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26th November 2013

To: Director Victoria Keilthy, Private and Third Sector Delivery Team (National Audit Office),
by e-mail to: PFIWasteAudit@nao.gsi.gov.uk

RE: Defra's oversight of the Waste PFI Programme in Nottinghamshire

UKWIN was founded in March 2007 to promote sustainable waste management. As part of fulfilling our aims and objects UKWIN works to help facilitate access to environmental information, public participation in environmental decision-making, and access to justice in environmental matters. UKWIN currently has more than 100 member groups and regularly takes part in consultations run by various Government bodies.

UKWIN welcomes this opportunity to provide evidence regarding Defra's oversight of the Waste PFI Programme. This submission will have a particular emphasis on our first-hand experiences in Nottinghamshire. UKWIN is aware that member groups in and beyond Norfolk, Herefordshire, Worcestershire and Surrey are also providing evidence as part of the NAO's investigation.

As a Pathfinder Project one could have expected the Nottinghamshire Waste PFI process to have been subject to more scrutiny than Defra's standard Waste PFI projects. If that is the case then it would be quite worrisome, as our evidence demonstrates that there were failures associated with Defra's involvement in the Nottinghamshire Waste PFI at every stage of the process, from the very beginning to the present day.

From the outset, Defra has been cited as being responsible for changing Nottinghamshire County Council's entire approach to procurement, moving them away from a Public Private Partnership focusing on four small contracts and instead towards a PFI contract valued at nearly £1 billion. Nottinghamshire's Waste PFI Contract is the most expensive contract ever entered into by Nottinghamshire County Council, and at 27 years constitutes one of the longest ongoing commitments ever contractually entered into by the County.

According to Nottinghamshire County Council's Group Manager for Waste Management: "...while the project began as a PPP (Public Private Partnership)...it was later changed to a PFI. We [at Nottinghamshire County Council] had PFI credits thrust upon us"¹.

¹ Recycling Waste World article entitled "Waste PFI contract signed between Notts CC and Veolia Environmental Services", 29 June 2006

Nottinghamshire's original PPP entailed four separate contracts for different aspects of waste management. It seems reasonable to speculate that this approach would have resulted in quicker progress towards equipping the County with appropriate waste infrastructure, whilst offering the best opportunity for local small to medium sized enterprises to win one or more of those relatively smaller contracts.

Instead, going down the PFI route resulted in a single provider, in our case Veolia, winning the whole contract. This in turn has resulted in Veolia being placed (with Defra's active support) in a position to dictate the technology, overriding – even supplanting – Nottinghamshire's existing waste strategy.

Your attention is called to Nottinghamshire County Council's Waste PFI Outline Business Case (OBC), where we read that the original project objectives included the following, based on the Nottingham and Nottinghamshire Joint Waste Strategy: "...Given the presence of an existing Energy from Waste (EfW) facility at Eastcroft, it is considered that no significant additional EfW capacity will be required through this PFI project".

It appears from the FBC that there was subsequently a significant change in emphasis away from Mechanical and Biological Treatment (MBT) towards incineration. This appears to have been largely because Veolia "have been unswerving in their proposal that Energy Recovery by Incineration is the only technical solution that can provide guaranteed diversion at a known risk and financial profile", although the project ended up being far riskier than Nottinghamshire anticipated. Veolia's proposal went from being for 120ktpa of incineration capacity at the Invitation to Negotiate (ITN) stage to 180ktpa at the FBC stage, despite, as Defra would have known, County residual waste arisings falling throughout the intervening period (i.e. between January 2004 and May 2006)².

This enthusiasm for incineration seems to have over-ridden the assessments of the Outline Business Case (OBC) and the detailed Best Practicable Environmental Option (BPEO) assessment for Nottinghamshire County Council carried out by Enviro and published in August 2004. This BPEO assessment concluded that "Option 5 perform[ed] better than all other options". Option 5 was based on MBT.

On the 19th of February 2008 Defra wrote in response to an Environmental Information Regulations request (Defra ref. AW 1) to confirm that Defra were: "...unable to find any evidence on record that:

- Defra gave advice to Nottingham[shire] CC and/or Veolia in relation to heat capture and energy efficiency of the proposed waste incinerator, or that
- Defra provided advice to Nottingham[shire] CC regarding the need or otherwise to consult with the community, or to reach broad consensus amongst stakeholders prior to the signing of the Waste PFI, or that
- Defra offered any comments in response to Nottingham[shire] CC/Veolia's changed tonnage facility through the inclusion of burning (instead of composting) 60,000 tpa of kitchen waste..."

² Nottinghamshire County Council's Final Business Case to Defra. Available from: <http://www.nottinghamshire.gov.uk/EasySiteWeb/GatewayLink.aspx?allId=171087>

It seems quite surprising that Defra did not provide any such advice at the time as part of their oversight role for one of their Pathfinder Projects, especially as Defra appear to be responsible for thrusting PFI credits upon Nottinghamshire to pay towards major waste infrastructure that was neither wanted nor needed.

In this respect I note Paragraphs 1202 and 1203 of the Planning Inspector's Report arising from the Rufford Inquiry (PINS Ref 2102006), which state:

"Consistent with the terms of the PFI contract, the (2007) Rufford ERF [Energy Recovery Facility, i.e. incinerator] proposals were submitted on the basis that they would provide a facility capable of incinerating 180,000 tpa of residual MSW which cannot be recycled or composted economically. The application pre-dated the (2009) decision to allow 100,000 tpa extra capacity at Nottingham's Eastcroft incinerator. It was also based on the assumption that the county's MSW arisings in 2009/10 would be 90,000 tpa higher than they apparently were, and that they would continue to rise until at least 2018, whereas they have shown a marked decline since 2004/5...annual monitoring suggests that the amount of MSW [Municipal Solid Waste] requiring management across Nottinghamshire is likely to be considerably less than had been suggested when the ERF [Energy Recovery Facility, aka incinerator] application was made [in December 2007]".

The planning application relied on waste projections contained within the Waste PFI documentation, and these projections were (perhaps unwisely) approved by Defra.

The Inspector's Report goes on, at Paragraph 1205, to state that:

"Actual MSW arisings, across the city and county in 2009/10, appear to be more than 140,000 tpa below the (EMRP) expected figure of 710,000 tpa. To my mind this is a significant change and one that is unlikely to have been caused by recessionary effects alone, bearing in mind that household waste per head peaked in 2002/3 and has dropped every year since 2004/5. An upturn in the economy might be expected to slow the observed trend, but not necessarily reverse it".

In Paragraph 16 of his Decision Letter for the Rufford Inquiry the Secretary of State agrees with Paragraphs 1202, 1203 and 1205 of the Inspector's Report.

When the Waste PFI Contracts were signed in June 2006 it was assumed that in 2011/12 there would be in excess of 500,000 tonnes of municipal waste in Nottinghamshire, with further increases expected. The actual figure reported for 2011/12 was less than 400,000 tonnes, displaying a steady downward trend.

Simply put, Defra appear to be responsible for wasting countless hours of effort and countless financial resources, all of which could have (and would have) been put to better use had Defra not intervened to change the course of Nottinghamshire's procurement process.

Further examples of Defra's counterproductive 'oversight' of the Nottinghamshire Waste PFI process (insofar as the illusion of Defra oversight gave a false sense of security) are provided by Defra's failure to notice that specific claims made as part of the winning bid were factually incorrect.

Paragraph 6.14 of Veolia's February 2006 Updated Revised Best and Final Offer 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" despite the fact that it was a greenfield site and not "previously-developed [brownfield] land".

It appears that Defra did not pick up on this mistake, as Veolia continued to erroneously claim the site was brownfield as part of their public justification for choosing the site, e.g. in their 10th July 2006 press release that stated: "The Rufford Colliery site has been selected...as the most appropriate site for an Energy Recovery Facility in the county because...It redevelops a brownfield ex-colliery site..." and in Veolia's May 2007 Community Liaison Group meeting explanation of why "this site is appropriate"³.

Significantly, in Contract A, Schedule 14(A), of the Nottinghamshire Waste PFI it is erroneously stated that the site for the proposed incinerator at the Former Rufford Colliery "has previously been used as part of a colliery, and can therefore be described as 'brownfield'".

These characterisations of the Former Rufford Colliery site as brownfield failed to take into account that the Government's planning rules (in Annex C of PPG3, then Annex B of PPS3, and now in the Glossary of the NPPF) make it absolutely clear that mineral sites with restoration conditions fall outside of the definition of brownfield. As such, contrary to the contract that Defra approved and contrary to the Updated Revised Best and Final Offer documentation that Defra presumably reviewed, the Nottinghamshire Waste PFI proposal was actually for an incinerator to be built on a greenfield site and not on a brownfield site. The distinction between greenfield and brownfield is not trivial in planning terms, and Defra should have spotted this mistake and brought it to the attention of the various parties.

The greenfield status of the site was confirmed as part of the Rufford Inquiry. At Paragraph 1285 of the Inspector's Report we read: "This is a greenfield site. Evidence to suggest that the site selection process gave appropriate consideration and priority to the use of previously developed land, is not persuasive. This is at odds with PPS7 key principle 1(v)..."

The Inspector went on to say, at Paragraph 1286, that: "Contrary to key principle 1(vi), this large incineration facility would not be sensitive to the character of the countryside". The Secretary of State agrees with the Inspector's conclusions, as recorded in Paragraph 18 of his Decision Letter, as follows: "The Secretary of State agrees with the Inspector's reasoning and conclusions on sustainable development under the terms of PPS1 and PPS7 as set out in IR1221-1234 and IR1282-1286".

This means that Defra oversaw the granting of large sums of public money to promote the construction of a waste incinerator on a greenfield site despite the fact that, amongst other serious shortcomings, such a development would not be sensitive to the character of the countryside, and would therefore offend against Government planning policy.

³ Transcript Report for the 5th Energy Recovery Community Liaison Group meeting. Available from: http://www.veoliaenvironmentalservices.co.uk/Documents/Publications/Nottinghamshire/Community%20Liaison%20Group/clg_mtg5_report.pdf

Defra also oversaw the negotiations that resulted in a clause being written into the Nottinghamshire Waste PFI Contract that pegged so-called “Landfill Tax Payments” to the Landfill Tax rate, even though these payments do not reach the Inland Revenue. In the 2002/03 tax year the Standard Rate of Landfill Tax was £13 a tonne. From 1st April 2013 the Standard Rate of Landfill Tax rose to £72 a tonne, rising to £80 per tonne from 1st April 2014. This rate is paid for each tonne of active waste that is landfilled.

Nottinghamshire’s Waste PFI contains a clause that requires Nottinghamshire County Council to pay Veolia the equivalent of the Standard Rate of Landfill Tax for each tonne of material (including a large proportion of inert material – that would incur a charge of only £2.50 per tonne if landfilled) above an agreed recycling rate for material handled at the County’s Household Waste Recycling Centres (bring sites). These agreed recycling rates were set unrealistically low (circa 57% when recycling rates at bring sites in Nottinghamshire are currently recycling around 83% with the better performing bring sites approaching a 90% recycling rate), and the rate of payment (being pegged to the Standard Rate of Landfill Tax) was set inexplicably high, resulting in an ongoing financial commitment approved by Defra that appears to offer no obvious value for money benefit to the public.

The risk and associated financial implications of such substantial increases in the Landfill Tax rate, and the viability of high recycling rates at bring sites where citizens bring recyclable material for recycling, do not appear to have been properly considered when Defra oversaw the awarding and drafting of Nottinghamshire’s Waste PFI. It is likely that Defra failed to require sensitivity analysis of the prospect of the Landfill Tax Escalator shifting from £1 per year to £8 per year, despite the significant financial implications of such a shift.

Similarly, it seems likely that, despite Defra’s supposed oversight, there was no robust analysis of the implications of such a large gap between the contract bring site recycling rate (c. 57%) and the actual recycling rate at bring sites (c. 83%), despite this being highly predictable. Even if sensitivity analysis had been conducted for lower than predicted residual waste arisings, higher than predicted Landfill Tax Rate, and greater than predicted disparity between baseline and future bring site performance, it is likely that the significance of any potential impacts were underestimated.

Moving away, for the moment, from financial considerations, Defra failed to abide by its own guidelines in relation to the reaching of a broad consensus in favour of the approach before progressing with the procurement process. For example, Defra guidelines, entitled “Criteria for Securing Waste PFI Credits”, set out the “criteria which waste projects must meet to be considered for PFI credits...in addition to the general criteria set out in the Green Book which must be met by all PFI projects”. Criterion 6 states: “Proposals should demonstrate that other relevant authorities, the public, and interested parties have been consulted and that there is a broad consensus supporting a recognised long term waste management strategy which is reflected in the proposed solution”.

Despite this, no such consultation took place, and no “broad consensus” was reached. Indeed, Nottinghamshire’s Waste PFI went against the long term waste management strategy that was in place at the time of the procurement, and as is evident by the strong public reaction to the proposals for a waste incinerator, first in Mansfield and then in Newark & Sherwood, it is clear that the public’s views were certainly not reflected in the proposed solution.

In fact neither were the views of the Waste Collecting Authorities within Nottinghamshire, let alone other relevant authorities. Indeed, Ashfield District Council resisted the incinerator being sited within Ashfield⁴, while Mansfield District Council opposed the proposal for the same incinerator at the former Crown Farm Colliery in Mansfield and withdrew the land for sale for the purpose of an incinerator and opposed an incinerator anywhere within Mansfield⁵, and Newark & Sherwood District Council, as consultees, called for the incinerator application, which by then had been moved to the former Rufford Colliery, to be refused. Newark & Sherwood District Council subsequently played an active role as a Rule 6 party at the planning inquiry that resulted in the refusal of planning permission, as outlined above.

The very first criterion of Defra's "Criteria for Securing Waste PFI Credits" sets out how: "In two-tier areas, proposals should demonstrate how the two tiers of local government will work together to deliver their targets under legally binding agreements or constitutions, which should be in place by the start of procurement", and how: "By Outline Business Case (OBC) stage we [Defra] would expect a minimum of a detailed Memorandum of Understanding (covering major points of principle), or establishment of joint waste management structures or formal contractual arrangements".

Despite these declared requirements Defra was prepared to sign off on a process that did not enjoy the support of Nottinghamshire's Waste Collecting Authorities, who had not entered into any relevant partnership agreement at the time that the Waste PFI was signed, years after the start of procurement and years after the OBC stage.

To the extent that there were any joint waste management structures in place, the minutes of the relevant meetings do not reflect the notion that partners reached any sort of broad consensus. Instead we read in the minutes that at the Joint [Waste] Officers Board meeting of 23rd November 2005: "Malvin Trigg [Nottinghamshire County Council's Assistant Director of Environment and Transport] advised [that] the front page of the [Waste PFI] Project had now been forwarded to the WCA's legal representatives. Mick Allen confirmed Sharpe Pritchard were at the present time working to provide a sanitised version of the full document to the WCA's legal representatives...MDC's Craig Bonnar [Mansfield District Council's Head of Direct Services] advised [that] a sanitised [i.e. redacted] version of the Partnering Agreement (PA) would not be sufficient as all WCA's need to read and be satisfied with the terms of the PFI Contract, technical specifications are also required for the schedules. Mick Allen advised Onyx [now Veolia] were very cautious of issuing the full version of the PA due to issues of confidentiality. Mick Allen confirmed that NCC [Nottinghamshire County Council] would be signing the PFI Contract regardless of whether the back to back agreement with the WCA's was signed..." Simply put, Nottinghamshire's Waste Collecting Authorities were being denied access to the very Partnership Agreement that they were being asked to sign! It is not surprising therefore to note that not one of the Waste Collecting Authorities in the county of Nottinghamshire was prepared to sign up to a Waste Partnership Agreement sight unseen.

⁴ As recorded in the Minutes of the 19th May 2004 Waste Officer Board meeting.

⁵ From the Full Council meeting of 17th May 2005: "That Mansfield District Council does not sell any land within the Crown Farm Industrial Estate to companies who intend to develop the site for the purpose of a waste incinerator...", and from the Full Council meeting of 13th December 2005: "Mansfield District Council opposes any proposed developments for a waste incinerator to be built in the District of Mansfield."

Minutes of the 15th February 2006 Waste Board meeting suggest that positively engaging with the WCAs took a back seat to pressing on with signing the Waste PFI contracts: “[Mick Allen] confirmed that the WCA's comments had been received via Eversheds and Sharpe Pritchard had reviewed them, as yet he had not gone through these in details as his priority was in finalising the PFI...The WCA's expressed concern that they have not had schedule 4 and this was holding up their progress and Eversheds have advised them without it they could not negotiate or sign a contract... [Mick Allen] advised if the input specification is not going to be accepted NCC would find it very difficult to give the WCA's revenue...Mick Allen confirmed that it is not a pre-condition on the PFI contract that the agreement with the WCA's is signed...”

The impression left upon the local community was that as decision-makers and Waste Officers at District level were unable to engage on equal terms with NCC, and that Defra appeared content to allow such a state of affairs, the public stood little chance of receiving a fair hearing of our Waste PFI concerns.

The 23rd February 2006 Report of the Members' Board of the Waste PFI includes the statement that: “If any WCAs wanted to enter into their own independent contracts to recycle waste [then] the County would have to consider using its power of Direction, under the Environmental Protection and Waste and Emissions Trading Acts, to direct the WCA to a County facility, built via the PFI process for that purpose” providing a further indication, not that one was needed, that Defra's “broad consensus” criterion was being ignored. The NAO may wish to look more deeply into what Defra knew when regarding the lack of broad consensus in Nottinghamshire.

The failure to reach broad consensus with the public, the Waste Collecting Authorities and other interested parties was repeatedly brought to Defra's attention, but was consistently dismissed without any evidence of Defra having undertaken adequate investigation at the appropriate opportunities. See Appendix A for extracts from these exchanges.

The exchanges show how Defra talked up the fact that the existing Joint Municipal Waste Management Strategy had been subject to consultation in 2000, but failed to acknowledge that the Waste PFI did not in fact accord with that Joint Municipal Waste Management Strategy, nor with the Waste Local Plan and various other relevant policies.

In correspondence (Appendix A) Defra even went so far as to assert that: “...the sites under consideration was in accord with polices in the Nottinghamshire Waste Local Plan (WLP) in that they were located in industrial areas...”, but the Inspector for the Rufford Inquiry subsequently stated at Paragraph 1196 of his Report that “In terms of visual intrusion, the ERF [incinerator] is well designed, but it would be highly intrusive in a landscape which already shows little sign of its industrial past, in anything other than close views, and which is due to be fully restored to heath and woodland”. At Paragraph 16 of the Secretary of State's decision letter he notes his agreement with the Inspector in this respect.

Even Nottinghamshire County Council's Planning Officer, who supported the incinerator planning application, acknowledged the inconsistencies. It should be noted, for example, that the planning application for the Rufford incinerator was treated as a departure from the Development Plan.

The following are taken from the County Planning Officer's Report to the Planning Committee⁶:

1.16 Section 12 deals with the suitability of Rufford Colliery for the development of an Energy Recovery Facility, noting that the site is not allocated for waste development in the Waste Local Plan and is on land designated as countryside within the Newark and Sherwood Local Plan. For this reason the application is being treated as a departure from the Development Plan.

11.23 The Nottinghamshire and Nottingham Waste Local Plan (WLP) adopted January 2002 makes provision for waste management facilities for a ten year period between 1st January 1995 and 31st December 2004. The plan does not consider the need for facilities beyond this period. Most policies in the WLP have been saved by the Secretary of State as part of the process to update Local Plans before they can be replaced by policies in the new 'Local Development Framework' arrangements.

11.25 The plan...did not promote the development of any new incinerators...

12.48 Overall, the designation of the site as open countryside means that any industrial re-development at this site would be a departure to JSP Policy 2/10 and NSLP Policy NE1, and such development would have some adverse landscape impacts which would not fully accord with policies which seek to minimise impacts on the Sherwood Forest Regional Park...

15.13 The most significant environmental impact arising from the development results from its visual and landscape impacts and their affect on the adjoining Rainworth Heath and Water Mature Landscape Areas, Sherwood Forest Special Landscape Area and surrounding residential properties. These impacts are assessed as being adverse/significantly adverse at some receptors and therefore 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. The development is therefore assessed as being a departure to these policies on the basis of its landscape and visual impact and would also require referral to GOEM for this reason.

15.27. ...The site is situated within land designated as countryside and therefore the development would fail to comply with policies aimed at protecting the countryside including Nottinghamshire Structure Plan Review (SPR) Policy 2/10 and NSLP Policy NE1.

These observations, regarding the failures of the proposed Waste PFI solution to reflect the policies and strategies in place at the time, were further confirmed by the result of the Rufford Inquiry.

The following two paragraphs are taken from the Inspector's Report, and the Decision Letter confirms that the Secretary of State explicitly agreed:

1193. Unlike the Rufford scheme, the Eastcroft proposals [in relation to the incinerator in Nottingham] were to extend an existing facility without conflicting with the development plan's requirements. Indeed, expansion of the incinerator had been supported by the waste local plan and found to be consistent with national policy.

⁶ Nottinghamshire's Planning Committee Meeting took place on 9th January 2009 and the Report for Planning Ref: 3/07/01793/CMW for the proposed Rufford incinerator is available from the County Council website.

Similarly, the development plan supported the provision of a merchant facility to handle pre-sorted commercial and industrial waste on a regional scale at Ince Marshes. Whereas here I have found little, if any, support from the development plan for siting an ERF on the former Rufford colliery.

1194. Veolia's proposals also fall to be considered against the guidance on site selection that is provided in paragraph 21 of PPS10. This highlights the priority that is to be given to using previously developed land and it reflects the sustainability benefits of moving waste by means other than road transport; neither of which lend support to the Rufford scheme.

Veolia themselves admitted that their proposal replaced rather than reflected the Waste Strategy, for example at Paragraph 5.25 of Veolia's Planning Supporting Statement for the Rufford incinerator Veolia assert that: "The Municipal Waste Management Strategy for Nottinghamshire (MWMS) was approved in 2001. This has effectively however been replaced by the provisions of the PFI contract for waste management services".

In short, Defra relied on the Waste Strategy and the Waste Local Plan having been consulted upon as evidence of broad consensus, but then did not require the Waste PFI's primary planning application to be consistent with the Waste Local Plan, nor with the relevant Waste Strategies, Joint Structure Plan, the emerging Regional Spatial and Waste Strategies, or with other relevant local, regional and national plans and policies. Far from being compatible with existing strategies, the Nottinghamshire Waste PFI appeared to replace these strategies – a far cry from the Criterion 6 requirement that the long term waste management strategy should be reflected in the proposed solution.

If the Waste Strategy was considered too old for it to be reasonable to require it to be reflected in the proposal, then it should certainly have been considered too old for its historic consultation to have been considered by Defra to be relevant to whether broad consensus had been achieved.

Defra's letter of 15th March 2010, signed by WIDP Programme Director himself, ends with the statement that: "...it is our view that the Nottinghamshire project continues to be consistent with Government policy".

This raises the obvious question: what review, if any, was carried out before this letter was issued? This question is brought into relief by the Rufford Inquiry, typified by the following statement from Paragraph 1293 of the Inspector's Report:

"Veolia draw support for the ERF from recent (2010) DEFRA correspondence which outlines the basis for the departmental approval that was given to the Nottinghamshire waste PFI project. Various features are attributed to the project, although it is not clear whose analysis this is based on. The letter concludes that the project 'continues to be consistent with Government policy', but there is no indication of which policy is being referred to. In the circumstances, it has had no bearing on my consideration of the planning merits of the ERF proposals"

If Defra's letter was intended to refer to Veolia's Rufford incinerator proposal then it would not only be wrong (because, as the Secretary of State later concluded, the proposal was inconsistent with Government policy), but it was presumably based on inadequate analysis (or even no analysis at all).

One might also argue that such statements would have been inappropriate as Defra could be seen to be supplanting the role of the local planning authority and the Secretary of State in determining planning policy consistency at the planning stage. If the letter did not intend to be a comment on the merits of the incinerator proposal, and the performance of the planning application against Government planning policy, then it should have specifically said so to avoid giving rise to false reassurance and/or confusion. Defra should be much more cautious before issuing such letters of support in the future.

Indeed, Defra's initial oversight failures were compounded by an apparent failure to revisit the projections of waste arisings that were fundamental to the Contract, despite the substantial inaccuracy of the figures associated with these projects, and the flawed assumptions that underpinned them. Chief among these flawed assumptions was the presumption that waste arisings would continue to increase year-on-year, despite the Landfill Tax and the other efforts being made to decouple economic growth from increases in waste arisings.

That the early projections were wrong is perhaps forgivable, but the unwillingness of Defra and others to revisit these projections in light of actual data and the downward trend that the data indicated, despite evidence of this having been called to decision-makers' attention, has resulted in poor value for money for the ratepayer, not least because unused capacity must still be paid for, as the Contracts require payment for the availability of waste treatment capacity whether or not that capacity is required.

As the months and years passed it became increasingly clear that the Waste PFI Contracts were attempting to solve a problem that simply did not exist (and was creating problems that would otherwise not exist). The anticipated problem, insufficient residual waste treatment infrastructure to handle a doubling of waste in the County, simply did not present itself because the volumes of waste arisings that had been anticipated simply did not materialise.

Indeed, as confirmed by Nottinghamshire County Council, the proposal for an incinerator at the Rufford site was standing in the way of increased recycling rates and improvements to waste management such as the introduction of separate collection of food waste.

At the Rufford Inquiry a representative of Nottinghamshire County Council's waste department informed the Inspector that if the application were to be refused and if as a result of this refusal the incinerator contract (Contract B) was terminated then Nottinghamshire County Council would respond by making a greater effort to maximise recycling and composting.

This notion accords with the Minutes of Nottinghamshire's Joint [Waste] Officer Board meeting of Wednesday 28th November 2007, where the representative from Gedling Borough Council is recorded as having "asked if there were any plans to look at food waste collection in the future". In reply, Nottinghamshire County Council's representative "confirmed that not at the present time as the contract can deliver targets promised to Defra without [separate collection of] food waste".

This highlights yet another serious flaw in the assumptions that underpinned the Waste PFI – the failure to treat food waste as a separate waste stream.

Defra oversaw a process that was so inflexible that it did not accommodate evidence of falling quantities of waste arisings, nor improvements in recycling and composting rates, neither did the process accommodate the Government's stated preference for anaerobic digestion (AD) of separately collected food waste. Some Local Authorities are using AD of separately collected food waste to help them reach recycling rates of between 60% and 70%, whilst Nottinghamshire's Waste PFI is designed to achieve a derisory 52% combined recycling and composting rate by 2020.

We do not know what level of scrutiny was given to the Nottinghamshire Waste PFI by Defra at either the existing review points or as part of the process of extending the longstop date for a proposal that was never likely to be granted planning permission. It should have been increasingly clear to Defra that the Rufford incinerator proposal was destined to be refused planning permission.

Rather than writing letters in support of the project, and allowing the extension of the planning longstop date, Defra should have been pushing Nottinghamshire County Council and Veolia to produce an appropriate Plan B, perhaps one resembling the Council's original intentions before Defra interfered and diverted Nottinghamshire down the PFI Pathfinder / incineration route, i.e. a plan that focuses on MBT and AD rather than on building new incinerators.

In these respects we submit that Defra was negligent in their duties in relation to the Nottinghamshire Waste PFI, to the detriment of all parties. It is hoped that lessons can be learned so that the Government never again supports unnecessary incineration infrastructure, especially when proposed for such inappropriate locations and based on such flaky assumptions.

Thank you for your consideration of the points raised in this submission. Please do not hesitate to contact UKWIN if you wish to discuss any aspect of our concerns, including potential ways forward.

Kind regards,

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Appendix A: Extracts of exchanges with Defra regarding the failure to reach broad consensus with the public, the Waste Collecting Authorities and other interested parties in relation to Nottinghamshire's Waste PFI.

Extract from e-mail to Ben Bradshaw (dated 18th November 2006):

Dear Minister,

I have been meaning to write to you about waste incineration for some time now...the Waste PFI for Nottinghamshire was signed without following Government guidelines (e.g. no consensus of stakeholders was reached - no consultation with residents (in violation of the Aarhus Convention), and not even agreement reached with Waste Collecting Authorities (not one District or Borough Council in Nottinghamshire has signed up to the Waste Partnership Agreement, despite some three years of insistence on the part of the Waste Disposal Authority!). I don't mean to be rude, although I am genuinely frustrated. Are your PFI guidelines just there for show?

...Many of these incinerators are being proposed on the assumption that municipal waste is continuing to grow year on year in this country. However, Defra's own figures, released recently, have shown that last year municipal waste in fact dropped by 3 per cent. In Nottinghamshire the quantity of Municipal Solid Waste arising is also falling, and according to my calculations (based on figures provided by Nottinghamshire County Council's Malvin Trigg) the County Council is in short-term danger of falling short on the amount of residual waste it will have to send to Eastcroft, and in the medium term will be some 150,000 - 170,000 tonnes short of the 180,000 required to run an incinerator as specified in the Waste PFI contract you hailed as such a success.

...if the Government does not withdraw its support for incineration we will end up with local authorities locked into long term contracts to feed incinerators with waste that should be being recycled or composted instead...

The following excerpt is from the reply, which arrived (nearly three months later) from Defra's Customer Contact Unit (CCU Ref: 280341, dated 5th February 2007), failed to acknowledge that the Waste PFI did not in fact accord with the existing Joint Municipal Waste Management Strategy nor with the existing Waste Local Plan:

...It is a statutory requirement for local authorities in two tier areas to adopt a Joint Municipal Waste Management Strategy (JMWMS) the content of which should be open to consultation with stakeholders. In assessing applications for credits under the Private Finance Initiative, Government needs to satisfy itself that the procuring authority has undertaken appropriate consultation. An adopted Joint Municipal Waste Management Strategy is an important piece of evidence in illustrating support for a given approach.

In July 2000 Nottinghamshire County Council began the process of consulting local stakeholder groups (district councils, parish councils, pressure groups etc) to begin the

process of defining the County's Municipal Waste Management Strategy. Between October and November 2000 a copy of a draft strategy together with a questionnaire were issued to the County Council's citizen's panel members for comment as well to stakeholders including District Councils MPs, industry and pressure groups. The strategy and the results of the consultation were reported to council members who approved the strategy in April 2001.

I believe your concern is that the County Council have not undertaken public consultation in relation to the site on which the council intends to locate new waste disposal infrastructure. Defra is satisfied that Nottinghamshire County Council has undertaken the required consultation with key stakeholders prior to and during the PFI procurement, our support for the project being tangible evidence of that. Although the sites under consideration was in accord with polices in the Nottinghamshire Waste Local Plan (WLP) in that they were located in industrial areas, the specific location of the residual treatment plant as well as its type could only be confirmed when the contract had been awarded, for reasons of commercial sensitivity...

A reply was sent to Defra on 26th February 2007, and this contained the following:

...I wrote to call attention to DEFRA's own guidelines for Waste PFI contracts (Criteria for Securing Waste PFI Credits, May 2006) that in point 6 state that "Proposals should demonstrate that other relevant authorities, the public, and interested parties have been consulted and that there is a broad consensus supporting a recognised long term waste management strategy which is reflected in the proposed solution." I have seen no evidence that such a consensus was ever reached, and no evidence that consultation ever took place in relation to the solutions offered by the Waste PFI contracts. Indeed this has been confirmed by Nottinghamshire County Council's Chief Planning Officer for Minerals and Waste.

There is presumably a logic at work in DEFRA that led to the drafting and issuing of these guidelines, and some commitment to the value of the consensus building process. We can all agree on the benefits of establishing just such a consensus of relevant authorities, the public and interested parties. Indeed, I sincerely believe that consensus building results in better decisions that are more likely to actually work! When I first asked NCC about this consensus building process I was told that no Waste PFI contracts would be signed prior to the District Councils entering into a Waste Partnership Agreement. This was not the case! District Councils have yet to sign up to NCC's proposed Waste Partnership Agreement, and yet contracts were signed in June 2006 (some nine months ago)...

Can you confirm that DEFRA is satisfied that this constitutes the sort of broad consensus and the sort of mandate expected of an Authority wishing to enter into long-term Waste PFI contracts without further endorsement from local residents or local authorities? ...I await further clarification regarding DEFRA's standards, and whether or not they were met in this instance.

Defra's reply (CCU Ref: DWOE 12342, dated 13 March 2007) contained the following, which appears to shift the responsibility for oversight of Defra's 'broad consensus criterion' away from Defra and onto the Local Authority:

At this stage in the process central Government cannot become involved in what is a matter for your local authority to decide on. The consultation process is over and has met with general approval by stakeholders in your area. However, the opportunity to raise any concerns you may have remains open to you and other residents at the planning stage.