

ANNEX

RULING ON THE SUBMISSIONS ON BEHALF OF CHESHIRE EAST COUNCIL THAT THE SECRETARY OF STATE BE REQUESTED TO ISSUE A DIRECTION UNDER REGULATION 19 OF THE TOWN AND COUNTRY PLANNING (ENVIRONMENTAL IMPACT ASSESSMENT) (ENGLAND AND WALES) REGULATIONS 1999 AS AMENDED AND THAT THE INQUIRY BE ADJOURNED TO ENABLE COMPLIANCE WITH THAT DIRECTION.

**Appeals by Covanta Energy Limited, land adjoining Pochin Way and ERF Way, Middlewich, Cheshire.
Refs APP/R0660/A/10/2129865 & 2142388**

The Submissions by the Parties

1. The essence of the Council's submissions is that because Appeal A is for the erection of an energy from waste facility ("EfW facility") its environmental effects necessarily include its outputs as electricity to a connection with the National Grid ("the grid") and as combined heat and power ("CHP") to users of that energy. Only indicative corridors for the grid connection and to the nearby British Salt premises have been assessed but the appellants plainly propose to supply CHP to others over at least the whole of the Midpoint 18 Business Park and no assessment of those connections has been made. In the absence of such information the Council maintain that the present consolidated environmental statement ("the CES") cannot be considered an environmental statement ("ES") within the meaning of the 1999 Regulations. They point in particular to the absence of information on the effects of CHP pipes on both the surrounding landscape and on the habitats of Great Crested Newts ("GCNs") a European Protected Species ("EPS") known or believed to be present over wide areas of the adjoining land.
2. The Appellants argue that the 1999 Regulations apply solely to the development applied for, though they accept that the EfW facility has been planned to connect to the grid and to British Salt and that they have assessed indicative corridors of those routes. However, no other connections for CHP are presently proposed or can be identified at this time, so they cannot form part of the development applied for and there is no requirement to assess their effects. The Appellants acknowledge that these potential future CHP connections should be considered as cumulative effects of the development, but say they are only to be assessed insofar as can be reasonably required having regard to the state of knowledge at the time. In this case the future connections are unknown so that it is unreasonable to expect information to be provided on that basis. This does not mean that the 'spare' energy generated by the EfW facility but not taken by British Salt will be wasted, because this 'spare' energy will be transmitted as electricity to the grid. The Appellants also say that any worst case assessment of the effects of future CHP connections has to be on a likely and realistic basis but claim that what the Council are suggesting

is a wide-ranging and completely unrealistic assessment on the basis of pipework everywhere, both above and below ground.

Factual Background

3. The application for planning permission subject of Appeal A is agreed to be an EIA application as defined by Regulation 2(1) of the 1999 Regulations because it comprises EIA development which is Schedule 1 development. An ES accompanied the application. That ES and further material submitted by the Appellants was itself the subject of a direction by the Secretary of State under Regulation 19 dated 1 October 2010 requiring the ES and further material to be consolidated and updated. The document received following that direction is the CES and it is this which the Council submits is deficient so that it cannot be considered to be an ES.
4. Regulation 2(1) says that "environmental statement" means a statement -
 - (a) that includes such of the information referred to in Part I of Schedule 4 as is reasonably required to assess the environmental effects of the development and which the applicant can, having regard in particular to current knowledge and methods of assessment, reasonably be required to compile, but
 - (b) that includes at least the information referred to in Part II of Schedule 4.
5. Paragraph 3 of Part II to Schedule 4 identifies as information for inclusion in an environmental statement:

"The data required to identify and assess the main effects which the development is likely to have on the environment."

Paragraph 4 of Part I to the schedule refers to:

"A description of the likely significant effects of the development on the environment, which should cover the direct effects and any indirect, secondary, cumulative, short, medium and long-term, permanent and temporary, positive and negative effects of the development, resulting from:

 - (a) the existence of the development;
 - (b) the use of natural resources;
 - (c) the emission of pollutants, the creation of nuisances and the elimination of waste,

and the description by the applicant of the forecasting methods used to assess the effects on the environment."

Inspector's Conclusions

6. I consider that the fundamental purpose of the EfW development subject of Appeal A is to recover energy from waste in accordance with the aims of the revised Waste Framework Directive 2008 (Directive 2008/98/EC) and the Waste (England and Wales) Regulations 2011 (SI 2011: No 988). To fulfil the purpose of the EfW facility therefore the energy by the facility must be exported and used or it will not substitute for energy derived from other fuels. In those circumstances,

the operations at the EfW facility could not be considered as recovery operations as defined in Article 3 of the revised Directive and in paragraph 5(b) of Part I of Schedule 2 to the 2011 Regulations. Neither could the proposed development be considered an EfW facility.

7. Accordingly I conclude that the export of energy from the development subject of Appeal A, whether as electricity to the grid or to any other user, or as CHP, whether to British Salt or any other user, is a necessary and intrinsic part of that development. Therefore the effects of those supplies are main effects of the development and those effects fall to be assessed by the EIA Regulations.
8. That being so, the question which arises is whether the information now in the CES is sufficient to satisfy the criteria in Schedule 4 of the 1999 Regulations having regard to the test in the definition of "environmental statement" that it is information which is reasonably required to assess the likely significant effects of the development and which the appellants can reasonably be required to compile having regard to current knowledge and methods of assessment.
9. On the evidence in the CES and from the inquiry to date I am satisfied that the following are the broad parameters of the development. The energy generation of the proposed EfW facility is 35Mwe and this can be transmitted wholly as electricity or wholly as CHP or as any combination of those means. The stated requirements of British Salt are for 20Mwe of CHP and electricity but at present only a Heads of Terms agreement exists for the supply of this energy, pending the decision on this appeal. The maximum extent of CHP supply is said to be within a radius of about 15km from the appeal site, but within that zone the further this energy is supplied the less attractive financially it becomes for both user and supplier. The CHP would be supplied in low pressure steam pipes placed underground.
10. Turning to the circumstances in areas that might take energy from the EfW facility, most of Phase 1 and 2 of the Midpoint 18 Business Park is already developed but there are some vacant units and other vacancies and changes of use may occur. Phase 3 of Midpoint 18 has been granted planning permission together with the spine road which will form the remaining part of the Middlewich Eastern Bypass. This is a composite permission, being a full permission for the road and for what is known as Building 101, and an outline permission for the layout of the rest of Phase 3. None of the Phase 3 development nor the Bypass has been built to date. An ES was prepared for the whole of the Phase 3 development and this included both landscape surveys and surveys for protected species; in terms of EPS both GCNs and the Lesser Silver Water Beetle were found to be present on the Phase 3 land. Mitigation measures were proposed both for the effects of the development on the landscape and on these protected species.
11. Against this background I conclude firstly that, on the balance of probabilities, CHP will be supplied to both British Salt and to occupiers of some buildings on Midpoint 18 Phases 1, 2 and 3. One of the likely

significant effects of this probable supply of CHP is that low pressure steam pipes will be laid within all three phases of Midpoint 18.

12. Secondly I conclude that the laying of any such steam pipes is likely to affect land forming some part of the habitats of EPS and other protected species. However, other than the surveys already undertaken and included in the CES, surveys of protected species on Midpoint 18 took place several years ago and cannot now be relied upon as an accurate and up to date record of their habitats. That being so, I conclude further that the likely significant effects of such pipe laying and perhaps of the subsequent presence of the pipes on protected species throughout Midpoint 18 is such that further information on those effects (if any) and the development of mitigation measures (if effects are predicted) is required if the CES is to be an environmental statement within the meaning of Regulation 2(1).
13. I do not believe that the assessment of these likely significant effects would impose an unreasonable requirement on the appellants. In particular I reject the Council's contention that such an assessment should be on the basis of what they described as a 'Japanese flag' layout of above ground pipes which would pass either through or adjacent to known habitats of protected species. I am satisfied that steam pipes above ground would not be acceptable to the landowners of Midpoint 18 so that any CHP supply would have to be underground and the evidence before me suggests that this is technically feasible. It seems to me that the practical and reasonable route of such steam pipes may well be similar to that of other underground services, namely, along or alongside the roadways serving the Midpoint 18 development and would seek to avoid known habitats of protected species. This would mirror the approach the appellants themselves have used in providing indicative corridors for the grid connection and the CHP link to British Salt.
14. Whilst I accept that the precise siting and location of buildings on Phase 3 is yet to be determined, the location of most buildings on Phases 1 and 2 is known. But even on Phase 3 the location and size of the largest single unit, Building 101, is known and there is an indicative layout for the remainder of that phase. Hence it would be reasonably practical to indicate where a CHP link might be made from the roadside corridor to each building on the indicative layout and hence to assess the effects of the CHP provision throughout Phase 3 on that basis. I recognise that it is highly likely that not every building on Midpoint 18 would require CHP during its lifetime, but the fact that every such option would be assessed would mean that this assessment would have been made on a worst case.
15. I do not consider it is reasonably likely that CHP would be provided beyond Midpoint 18, partly because of increasing distance and its financial effects and partly because of physical difficulties including the railway line and canal to the west. Hence I conclude that the Midpoint 18 Business Park represents the probable extent of the supply area for CHP that can reasonably be foreseen at this time in the light of current

knowledge. It follows that the Appellants can reasonably be required to compile this further information.

16. I have considered the Council's request that a landscape assessment should also be required of the effects of CHP connections on Midpoint 18 and its surroundings. However, my conclusion that the balance of probabilities shows that any CHP connections would be underground means that those connections would have no significant effects on the landscape. I say this taking into account that some maintenance and other minor structures may be required above ground even for underground pipes, but I consider that these minor structures are unlikely to be visually significant.
17. I shall therefore ask the Secretary of State to notify the Appellants that further information be provided by under Regulation 19(1) enabling the CES to be an ES. This further information would be an assessment of all potential CHP connections from the proposed EfW plant to all buildings on Midpoint 18 Phases 1, 2 and 3 (whether existing, permitted or indicative) in terms of their effects on the habitats of protected species, and especially on European protected species, together with appropriate mitigation measures. In addition the existing assessments of the grid connection and the proposed CHP connection to British Salt should also be incorporated into the CES.
18. In the light of this ruling I turn to the related submission by the Council that, in these circumstances, the inquiry, which adjourned last Friday, 1 April, to Tuesday 17 May 2011, be further adjourned to enable the Appellants to carry out the required assessment and to allow consultation on the results of the assessment with Natural England and publicity of that assessment.
19. On the information before me I do not know how long such an assessment would take, although the evidence suggests that April/May is the ideal time for carrying out surveys for many protected species. Nevertheless, it seems to me that it is for the Appellants to say how long they believe they would require. I would also draw attention to Regulation 19(2), that where the further information is provided for the purposes of an inquiry, and the request for that information states that it is to be provided for that purpose, the publicity and consultation provisions of paragraphs (3) to (9) do not apply.
20. Against this background I would ask that the Appellants give PINS a firm estimate of the time they expect such an assessment would take by no later than Friday 15 April. This would enable consideration to be given to whether or not the present date for resumption of the inquiry will need to be revisited and if necessary for further arrangements to be made.

Richard Tamplin
Inspector
8 April 2011