

PLANNING OBJECTION

Proposed Development:

Section 73 to vary condition no. 4 (Approved Plans) and no. 6 (Environmental Impact Statement) of planning approval 16/0195/VARY

Proposed Location:

**Land South Of Chemoxy International Billingham Site
New Road Billingham TS23 1PY**

Applicant:

Billingham Energy Ltd

Planning Reference:

25/0148/VARY

27TH JANUARY 2026



OVERALL CONCLUSIONS

The permission approved under 13/2822/EIS is expressly for a scheme where:

“Residual wastes will be processed through an advance thermal treatment process, gasification, to produce renewable heat and power”.

This wording comes directly from the applicant’s description in their planning application dated 18 November 2013.

It is not proper for the applicant to now attempt to use a Section 73 application to vary the description of the scheme.

While the applicant claimed that the purpose of 16/1095/NMB *“was to remove the terms ‘advance’ and ‘gasification’ to allow the flexibility to submit plans that allow for other technologies”*, that is not something which 16/0195/NMB was able to do, nor is it something that was actually achieved through 16/0195/NMB.

The document labelled “DECISION_NOTICE” for 16/0195/NMB does not clearly state that an amendment to the description is approved; it says only that the revised description “can be classed” as non-material and must be read with an “initial decision notice” which has not been provided. As such, it is not safe or lawful to proceed on the basis that the operative description has been amended.

The current s73 application attempts to change to the description of the development and/or to introduce changes to the planning conditions that would be inconsistent with the description of the development, rather than simply seeking a lawful variation of planning conditions.

As such, we ask that this Section 73 application be rejected on the basis that it is not a valid Section 73 application.

It should also be rejected on the basis that insufficient information has been provided regarding the impacts of the changes that the applicant is now proposing to make to the previously agreed scheme.

Even if the LPA treats 16/0195/NMB as extant, reliance on it underlines that the proposal now being pursued is a materially different form of approved development and should be brought forward by a fresh application. In any event, the LPA must be satisfied it has power under s73 to grant what is now proposed.

Additionally, it should be noted that the purported revised description of *“Residual wastes will be processed through a thermal treatment process to produce renewable heat and power”* would exclude the incineration of plastics and other non-renewable waste feedstock. The Council should make it clear that under this description the incineration of residual waste that contained non-biogenic material would be considered a breach of the planning consent.

GOVERNMENT GUIDANCE AND LEGAL PRECEDENT

The UK Government's planning guidance for Section 73 is explicit:

"Section 73 cannot be used to change the description of the development"
(014 Reference ID: 17a-014-20140306).

Yet that is exactly what the applicant is trying to do here.

The applicant's supporting letter of 21st December 2025 states:

"This current S.73 application is submitted following an NMA approved July 2024 (ref. 16/0195/NMB), which amended the above application description slightly..."

Rejecting the current application on the basis that it is not a valid Section 73 application would be in line with legal precedent.

As Paragraph 42 of *Finney v Welsh Minsters* [2019] EWCA Civ 1868 puts it:

*"...The question is one of statutory interpretation. Section 73 (1) is on its face limited to permission for the development of land 'without complying with conditions' subject to which a previous planning permission has been granted. In other words the purpose of such an application is to avoid committing a breach of planning control of the second type referred to in section 171A. As circular 19/86 explained, its purpose is to give the developer 'relief' against one or more conditions. On receipt of such an application section 73 (2) says that the planning authority must 'consider only the question of conditions'. It must not, therefore, consider the description of the development to which the conditions are attached. **The natural inference from that imperative is that the planning authority cannot use section 73 to change the description of the development. That coincides with Lord Carnwath's description of the section as permitting 'the same development' subject to different conditions.**"*
(emphasis added)

A change to the description is a change to the description, however slight. As such, Section 73 is clearly the incorrect route for the applicant to be taking.

Furthermore, planning conditions cannot be used to contradict the operative description. Even if framed as a change to conditions (e.g. the approved plans condition), a s.73 permission cannot lawfully authorise a scheme that conflicts with the operative part of the permission.

In *Test Valley BC v Fiske* [2024] EWCA Civ 1541, the Court of Appeal stated at [97]:

“A condition cannot take away in one hand what has been given by the operative part in the other.”

The Court held that where a proposed s.73 condition would be inconsistent with the operative grant, the authority would have no power under s.73 to make that change; the appropriate route would be a fresh “full” application.

Furthermore, as set out below, the proposed change to the description is far from slight. It goes to the nature of the development and the anticipated impacts of the development as previously described in previous planning application submissions.

PRECEDENT FROM 13/2982/EIS

In their 13/2982/EIS the applicant stated, in the Introduction chapter to their Environmental Statement, that:

*“The EfW facility was consented within the site in 2010 (planning ref. 10/1464/EIS), and was replaced by a further consent, to extend the commencement of development until September 2016 (planning ref. 13/1584/RNW, see Appendix 1.1). However, as a consequence of detailed design there are **changes to the building design and the gasification technology**. This detailed design process has resulted in **minor changes to the consented development that has necessitated the submission of a new planning Application.**” (emphasis added)*

Given that a new planning application was deemed necessary for ‘minor changes to the consented development’ to move from one form of gasification to another, it would be inconsistent to allow a more significant change, i.e. from gasification to conventional incineration, to be determined as a Section 73 application.

RELEVANT STATEMENTS FROM 10/1464/EIS

With respect to the original planning permission associated with planning application reference 10/1464/EIS (referred to above), for which planning permission was granted on 3rd September 2010, for the development of *“materials recycling facility and production of energy from waste, including erection of new buildings and access from New Road, Billingham. The main building will be portal framed, profiled steel clad with a single stack to a maximum height of 80 metres”*, on page 5.8 of the applicant’s Environmental Statement Part A, in a section entitled Alternative technologies, we read:

*“5.4.3 The developer has considered the potential for alternative technologies to be used as part of this proposed development and has concluded that **the technology as proposed offers the best option for this development.**” (emphasis added)*

The Introduction section of that same document also states:

“1.1.4 ...with reference to moving grate combustion (incineration), gasification would deliver a reduction in the order of 0.5 times less CO2 eq annually.”

Source: https://www.developmentmanagement.stockton.gov.uk/online-applications/files/9C7D699B1E4031A544F0E639B0EEB12B/pdf/10_1464_EI_S-ENVIRONMENTAL_STATEMENT-PART_A-1487419.pdf

This indicates the current proposal is for a materially inferior development with worse environmental impacts and highlights how according to previous applicant’s gasification technology is fundamentally different to moving grate combustion (incineration) technology.

ADDITIONAL EXAMPLES OF HOW THE NEW PROPOSED SCHEME IS DIFFERENT TO CONSENTED SCHEME

The Planning Statement for the proposed scheme states:

*“Through energy recovery technologies, the facility is expected to produce **10MW** renewable energy, which can be fed back into the local grid.” (emphasis added)*

However, 13/2982/EIS promised 15MW, stating for examples in paragraph 1.2.3 of the ES Introduction that:

“In summary, the EfW facility will generate 15MW, gross electricity output.”

Variation 20/2620/VARY stated:

*"Thermal treatment of remaining waste to feed **25 MW(Megawatts)** of electricity into the distribution grid via an underground cable."* (emphasis added)

As such, the electrical generation capacity of the scheme as approved – one of the key claimed benefits of the scheme – is now being proposed to be significantly worse than for the consented scheme.

QUOTES FROM EQTEC ABOUT HOW THEIR GASIFICATION TECHNOLOGY WAS SIGNIFICANTLY DIFFERENT FROM CONVENTIONAL INCINERATION

In an article on planning permission having been granted for the Billingham plant dated 28 January 2021, EQTEC CEO David Palumbo is quoted as having stated:

*"This is waste that would otherwise be diverted to **less economically and environmentally beneficial options such as landfill or incineration**".* (emphasis added)

Source: <https://www.gazettelive.co.uk/news/teesside-news/jobs-way-major-haverton-hill-19717044>

As such, it was clearly the position of EQTEC that their proposal for Billingham of gasification was fundamentally different to incineration and that incineration, also described as 'combustion' (which is what is now proposed) would perform worse from an environmental perspective.

In their January 2022 Technology Information Paper available from <https://eqtec.com/wp-content/uploads/EQTEC-Technology-Information-Paper-Jan-2022-FINAL-2.pdf> EQTEC stated:

"Gasification converts waste into energy and biofuels more efficiently than legacy alternatives, while having an ultra-low environmental impact. It is cleaner, more sustainable, smaller, more suited and better for local communities."

An April 2022 research paper from EQTEC also stated;

*“In gasification, the feedstock materials are transformed entirely to a gas under a high temperature and a highly controlled supply of oxygen or steam, then purified to make a ‘clean’ syngas that can then be turned into energy sources such as electricity, heat, biofuels and more. **This differs from incineration where materials are combusted in the open presence of oxygen.**”*

“During the gasification process there are many chemical reactions, although the final result is a gas mainly composed of hydrogen (H₂) and carbon monoxide (CO) but also including CO₂, CH₄, C₂H₄, H₂O, N₂, a minority of tars and suspended solid particles. The raw syngas then goes through a hot gas conditioning stage which removes tars followed by cold gas conditioning which results in a very pure syngas. This can then be further processed according to the final application...”

*“**Notably ATT was a better option than landfill or incineration....**”*

*“**Waste incineration is a carbon-intensive process undermining the efforts to decrease carbon emissions and, thus, to reach carbon neutrality on time.**” (emphasis added)*

In 13/2982/EIS the applicant made it very clear their view that their proposed gasification project was very different to the sort of conventional incineration scheme are now proposing.

INCINERATION OF PLASTIC IS NOT RENEWABLE

As the Government’s Energy from Waste – Guide to the Debate puts it:

“Only the energy generated from the recently grown materials in the mixture is considered renewable. Energy from residual waste is therefore a partially renewable energy source...”

Earlier iterations of the plant focussed only on burning biomass, not on plastic. For example, as noted on paragraph 5.4.3.2. of the Applicant’s Planning Statement and ES Addendum for ten ew application, the consented process description is for *“Gasification is a thermochemical process which converts waste materials (i.e. **organic waste**)”* (emphasis added)

If the applicant now intends to burn plastic, then even if the description of the revised scheme were to be changed to “Residual wastes will be processed through a thermal treatment process to produce renewable heat and power” then their proposed feedstock would mean the plant would fall outside of that description.

NOISE IS A MATTER FOR PLANNING, NOT JUST PERMITTING

In 'FW: 25/0148/VARY - Additional information with regards to New Road, Billingham' (ADDITIONAL_NOISE_AND_AIR_QUALITY_INFORMATION-2577417.pdf) the applicant's representatives state:

"As stated previously, the Environmental Permit will regulate onsite acoustic performance during the operation of the facility and provide a mechanism to monitor and regulate limits. This permit will not be granted unless stringent performance criteria are achieved by the proposed plant. In this context, we consider further specific assessment of LAeq or low-frequency noise to be unnecessary at S.73 stage."

However, as the Environment Agency noted in their consultation response to the Portland incinerator (WP/20/00692/DCC):

"Planning has a role to play in managing amenity issues such as noise, dust, odour, pest control issues, etc., and your Environmental Health Department can advise you on this..."

"Please note that an environmental permit cannot always prevent, eliminate or eradicate all such issues. Some issues need careful management and the use of Best Available Techniques (BAT) will ensure such issues are minimised."

This is in line with the letter from the Environment Agency on the differences between the approach of the Environment Agency and Scottish Environment Protection Agency (SEPA) with respect to policy towards incinerators, dated 14th December 2017, which states

*"We [the Environment Agency] do not comment publicly on the adequacy of the waste infrastructure network, or the mix of technologies required to meet objectives, or targets, for sustainable waste management at any spatial level....In the majority of cases we are unlikely to object at planning application stage...The National Planning Policy Framework (NPPF) is clear that the planning system should not duplicate the controls of other regulatory regimes...**That does not mean to say that the residual impacts of matters controlled through the permit cannot be material planning considerations. Such impacts are relevant to whether the proposal represents an acceptable use of the land and they can legitimately have a bearing on any planning decision.**"*
(emphasis added)

As such the Environment Agency only ensures compliance with permitting requirements and, while they can try to ensure that impacts are minimised within the constraints of the technology and location, the potential for such disamenity impacts cannot be ruled out simply because the plant will be regulated by a permit.

It remains the responsibility of the Local Planning Authority to ensure that relevant planning policies are followed and to take into account potential noise and other disamenity impacts as a material planning consideration on the basis that they might not be eliminated by the permitting process and might be deemed unacceptable from a planning perspective.

The widely publicised problems at the Runcorn incinerator, labelled by the BBC as 'The Nightmare Next Door', can be testament to that fact that even when regulated by the Environment Agency various amenity issues can occur. However, there is reporting on amenity issues associated with incinerators beyond the reporting by the BBC. For example:

- In *Runcorn*, where waste is delivered by rail, it was reported that: *"one resident said she faced daily noise from cargo trains en route to deliver the waste to be burned, well into the evening"* and that: *"It's unbelievable – you can lie in bed at night and feel the vibration of the train as it goes past but it goes that slow it takes about two to three minutes to come past through the station."* (<https://www.liverpoolecho.co.uk/incoming/shadow-uks-biggest-incinerator-part-12406245>)
- It was also reported in *Runcorn* that: *"Around 100 people attended a meeting...to protest over the noise, smell, steam and pollution from the plant."* quoting one resident saying: *"I've been awake most of the night and I'm losing the will to live. Then wagons beeping their horns this morning followed by banging of containers"*. The organiser of the meeting is quoted as stating: *"People feel trapped. It's gone from a place where they could sit in their garden to closing doors and windows because it stinks"*. This report also quoted the local MP as follows: *"People have been complaining about a droning noise disturbing their sleep. These are genuine concerns about the vapour, noise and smells."* (<https://www.runcornandwidnes-world.co.uk/news/11753701.health-fears-over-runcorn-incinerator/>)
- In *Derby*, one resident stated: *"Where we are, the stench is really strong and smells like rotting food. We have been getting loads of flies around here as well. The summer has been horrendous, we have had to keep our windows closed in the hot weather because when we open them it is just awful."*

<https://www.derbytelegraph.co.uk/news/derby-news/residents-slam-controversial-waste-plant-2021845>).

It was also reported that: *“Bad smells from the controversial Sinfin waste treatment plant are still plaguing residents almost a year after the stink first started. Last August, residents and businesses near to the plant complained to the Environment Agency about a compost-like smell shortly after waste arrived for pre-opening commissioning. They were told the smell would disappear and was due to waste being stored on the site ahead of testing. But the smell has continued to plague residents – especially during the recent warmer weather – despite earlier promises from the operators that there would be no smell off-site from the facility”*. (<https://www.derbytelegraph.co.uk/news/derby-news/smell-sinfin-derby-waste-plant-1641728>).

- In Derby, the operator stated: *“we acknowledge...that some nuisance has been caused especially overnight when background noise levels are lower, and the warm weather leaves residents understandably wishing to have windows open”*. (<https://www.derbytelegraph.co.uk/news/derby-news/furious-residents-hit-out-incinerator-1970834>).
- In Gloucestershire, the operator stated in relation to hot commissioning that: *“During this period, up until the facility is fully operational in summer 2019, there will be occasional loud noises, which sound similar to when you bleed a radiator, and plumes of steam as the first combustion gases are pushed through the ducting to test all systems”*. (<https://www.gloucestershirelive.co.uk/news/gloucester-news/residents-living-near-javelin-park-2918314>).
- An incinerator in Plymouth has also generated numerous complaints from local residents, with one commenting to the Plymouth Herald that: *“The summer was awful, all the flies, the rubbish, the smell. I am looking to move because we have had enough of it”*, and another stating: *“It smells, it makes me feel sick”*.

According to an ITV report: *“Residents nearby have complained about the smell, the noise and flies in their homes. They say their worst fears have been realised”*. (<http://www.itv.com/news/westcountry/2016-02-25/residents-to-discuss-upsetting-incinerator/>).

It was also reported that: *"A 'rotten smell' was frequently emitted when first constructed, and still occurs in the summer"*. (<https://www.plymouthherald.co.uk/news/plymouth-news/life-plymouths-sad-row-homes-4812015>).

- In *Plymouth*, the Environment Agency inspector also found that during a shutdown of the Devonport incinerator that: *"Based on the volume and sudden spike in odour complaints, combined with MVV staff observations, and the reported impact on sensitive receptors, such as the primary school, it is evident that a significant odour pollution occurred..."* and stated that: *"I consider that as a result of the sustained complaints MVV should have conducted more frequent amenity checks particularly over the weekend"*. (https://www.whatdotheyknow.com/request/compliance_assessments_reports_a/response/3123136/attach/16/Compliance%20CAR%20Form%20WP3833FT%200564651%20Odour%20Site%20Inspection%2023062025%20Final.pdf?cookie_passthrough=1)
- It was reported that in *Sutton*: *"The Beddington incinerator, otherwise known as the Beddington Energy Recovery Facility (ERF) billows smoke from its tall chimneys, and often carries the smell of burning waste around the vicinity...the incinerator's owners Viridor admitted that a power outage at their plant caused acrid smoke to smoulder for more than 24 hours."* (<https://www.yourlocalguardian.co.uk/news/23878640.beddington-lane-life-sutton-road-energy-burnt/>)