area, will need careful consideration”.

## ***OTHER DESIGNATIONS***

The glossary of the NPPF defines ‘ancient woodland’ as: “An area that has been wooded continuously since at least 1600 AD”. Natural England maintains the National Inventory of Ancient Woodland for sites larger than 2 hectares, but local authorities are responsible for identifying sites.

NPPF Paragraph 118 states: “...planning permission should be refused for development resulting in the loss or deterioration of irreplaceable habitats, including ancient woodland and the loss of aged or veteran trees found outside ancient woodland, unless the need for, and benefits of, the development in that location clearly outweigh the loss;...”

Trees on a site may also have been given a temporary or permanent tree preservation order, although this may be more for aesthetic than environmental reasons. See <http://webarchive.nationalarchives.gov.uk/20120919132719/www.communities.gov.uk/documents/planningandbuilding/pdf/tposguide.pdf> for details. Also note that 'important hedgerows' are protected under the Hedgerows Regulations 1997. Further details available at: <https://www.gov.uk/countryside-hedgerows-regulation-and-management>

Local wildlife sites, also known by other names such as Sites of Importance for Nature Conservation (SINCs), are given protection in the policies of local plans, but are typically given less protection than sites with international and national designations.

## Types and pathways of harm to nature conservation interests

There are many pathways by which the construction, operation or decommissioning of an incinerator (and associated connection to the power grid or districted heating networks) could, on its own or in-combination with other plans and projects, provide a pathway of harm to nature conservation interests, including:

- **Loss of habitat** – The landtake of an incinerator, ancillary buildings, access road, etc. is land that cannot be used for breeding and foraging. This is especially important if the land is currently functional habitat or if it is destined to be habitat, e.g. due to a restoration condition or as compensation for a different development. Land proposed for use as compensation / mitigation for one type of loss may already be functional habitat and any change could mean the existing value of the land is lost or diminished.
- **Harm to habitat** – Due, for example, to nitrogen deposition, contamination, pollution, soil erosion, water quality, or increased risk of flooding. This can sometimes be counter-intuitive, e.g. nitrogen deposition could be a factor not because of 'air quality' but because the nitrogen enhances the soil, and enhanced soil ceases to be suitable for certain rare species of plant, e.g. heather, and the nitrogen could come from the operation of an incinerator, the traffic involved, and the presence of dogs on a site.
- **Harm to species** – Pollution (adverse impact on air quality); Disturbance from light, noise, and people; Disturbance and predation from cats and dogs (primarily in relation to housing developments and ground-nesting birds); Dust (especially from demolition, construction and decommissioning); Presence of building or chimney (e.g. because it discourages a species or because it encourages birds of prey); lighting. When assessing the noise during construction and decommissioning it is important to take into account the adverse impact of intermittent loud noises, not only the average noise level during a given period.

## Further reading regarding biodiversity and geodiversity

Biodiversity and geodiversity is covered at:

<http://planningguidance.planningportal.gov.uk/blog/guidance/natural-environment/biodiversity-ecosystems-and-green-infrastructure/>



## 7. HISTORIC ENVIRONMENT AND BUILT HERITAGE

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NPPW Appendix B criterion E ('conserving the historic environment') states: "Considerations will include the potential effects on the significance of heritage assets, whether designated or not, including any contribution made by their setting".

Sites of international importance for heritage include World Heritage Sites. Nationally recognised heritage designations for sites or buildings include Scheduled Monuments, Conservation Areas, Listed Buildings, Registered Historic Battlefields and Registered Parks and Gardens. The protection for individual heritage assets depends on the designation given to the asset. Most local plans will have some form of protection for heritage assets, as does the NPPF. Even the impact on non-designated heritage assets need to be considered.

When making heritage arguments it is far better to have a heritage organisation on your side, e.g. the body tasked with protecting the specific heritage asset and/or Historic England (formerly English Heritage). In some instances harming a heritage asset can also be linked to harming regeneration, the local economy, the character of an area, and visual amenity.

As with nature conservation, the developer will try to persuade heritage bodies to withdraw any objection, and as such you should ensure that these organisations do not withdraw their objection as a result of proposed mitigation and compensation unless they are fully satisfied that their concerns had been fully addressed and that the applicant's proposal would not result in an unacceptable adverse impact on heritage.

According to NPPF Paragraph 14 the 'presumption in favour of sustainable development' does not apply where "specific policies in this Framework indicate development should be restricted", and according to Footnote 9 this includes policies relating to "designated heritage assets".

As noted above, the National Planning Policy Guidance states that: "great care should be taken to ensure heritage assets are conserved in a manner appropriate to their significance, including the impact of proposals on views important to their setting". Conservation and enhancing the historic environment is covered in the Planning Practice Guidance at: <http://planningguidance.planningportal.gov.uk/blog/guidance/conserving-and-enhancing-the-historic-environment/>

The Barnwell Manor Court of Appeal Decision is also relevant. For example, Paragraph 11 of the Secretary of State decision to refuse planning permission for a wind turbine (2191503) states that: "Having regard to the judgment in the Barnwell Manor case, the Secretary of State takes the view that it does not follow that if the harm to heritage assets is found to be less than substantial, then the subsequent balancing exercise undertaken by the decision taker should ignore the overarching statutory duty imposed by section 66(1). He therefore sees a need to give considerable weight to the desirability of preserving the setting of all listed buildings. Accordingly, and also taking account of the fact that English Heritage maintain their objection to the appeal proposal on grounds of its adverse impact on the setting of the church, the Secretary of State gives substantial weight to his statutory duty to protect the setting of the Grade 1 listed building in the overall planning balance".

## 8. TRAFFIC, ACCESS AND AIR QUALITY

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NPPW Appendix B criterion F ('traffic and access') states: "Considerations will include the suitability of the road network and the extent to which access would require reliance on local roads, the rail network and transport links to ports".

NPPW Appendix B criterion G ('air emissions, including dust') states: "Considerations will include the proximity of sensitive receptors, including ecological as well as human receptors, and the extent to which adverse emissions can be controlled through the use of appropriate and well-maintained and managed equipment and vehicles".

NPPW Appendix B criterion J ('noise, light and vibration') states: "Considerations will include the proximity of sensitive receptors. The operation of large waste management facilities in particular can produce noise affecting both the inside and outside of buildings, including noise and vibration from goods vehicle traffic movements to and from a site. Intermittent and sustained operating noise may be a problem if not properly managed particularly if night-time working is involved. Potential light pollution aspects will also need to be considered".

As noted above, the National Planning Policy Guidance states that: "the need for renewable or low carbon energy does not automatically override environmental protections" and that "cumulative impacts require particular attention..."

According to Paragraph 139 of the February 2014 version of the Government's Energy from Waste: A Guide to the Debate: "Transport links are a key concern for local residents and it is an issue which needs very careful consideration. One of the greatest impacts of any waste management site, not just energy from waste, is often not the site itself but the truck movements required to get the waste to the site..."

The Highways Authority and the Highways Department of the Waste Planning Authority are respected bodies when it comes to commenting on whether a proposal would cause an unacceptable impact on the road network, but they can sometimes overlook issues.

It is important to consider the impact of construction as well as the impact of operation on busy junctions at peak times. Please ensure that in any reference to 'HGV movement' it is clear whether this means a single movement to or from the proposed facility, or the collective journey (round trip) both to and from the proposed facility.

Paragraphs 28, 29 and 35 of the Secretary of State's Decision Letter for the Middlewich decision state that: "...the Secretary of State agrees with the Inspector...that the proposal would have an adverse effect on air quality caused by increased traffic...The Secretary of State agrees with the Inspector's reasoning and conclusions on the effects on traffic in and around Middlewich...In particular..., he agrees that the traffic assessment is flawed in its assumptions on future generation, trip distribution and peak hour loads, and that it lacks important comparative information on the key A54/A533 road junction, thereby failing to demonstrate that the appeal proposals would not have a serious effect on present congestion in the town centre around that junction...The Secretary of State also considers

that the proposal would conflict with the policy aims of Annex E of PPS10 in terms of...traffic and access, and air emissions (as they apply to traffic)...” [Note that Annex E of PPS10 is the predecessor to Appendix B of the NPPW].

As mentioned in the section on Visual Amenity, the presence of “distinctive waste carrying HGVs” could make it plain that a facility is a waste facility by “identify the use as processing waste”, and this could be relevant as to whether a facility would be out of keeping with the character of an area or would adversely affect the character or visual amenity of an area.

The impact of traffic on local air quality is especially important where the proposal is in a designated Air Quality Management Area (AQMA). According to Paragraph 124 of the NPPF: “...Planning decisions should ensure that any new development in Air Quality Management Areas is consistent with the local air quality action plan”.

The National Planning Practice Guidance on Air Quality is available from <http://planningguidance.planningportal.gov.uk/blog/guidance/air-quality/> and Transport is covered at <http://planningguidance.planningportal.gov.uk/blog/guidance/transport-evidence-bases-in-plan-making/> and <http://planningguidance.planningportal.gov.uk/blog/guidance/travel-plans-transport-assessments-and-statements-in-decision-taking/>

## 9. POTENTIAL LAND USE CONFLICT AND OTHER DESIGNATIONS

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NPPW Appendix B criterion L ('potential land use conflict') states: "Likely proposed development in the vicinity of the location under consideration should be taken into account in considering site suitability and the envisaged waste management facility".

Potentially conflicting uses could include food processing facilities. If there are any nearby existing or proposed developments, then it is useful for them to object to the application.

### Greenfield site designation

Paragraph 4 of the NPPW states that: "Waste planning authorities should identify, in their Local Plans, sites and/or areas for new or enhanced waste management facilities in appropriate locations. In preparing their plans, waste planning authorities should: ...give priority to the re-use of previously-developed land, sites identified for employment uses, and redundant agricultural and forestry buildings and their curtilages".

As was the case with the Former Rufford Colliery incinerator decision, if a site is subject to a restoration condition then it is greenfield site not brownfield. The NPPF glossary definition of 'previously developed land' states that brownfield land excludes: "land that is or has been occupied by agricultural or forestry buildings; land that has been developed for minerals extraction or waste disposal by landfill purposes where provision for restoration has been made through development control procedures; land in built-up areas such as private residential gardens, parks, recreation grounds and allotments; and land that was previously-developed but where the remains of the permanent structure or fixed surface structure have blended into the landscape in the process of time".

### Green Belt

According to NPPF Paragraph 14 the 'presumption in favour of sustainable development' does not apply where "specific policies in this Framework indicate development should be restricted", and according to Footnote 9 this includes policies relating to "land designated as Green Belt".

NPPF Paragraph 17 states: "...planning should...take account of the different roles and character of different areas, promoting the vitality of our main urban areas, protecting the Green Belts around them...[and] contribute to conserving and enhancing the natural environment...so that they can be enjoyed for their contribution to the quality of life of this and future generations..."

NPPF Paragraph 87 states: "As with previous Green Belt policy, inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances". Incinerators proposed for Green Belt land are always classified as 'inappropriate development'.

NPPF Paragraph 88 states: "'Very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, **and any other harm**, is **clearly outweighed** by other considerations" (**emphasis UKWIN's**).

In *Secretary of State for Communities and Local Government & Ors v Redhill Aerodrome Ltd [2014] EWCA Civ 1386 (24 October 2014)* it was established that the "any other harm" referred to in Paragraphs 88 of the NPPF is all other harm that is relevant for planning purposes, not just other harm to the Green Belt.

In relation to demonstrating whether or not 'very special circumstances' exist, we note *Secretary of State for the Environment ex parte Pehrsson [1991] 61. P&CR 266*. This legal precedent established that the burden of proof rests with the applicant to demonstrate that the advantages of their proposed development would clearly outweigh all of the associated harm.

If the benefits do not clearly outweigh the harm then very special circumstances will not exist. However, as per *Chelmsford BC v First Secretary of State and Draper [2003] EWHC 2978*, simply overcoming that barrier is not sufficient to demonstrate that 'very special circumstances' exist. It is not for the Waste Planning Authority to show the absence of very special circumstances, but for the applicant to prove them.

Paragraph 6 of the National Planning Policy for Waste (NPPW) states that: "Green Belts have special protection in respect to development. In preparing Local Plans, waste planning authorities, including by working collaboratively with other planning authorities, should first look for suitable sites and areas outside the Green Belt for waste management facilities that, if located in the Green Belt, would be inappropriate development. Local planning authorities should recognise the particular locational needs of some types of waste management facilities when preparing their Local Plan"

### **Local Green Space designation**

The Local Green Space designation is similar to that for a village green. However, as with village green status, it is usually quite difficult to secure such a site designation.

According to NPPF Paragraph 76: "Local communities through local and neighbourhood plans should be able to identify for special protection green areas of particular importance to them. By designating land as Local Green Space local communities will be able to rule out new development other than in very special circumstances. Identifying land as Local Green Space should therefore be consistent with the local planning of sustainable development and complement investment in sufficient homes, jobs and other essential services. Local Green Spaces should only be designated when a plan is prepared or reviewed, and be capable of enduring beyond the end of the plan period".

According to NPPF Paragraph 14 the 'presumption in favour of sustainable development' does not apply where "specific policies in this Framework indicate development should be restricted", and according to Footnote 9 this includes policies relating to "Local Green Space".

## Area of Outstanding Natural Beauty (AONB)

According to NPPF Paragraphs 115 and 116: “Great weight should be given to conserving landscape and scenic beauty in National Parks, the Broads and Areas of Outstanding Natural Beauty, which have the highest status of protection in relation to landscape and scenic beauty. The conservation of wildlife and cultural heritage are important considerations in all these areas, and should be given great weight in National Parks and the Broads...Planning permission should be refused for major developments in these designated areas except in exceptional circumstances and where it can be demonstrated they are in the public interest”.

According to NPPF Paragraph 14 the ‘presumption in favour of sustainable development’ does not apply where "specific policies in this Framework indicate development should be restricted", and according to Footnote 9 this includes policies relating to “an Area of Outstanding Natural Beauty”.

## **ANNEX – EIR REQUEST E-MAIL TEMPLATES**

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Note: Please check to see whether the information is available from a local authority website before requesting it.

### **Template for requesting scoping documents**

To Whom It May Concern,

Under the Environmental Information Regulations (EIR) I request electronic copies of all correspondence and documents pertaining to the scoping (screening) request, scoping opinion and scoping report associated with the prospective incinerator at **SITE ADDRESS**.

Thank you in advance for your cooperation and support with my request for environmental information.

Yours sincerely,

### **Template for requesting consultation responses**

To Whom It May Concern,

Under the Environmental Information Regulations (EIR) I request electronic copies of all consultation submissions made by non-neighbour consultees for application **REFERENCE** to date (i.e. representations made by statutory consultees, council officers / internal consultees, and organisations, etc., as distinct from individual residents).

Thank you in advance for your cooperation and support with my request for environmental information.

Yours sincerely,