

Planning Application Representation

CHANGES IN CIRCUMSTANCES SINCE 22ND JUNE 2021 THAT SUPPORT REFUSAL OF EMERGE INCINERATOR

Proposal:

**East Midlands Energy Re-Generation (EMERGE)
Centre and associated infrastructure**

Location:

**Ratcliffe-on-Soar Power Station, Nottingham,
Ratcliffe-on-Soar, NG11 0EE**

Applicant:

Uniper UK Limited

Notts County Council Planning Reference:

ES/4154

MARCH 2022



OVERVIEW OF CHANGES AND IMPLICATIONS

1. Determining planning applications is all about balancing benefits and disbenefits and deciding what weight to give to the various considerations. As such, the Committee should not simply be asking themselves whether new issues have arisen since they last considered the application in June, but asking whether or not there have been changes in circumstances that impact on the planning balance.
2. As set out below, much of relevance has happened since June, and taken together this amounts to a substantial change in circumstances that justifies the Committee deciding to refuse the planning application this time around.
3. The matters that have changed to tip the balance away from incineration and towards refusal of the application as it currently stands include:
 - a) The Government having published and consulted on a draft replacement for EN-3 where we see a strengthening in the Government's policy wording intended to avoid further overcapacity;
 - b) The Environment Act is now law, and Government is formulating residual waste reduction targets;
 - c) Publication of a consultation draft replacement Nottingham and Nottinghamshire Waste Plan, and associated evidence base;
 - d) The publication of UKWIN's Good Practice Guidance for Assessing the GHG Impacts of Waste Incineration.
4. The Applicant's need assessment, which predated the above, was premised on a 'Median scenario' of only 50.1% recycling. This highlights how the development is out of step with the direction of travel now being pushed both locally and nationally, as underlined by the need assessment which shows that if Nottinghamshire meets its recycling targets then it will have energy recovery overcapacity of 35,378 tpa, even without taking account of the proposed EMERGE capacity.
5. The proposed development conflicts with the current Waste Core Strategy policies WCS3 ('Future waste management provision'), WCS4 ('Broad locations for waste treatment facilities'), WCS12 ('Managing non-local waste') and WCS14 ('Managing climate change'), and the proposed Waste Local Plan. There are also a host of conflicts with existing and emerging national policy and guidance.
6. This development is acknowledged to result in inappropriate development in the Green Belt, and is advertised as a departure. In line with national policy, Notts policy WCS4 states that such proposals "will be permitted **only** where need and other material considerations amount to very special circumstances sufficient to outweigh harm to the Green Belt and any other harm identified".
7. Whatever the merits were of the proposal in June, the case for the proposal is now weaker and the case against is stronger, and so the proposal clearly goes against WCS4 requirements policies. Refusal is necessary to protect the green belt, defend Nottinghamshire's recycling ambitions, and to stave off incineration overcapacity which could have significant adverse environmental impacts.

LACK OF NEED FOR THE PROPOSED EMERGE CAPACITY

a) Relevant changes to National Policy Statement EN-3

8. Draft EN-3 (2021) includes the following statement that provide a clear expression of Government's thinking with respect to the imperative to avoid over-capacity:

"2.10.4 As the primary function of EfW plants is to treat waste, applicants must demonstrate that proposed EfW plants are in line with Defra's policy position on the role of energy from waste in treating municipal waste.

*"2.10.5 The proposed plant **must not result in over-capacity** of EfW waste treatment at a national or local level."*

9. These statements make clear the Government's view that incineration over-capacity at a 'national or local level' should be resisted, and that allowing such overcapacity would undermine Defra's current policy position on the role of incineration in treating municipal waste.
10. One planning professional who is currently working for the incineration industry commented on the significance of this national requirement, stating that *"...this wording would mean they [promoters of new EfW waste treatment schemes] will need to be robust in making the case that there is demand for the project".¹*
11. Such an interpretation is in line with other Government statements, such as:
- In the House of Commons John Grogan MP questioned the then Environment Secretary Michael Gove, asking: *"Most studies now indicate that we have an excess of incineration capacity to deal with residual waste. Is there not a danger that, if we build more incinerators, waste that would otherwise be recycled will be diverted to those incinerators?"* and the Environment Secretary acknowledged this danger by responding: *"That is a fair point".²*
 - Rebecca Pow, speaking on behalf of the Government, told Parliament that: *"...we seek to minimise the amount of waste that goes to incineration or landfill..."³*
 - The UK Government's then Resource Minister Thérèse Coffey gave oral evidence to the Environmental Audit Committee that: *"I think, actually, there is sufficient capacity out there for incineration".⁴*

¹ Planning Resource article 'Five key proposed changes to planning for major energy projects' by Joey Gardiner dated 23rd September 2021. Available from: <https://www.planningresource.co.uk/article/1728478/five-key-proposed-changes-planning-major-energy-projects>

² Hansard. Volume 657 (28th March 2019). Available from: <https://hansard.parliament.uk/commons/2019-03-28/debates/0F70A51B-823B-45CB-9929-7601F78D50D7/TopicalQuestions>

³ Hansard - Westminster Hall debate on Industrial & Commercial Waste Incineration (28 January 2020)

⁴ Oral evidence: The National Audit Office Report on Packaging Recycling Obligations, HC 1548 (12 Sept. 2018). Available at: <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/environmental-audit-committee/national-audit-offices-report-on-packaging-recyclingobligations/oral/90137.pdf>

12. A requirement to demonstrate a need for the proposed EMERGE incineration capacity already exists with respect to this development, and this requirement is reflected within policies WCS3, WCS4, and WCS12 of the current Nottingham and Nottinghamshire Waste Core Strategy.
13. As such, EN-3 (2021) provides added emphasis regarding the need to ensure that development proposals for new waste incineration capacity have robustly demonstrated a need for that capacity.
14. EN-3 (2021) is a material planning consideration, and therefore it is open to the Planning Committee to determine how much weight EN-3 (2021) should be given in the EMERGE decision.
15. The National Planning Policy Framework (NPPF) states at paragraph 2 that: *"Planning law requires that applications for planning permission be determined in accordance with the development plan, **unless material considerations indicate otherwise**"*⁵ due to Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990.
16. In this instance, with respect to the EMERGE proposal, there are material considerations – including the need to avoid incineration overcapacity – that support refusal.
17. Government guidance acknowledges that the definition of 'material' is very broad:
*"...a material planning consideration is one which is relevant to making the planning decision in question (eg whether to grant or refuse an application for planning permission). The scope of what can constitute a material consideration is very wide and so the courts often do not indicate what cannot be a material consideration".*⁶
18. It is a long-established planning principle that:
*"Emerging policies, in the form of draft policy statements and guidance, can be regarded as material considerations..."*⁷
19. Indeed, paragraph 26 of the Government's 'Guidance on the National Policy Statements Review process' notes how:
*"...Any emerging draft National Policy Statements are potentially capable of being important and relevant considerations in the decision-making process, but the extent to which they are relevant is a matter for the relevant Secretary of State to consider with regard to the specific circumstances of each Development Consent Order application."*⁸

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1005759/NPPF_July_2021.pdf

⁶ <https://www.gov.uk/guidance/determining-a-planning-application>

⁷ <https://www.peckletonpc.org.uk/uploads/174bc34b7ae512e9383318471.pdf>

⁸ <https://www.gov.uk/guidance/planning-act-2008-guidance-on-the-process-for-carrying-out-a-review-of-existing-national-policy-statements>

20. Turning to Paragraph 1.2.1 of the Government's EN-3 (2021) we read how the Government clearly sees this document as an important material planning consideration:

*"In England and Wales this NPS may be a material consideration in decision making on applications that fall under the Town and Country Planning Act 1990 (as amended). Whether, and to what extent, this NPS is a material consideration will be judged on a case by case basis and will depend upon the extent to which the matters are already covered by applicable planning policy."*⁹

21. Given the importance of the requirement to demonstrate need for proposed new waste incineration capacity to demonstrate accordance with policies WCS3, WCS4 and WCS12 of the Nottingham and Nottinghamshire Waste Core Strategy, significant weight should be given to the Government's policy intentions, as expressed in EN-3 (2021) paragraph 2.10.5, that local and national incineration overcapacity should be avoided.
22. As set out further below, there is significant uncertainty around the need case for the proposed EMERGE capacity, and therefore EN-3 (2021) helps tip the scales towards not giving the applicant the 'benefit of the doubt' in this regard and instead to **refuse the proposal** based on the applicant's failure to demonstrate consistency with the extant Nottinghamshire Waste Core Strategy when assessed in light of the latest evidence and the current circumstances.

b) The Environment Bill having passed into UK law as the Environment Act

23. The Environment Act includes various measures that will boost recycling and waste prevention, thus reducing the quantity of material that would be available for use as incinerator feedstock at the proposed EMERGE facility.
24. Rebecca Pow, then Parliamentary Under-Secretary of State for Environment, Food and Rural Affairs, stated that:

*"...the measures in the Resources and Waste Strategy and the Environment Bill will enable a paradigm shift, in relation to reducing, reusing and recycling our waste, that should **limit the amount that ever has to go to incineration and landfill**"*¹⁰

25. The Environment Act provides the Government with powers to set new binding targets, including waste reduction targets.
26. According to a September 2021 Government Policy Paper on the Environment Act:¹¹

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1015236/en-3-draft-for-consultation.pdf

¹⁰ Hansard - Westminster Hall debate on Industrial and Commercial Waste Incineration. UK Parliament, 12 February 2020. Available from: <https://hansard.parliament.uk/Commons/2020-02-11/debates/D1799344-3D26-4DF0-94C1-3AEB397AF375/WasteIncinerationFacilities>

¹¹ <https://www.gov.uk/government/publications/environment-bill-2020/10-march-2020-waste-and-resource-efficiency-factsheet-part-3>

“We [the UK Government] want to...minimise waste... We are exploring how targets can help: ...reduce the amount of ‘residual’ waste we generate”.

27. The fact that the Environment Bill has now been passed into legislation as the Environment Act adds weight to the significance in the planning balance of the EMERGE applicant’s failure to demonstrate that the proposed incineration capacity would be needed once the measures contained within the Act have been implemented.

c) Publication of a consultation draft replacement Nottingham and Nottinghamshire Waste Plan, and associated evidence base

28. The Applicant has stated that their need assessment is premised on a 50.1% household waste recycling rate.¹² This not only below the national target of 65% for Municipal Solid Waste (MSW), but also below the proposed local targets for Nottinghamshire.
29. The January 2022 Draft Nottingham and Nottinghamshire Waste Plan adopts a target of 65% for Local Authority Collected Waste (LACW) and 80% for Commercial & Industrial (C&I) Waste.
30. These figures were not chosen arbitrarily. According to the Plan document, the LACW target was preferred *“as this reflects the more ambitious national target and takes account of the future recycling measures which are due to be introduced”* and the C&I target was preferred in part to take account of *“proposed recycling measures”*.
31. As a result of these choices, in the Plan document’s Table 11 gap analysis the County found that, based on already operational facilities, there was currently an overcapacity of incineration locally, without the EMERGE facility being built.
32. Meanwhile, the capacity proposed for EMERGE could result in the incineration of up to 524,550 tonnes of RDF. As around 1.25 tonnes of waste is required to produce each tonne of RDF¹³, the EMERGE plant in reality could rely on more than 650,000 tpa of waste which would have to come from somewhere. This could mean imperilling Nottinghamshire’s recycling ambitions, or importing significant tonnes of waste from far afield, or most likely both.
33. The evidence base for the Plan, produced by professional consultants employed by the Council, makes clear that allowing the EMERGE incineration development would result in significantly exacerbating local incineration overcapacity. This prospect runs contrary to existing and emerging local and nation planning policy.

¹² Paragraph 3.3.38 of the Planning Statement

¹³ The multiplication factor is based on the formula $100 \div (100 - N)$ where N is the mass loss due to moisture loss. For example $100 \div (100 - 20) = 100 \div 80 = 1.25$. An average moisture loss for RDF of 20% is set out in ‘Briefing Report: Mechanical Biological Treatment – 15 Years of UK Experience’ (Tolvik, September 2017), available from: <https://www.tolvik.com/wp-content/uploads/2017/09/Tolvik-2017-Briefing-Report-Mechanical-Biological-Treatment.pdf>

34. Granting permission for the development proposal would prejudice the outcome of the plan-making process and as such **should also be refused on the grounds of prematurity.**
35. If the Applicant believes that the Council's proposed recycling targets are unrealistic then they should make their case as part of the Examination in Public process for the Local Plan, but they must not be allowed to bypass the democratic process by being given planning permission for their pre-emptive proposal.
36. Not only are high recycling rates in line with Government policy, but they are also in line with guidance from the Committee on Climate change who on the 25th of June 2021 (just after the Planning Committee meeting that first considered the EMERGE proposal) told Parliament that:¹⁴

"It will be important for recycling rates to rise to at least 68% by 2030, together with actions to reduce material inputs and increase product longevity, reuse and sharing in order for resource efficiency to contribute fully to achieving the emissions reductions necessary for the Sixth Carbon Budget."

*"In 2019, the latest year for which emissions data is available, emissions from EfW increased by over 10% on 2018, putting it on course to overtake emissions from coal power in 2020...**If EfW usage continues to rise unchecked, then its emissions will exceed the CCC pathway while potentially undermining recycling and re-use efforts.**"*
37. The potential for harm to recycling and the environment, and therefore the justification for refusal, is exacerbated by the fact that there is already a significant quantity of incineration capacity that is under construction or that is already operational within a short distance of the proposal, with even more consented capacity that could be built.
38. Setting aside facilities that are currently in construction or commissioning, including the Shephed incinerator that is nearly operational and that is located only 20 minutes from the EMERGE site, there already exists in excess of 6.4 million tonnes of incineration capacity with a 2-hour isochrone of the Ratcliffe-on-Soar Power Station (NG11 0EE).¹⁵
39. If account is taken of just six of the facilities currently under construction, or that have been granted planning permission, or that are currently going through the planning or permitting processes, this would add nearly a further 4 million tonnes of incineration capacity within a 2-hour isochrone of NG11 0EE.
40. Taken together, these existing and emerging facilities already provide well over 10 million tonnes of incineration capacity within a 2-hour isochrone of NG11 0EE.
41. In light of this information, it is clear that the EMERGE Applicant has failed to demonstrate a need for their proposed capacity to be located in Nottinghamshire.

¹⁴ <https://www.theccc.org.uk/publication/reducing-uk-emissions-2020-progress-report-to-parliament/>

¹⁵ <https://ukwin.org.uk/incinerators/?existing=show&potential=show>

CLIMATE CHANGE IMPACTS OF THE PROPOSED DEVELOPMENT

d) Publication of UKWIN's Good Practice Guidance for Assessing the GHG Impacts of Waste Incineration

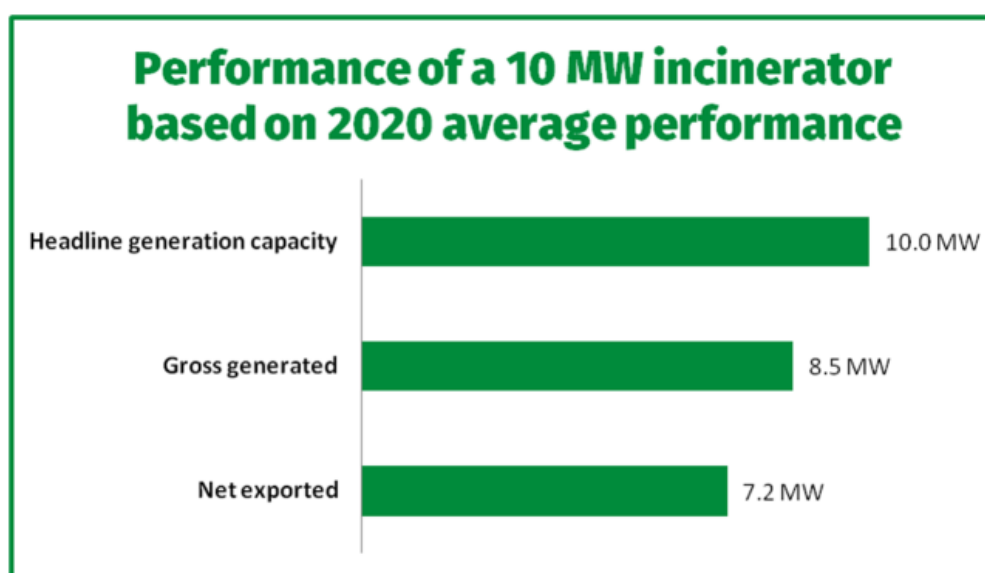
42. One of the few benefits of the EMERGE scheme claimed in the June 2021 Committee Report was the assumption that the development would produce 'low-carbon energy'.
43. Paragraph 66 of the March 2022 Committee Report shows that this assumption has not been reassessed in light of new evidence that shows how the facility would in fact be likely to count as 'high-carbon'.
44. In July 2021 UKWIN released a 92-page Good Practice Guidance for Assessing the GHG Impacts of Waste Incineration.¹⁶
45. The guidance document offered an extensive review of approaches being taken or recommended by climate change professionals with respect to the assessment of the climate change impacts of waste incineration.
46. The document also provided evidence of the real world carbon performance of waste incinerators in the UK.
47. The issues raised in the July 2021 guidance therefore have a material bearing on the weight to be given to the climate arguments put forward by the EMERGE Applicant and by UKWIN and other consultees.
48. When comparing the guidance with the EMERGE Applicant's carbon assessment it becomes clear that the Applicant's approach to assessing the climate impacts of their proposal failed to follow good practice.
49. For example, the Applicant's submissions failed to take account of the evidence set out in the guidance that real world emissions from waste incinerators have been found to be significantly worse for the climate than modelled.
50. The publication of UKWIN's GHG Guide provides strong evidence that the EMERGE facility would be high carbon and not low carbon.
51. The evidence showed that the incinerators where operators provided real world fossil CO₂ data all had carbon intensities of higher than 800 gCO₂/kWh which is significantly higher than the carbon intensity of CCGT (gas turbines), and is roughly equivalent to the carbon intensity of energy generated from the unabated burning of coal.
52. As such, new evidence demonstrates that the energy that would be generated at the EMERGE incinerator fails to meet the NPPF definition of 'low carbon' which relates only to *"technologies...that can help reduce emissions (compared to conventional use of fossil fuels)"*.

¹⁶ See <https://ukwin.org.uk/files/pdf/UKWIN-2021-Good-Practice-Guidance-for-Assessing-the-GHG-Impacts-of-Waste%20Incineration.pdf> and associated presentation <https://ukwin.org.uk/files/pdf/UKWIN-Incinerator-GHG-Good-Practice-Guide-Presentation.pdf>

53. The GHG Guide's analysis of real world performance also found that for the incinerators studied, on average:

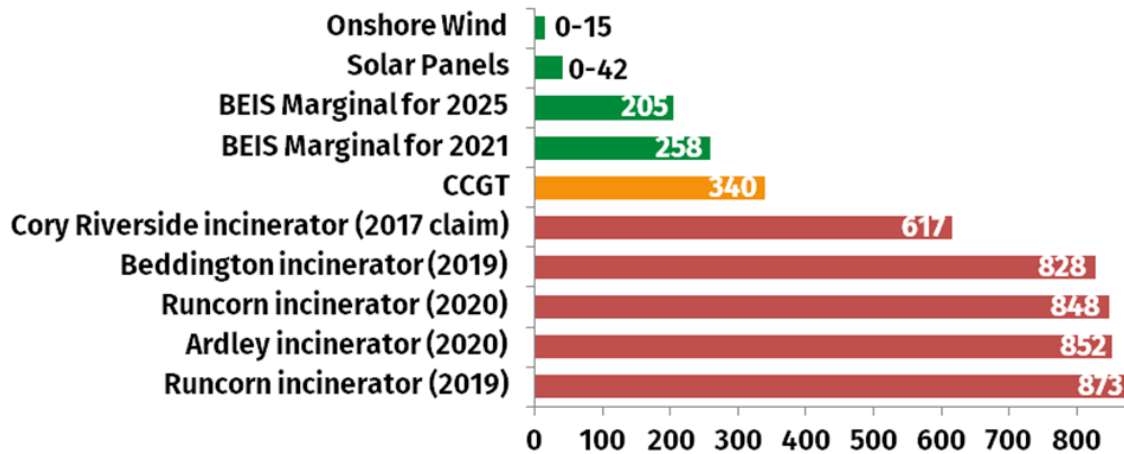
- The proportion of CO₂ that was fossil CO₂ was 13 percentage points higher than predicted at the planning or permitting stage.
- The fossil carbon intensity of electricity exported to the grid was around 49% higher than predicted by the applicant at the planning or permitting stage.
- Reported fossil CO₂ released per tonne of waste feedstock incinerated was around 20% higher than that predicted at the planning or permitting stage.
- Electricity generated by incinerators was 15% lower than implied by the claimed headline megawatt (MW) generation figure, i.e. an incinerator advertised as being capable of generating 10MW of electricity typically only generated 8.5MW and only exported 7.2 MW.
- Electricity exported was around 28% lower headline MW generation figures.

54. A number of the graphics from this report and its associated presentation are set out below.



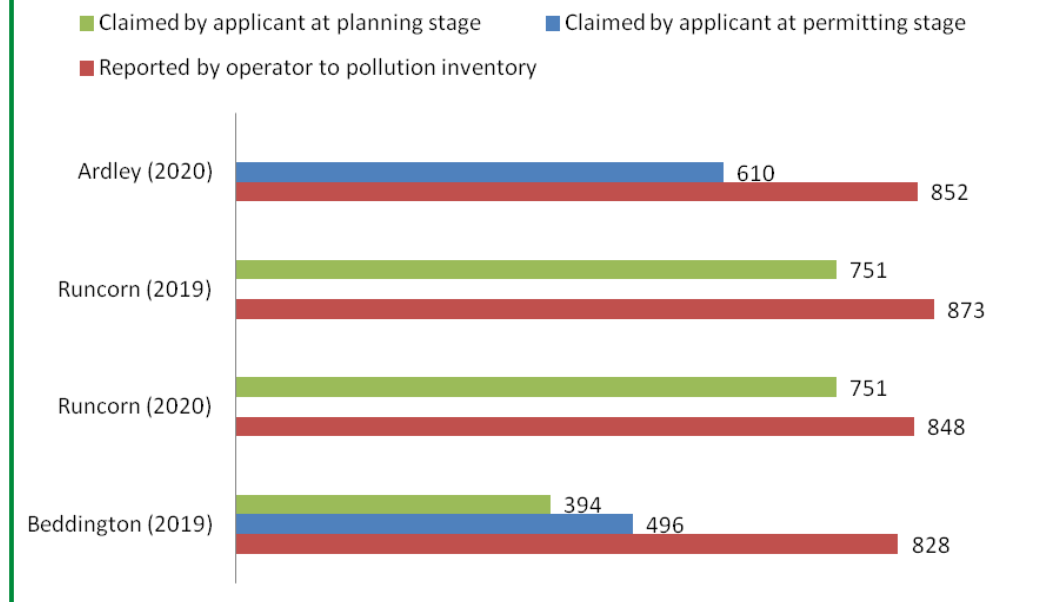
Due to issues such as turbine and generator failures, a study of all English electricity-only incinerators based on operator-reported performance found that they produced far less electricity than their headline generation capacity would suggest.

Comparison of fossil carbon intensity of energy exported to the grid from different electricity generation methods (gCO₂e /kWh)



Based on operator-reported performance, all of the real world incinerators studied (Beddington, Runcorn, and Ardley) were found to have a fossil carbon intensity which is more than twice the carbon intensity of CCGT gas and is instead on par with the carbon intensity of unabated coal.

Predicted and reported fossil carbon intensity of electricity exported (gCO₂e/kWh)



Comparison of this real-world performance against the level of carbon performance assumed in planning and permitting applications showed that consistently performed worse than predicted by applicants.

CONFLICTS WITH CURRENT WCS POLICIES

55. Below is a summary of some of the Nottinghamshire Waste Core Strategy (WCS) policies which the proposal can be considered to go against in light of the latest information and changes in circumstances outlined above:

- Policy **WCS4** ('Broad locations for waste treatment facilities'), which requires that "In the Green Belt proposals for built waste management facilities would constitute inappropriate development and will be permitted **only** where need and other material considerations amount to very special circumstances sufficient to **outweigh harm to the Green Belt and any other harm identified.**"
- Policy **WCS3** ('Future waste management provision') because it is the case that, in light of the new analysis, that the EMERGE proposal clearly goes against the current target of 70% recycling or composting of all waste by 2025 and falls foul of **WCS3(b)** which states that "new or extended energy recovery facilities will be permitted **only** where it can be shown that this would divert waste that would otherwise need to be disposed of..."
- Policy **WCS12** ('Managing non-local waste') because whilst it appears that the EMERGE incinerator is likely to treat waste from outside Nottingham and Nottinghamshire, the Applicant has not demonstrated that the proposal meets any of the three criteria relating to the treatment of non-local waste.

In relation to **WCS12(a)**, the facility appears more likely to divert waste from other incinerators and from recycling facilities than from landfill, and therefore the Applicant has not shown that their proposal would make a significant contribution to the movement of waste up the waste hierarchy.

In relation to **WCS12(b)**, the Applicant does not appear to have carried out any realistic alternative site appraisal and nor have they shown that there are no facilities or potential sites in more sustainable locations in relation to the anticipated source of the identified waste stream.

In relation to **WCS12(c)**, the Applicant has not demonstrated that there are wider social, economic or environmental sustainability benefits that clearly support the proposal. As noted above, for example, the claimed climate change benefits have been undermined by new and unrebutted evidence.

- In relation to **WCS14** ('Managing Climate Change'), the proposal should now be refused in line with the performance indicator for WCS14 which notes that compliance with the policy means "Proposals judged to have unacceptable impact on climate change refused".