

**APPEAL BY POWERFUEL PORTLAND LIMITED
LAND AT PORTLAND PORT, CASTLETOWN, PORTLAND, DORSET, DT5 1PP**

**OPENING STATEMENT
on behalf of
DORSET COUNCIL**

Introduction

1. The Council's three reasons for refusal (RfR) raise the following key issues:
 - (1) Whether the development, as an unallocated site, is a sustainable form of waste management that complies with the Bournemouth, Christchurch, Poole and Dorset Waste Plan 2019 (Waste Plan), most notably policies 1, 4 and 6.
 - (2) Whether the development, as a result of its scale, massing and height, in the proposed location, would have significant adverse landscape and visual effects and be contrary to relevant local and national policy.
 - (3) The extent of harm to heritage assets that would be caused by the development, and whether the public benefits of the scheme are sufficient to outweigh any such harm in line with relevant local and national policy.

2. There is, of course, interlinkage between RfR 1 and RfRs 2 and 3, due to the fact that Policy 4(d) of the Waste Plan that any proposal for waste management facilities on an unallocated site must demonstrate that it complies with the relevant policies of the Waste Plan, which here includes those Waste Plan policies relating to both landscape and heritage impacts (i.e. Policies 14 and 19).
3. Overall, the Council maintains that each of its three RfRs justify a refusal of permission by the Secretary of State.
4. The Council does not object to the principle of *any* development of the appeal site. The Council recognises that the site consists of previously developed land which sits within the context of a working port,¹ and which is allocated as a key employment site. The Council's objection is to a development of this size and scale. It is the scale, height and massing of this development that causes it both to result in unacceptable impacts on its surroundings (both in landscape and heritage terms).
5. The fact this is a waste incinerator designed to burn up to 202,000tpa until c 2065 (if built) also means it goes well beyond the envisaged capacity need for residual waste forecast to be produced in the Waste Plan area, when proper regard is given to the Government's policy commitments made since the Plan was adopted in 2019. In addition, it being located some distance away from the south east Dorset conurbation where the bulk of the Waste Plan area's waste is produced means it is contrary to the Waste Plan's Spatial Strategy that

¹ Indeed, in 2010 the Council's predecessor granted permission for an energy plant on this site.

underpins the Waste Plan adopted only four years ago. In short, it is the wrong development in the wrong place at the wrong time.²

RfR 1 Waste Management

Need:

6. For the purposes of this appeal, in order to assist you and the Secretary of State, the Council (quite rightly) has provided an updated assessment of the need for residual waste management capacity in the Waste Plan area. This is in a context of the Waste Plan's forecast which dates from 2018 but relies on 2015 baseline data. Given the age of the forecast and the data upon which it relies, it is important that the Secretary of State should be provided with a current assessment of need to weigh in the planning balance. This does not signal any suggestion or acceptance by the Council that the Waste Plan itself is in any sense out of date. The Waste Plan is not prescriptive as to the extent of need which will be required to be met over the plan period and the means by which that need is met. This is demonstrated by the fact that the Waste Plan itself expects an up-to-date position on need to be provided in support of applications for facilities proposed on unallocated sites (paragraphs 6.13-6.14 of the Waste Plan).³

² Cf. the aim of the National Planning Policy for Waste 2014 "to help achieve sustainable waste management by securing adequate provision of new waste management facilities of the right type, in the right place and at the right time" (per the Waste Management Plan for England (2021) (CD 9.07) p. 41).

³ CD 7.01, pp. 33-34.

7. Having assessed the extent of the forecast need for additional waste residual capacity within the plan area, the Council's position is that whilst an ongoing need for residual waste management capacity in Dorset remains, the extent of that requirement has notably reduced since the Waste Plan's adoption.

8. On the Council's revised assessment of need, even without any other additional waste treatment provision coming forward in the Waste Plan area, there will be insufficient residual waste arisings produced within the Waste Plan area to support it from very early into its forty year operational life even if the incinerator were able to attract LACW which is presently contracted elsewhere.⁴ It is simply too large when compared to the forecast waste arisings. To the extent that further capacity is required, the Waste Plan's allocated sites, which are predicated on the provision of smaller individual treatment facilities (supported by additional waste transfer facilities) well located in relation to the principal sources of waste arisings in the plan area, are available to meet the need. This is what the Plan's Spatial Strategy seeks to deliver.

Spatial Strategy and Policies 1 and 6:

9. The Waste Plan sets a clear Spatial Strategy for waste management in the Waste Plan area. The development does not support delivery of that strategy and consequently breaches Policy 6(a) of the Waste Plan. The appeal site's location (situated away from the greatest concentration of arisings in south east Dorset in the widest sense i.e. the conurbation including Bournemouth, Christchurch and Poole)⁵ means that it would not result in a good spatial

⁴ See Potter's rebuttal proof – para.2.27 and Table 5.

⁵ See Potter Main Proof 3.14 p.8, 3.20 p.9 and Figure 1 p.10

distribution of facilities, and would increase waste miles travelled compared to allocated sites.⁶

10. An oversized merchant facility located on an island and serviced effectively by a cul de sac, remote from the principal sources of waste arisings in the Plan area⁷ and even more remote from the sources of waste it would have to seek to attract in order to operate, would not be consistent with the proximity principle;⁸ nor, would it result in waste being managed at the highest feasible level of the waste hierarchy, a legal requirement reflected in Objective 1 of the Waste Plan, were it to be built. Given the disproportionate size of the proposed ERF having regard to the forecast capacity gap, it poses a material risk that it will serve to deter investment in facilities to deliver increased rates of recycling thus locking waste into a management method towards the bottom of the Waste Hierarchy.⁹ Consequently, it would conflict with Policy 1¹⁰ (and Objective 1¹¹) of the Waste Plan, as well as Policy 6(b).¹² It would also work against the success of policy commitments adopted by the Government since adoption of the Plan which are material to consideration of this Appeal.

Policy 4:

11. As an unallocated site, the Appellant will need to show that the various criteria of Policy 4¹³ of the Waste Plan are met. It cannot do so. Not least, in light of the

⁶ Cf. Spatial Strategy, see p. 27 of the Waste Plan (CD 7.01).

⁷ See Potter Main Proof para.3.19 p.9

⁸ Enshrined in Objective 2 to the Waste Plan

⁹ Potter Main Proof para.3.6 p.5

¹⁰ CD 7.01, p. 20.

¹¹ CD 7.01, p. 23.

¹² CD 7.01, P. 76.

¹³ CD 7.01, p. 35.

above conclusions, and the development's non-compliance with a number of Waste Plan policies (including Policies 14 and 19, see below), criteria (c) and (d) of Policy 4 cannot be met.

12. Moreover, and notwithstanding this, allocated sites are available and the Appellant has not shown that the appeal site provides sufficient advantages over these allocations, contrary to criterion (a). These issues will be more fully examined in evidence but, in summary, the Appellant's case is founded on seeking both in relation to the merits of the scheme itself and to its relative merits to significantly understate its adverse impacts whilst exaggerating its locational benefits. For example

a. **Shore power:** whilst a potential benefit, is an uncertain one. If provided to the extent to which it would actually be relied upon by vessels visiting the port, the numbers of which cannot be predicted,¹⁴ there is still no guarantee that the Appellant would provide that power to the Port as opposed to exporting it to the grid in the event that commercial considerations made that more advantageous.¹⁵ Further, the Council is not satisfied that an alternative acceptable solution to the electricity grid constraints at the Port could not be found to enable the provision of shore power at the Port without the unacceptable effects of the appeal proposal. In this context, it is noteworthy that there is a very considerable mismatch between the large size of the facility and the very small shore power benefit which would be delivered.¹⁶ The Appellant appears to be seeking to advance the appeal

¹⁴ Norton Proof para.3.2 p.5

¹⁵ Ibid para.5.3 p.20

¹⁶ See Norton Main Proof Appx 1

proposal as a form of enabling development to fund improvements at the Port but has failed to provide a robust evidence base which allows for the costs and benefits to be properly examined.

- b. **District heating:** this is not part of the application and the uncertainties surrounding its delivery, its likely attraction to local customers and its viability are such that its benefits can be accorded little weight.¹⁷As with shore power, even if delivered there will be a minimal reduction in electricity as a result of heat use demonstrating the mismatch between the size of the facility and the claimed locational benefits advanced by the Appellant.
- c. **Energy supply to the grid:** the contribution to energy security through the export of at least partly renewable electricity¹⁸ is accepted to be a benefit, but as the PPG makes clear, the focus for renewable energy development should be on locations where impacts on the local environment are acceptable.¹⁹ They are not here.
- d. **Local reductions in local emissions:** whilst the Council welcomes any emissions reductions from ships not running their engines whilst at port, these come at the cost of the additional local emissions produced by the development as a whole,²⁰ which more than offset those avoided, and must be taken into account.
- e. **Waste movements by sea:** whilst much is made of the potential use of ships to deliver waste to the ERF and to transport IBA and APCr away to

¹⁷ Norton Main Proof section 4 pp.11-19 and Rebuttal Proof Section 3 pp.6-7

¹⁸ Energy produced by the biogenic portion of waste burnt is regarded as renewable

¹⁹ PPG on Renewable and low carbon energy, para 001, ID 5-001-20140306

²⁰ Norton Main proof para.3.24 p.10

facilities elsewhere, there is no commitment to the use of shipping as a mode of transport and hence the extent of any benefit remains unproven.

13. As a result, the main purported benefits relied on by the Appellant are either uncertain or overstated. They must also be considered against the locational dis-benefits associated with the appeal site (noted above, in terms of harm to the waste hierarchy and the Waste Plan's underlying Spatial Strategy for the management of waste arising in the Waste Plan area, and below in terms of landscape and heritage harm). Whilst the Appellant seeks to emphasise the constraints affecting the allocated sites, the appeal site itself is constrained including by the internationally important World Heritage site designation and the exceptional heritage interest which surrounds it. It should be noted that each of the allocations²¹ were duly tested through the examination process and found to be sound (i.e. effective and deliverable). There is no reason why they should not come forward for appropriately sized facilities.

RfR 2: Landscape and Visual

14. Overall, the particular landscape in which the appeal proposal sits would be adversely, and unacceptably, impacted by the scale and mass of the proposed development, which would be damagingly incongruous with its setting.

²¹ The focus here is, notably, on those *allocations* and not any particular proposal in relation to them.

15. Both parties are in apparent agreement that the Appellant's original LVIA understated the extent of landscape and visual effects and that further relevant viewpoints and landscape character areas needed to be assessed.

16. Overall, there would be a number of significant landscape and visual impacts, including:

- a. significant landscape and visual effects on the Jurassic Coast World Heritage Site and its setting (this site being a heritage asset of the very highest significance).²²
- b. significant landscape and visual effects (resulting in unacceptable impacts²³) on the West Dorset Heritage Coast.²⁴
- c. significant adverse effects on the visual amenity of a number of residential properties and users on the South West Coast Path and local rights of way network.²⁵
- d. significant adverse effects on the two most directly affected landscape character areas – Portland Peninsula and Chesil Bank, the Fleet and the Causeway.²⁶

17. The Council will demonstrate that, contrary to the Appellant's assertions, the development's effects would not be "localised" or "very localised", but will instead be experienced over a wide area of land and water at distances

²² Williamson Main Proof para 4.73

²³ Per Policy 14 of the Waste Plan (CD 7.01, p. 112).

²⁴ Williamson Main Proof paras 4.77 and 5.5

²⁵ Williamson Main Proof paras 4.69 and 5.6-5.7

²⁶ Williamson Main Proof paras 4.41-4.43

extending to at least 4.5km away²⁷ including in locations in which the experiential setting of the World Heritage site will be significantly affected.

18. Consequently, the development conflicts with Policy 14 of the Waste Plan,²⁸ Policy ENV1 of the West Dorset, Weymouth & Portland Local Plan,²⁹ Policy Port/EN7 and Port/BE2 of the Portland Neighbourhood Plan³⁰ and relevant paragraph 174 of the NPPF.³¹

RfR 3: Heritage

19. There is no doubt (and the parties are agreed) that the development will affect the setting of a number of different heritage assets,³² which include assets of the highest significance. Section 66(1) of the planning (Listed Buildings and Conservation Areas) Act 1990 requires the Secretary of State, as the decision-maker, to give “special regard” to the desirability of preserving the setting of a listed building. As recognised in case-law,³³ the intention behind this statutory duty is to ensure “considerable importance and weight” is given to “the desirability of preserving the setting of listed buildings when carrying out the balancing exercise”.

20. What is unique about this site, beyond simply the extensive number of heritage assets in the locality, is the group value of those assets and the time-period

²⁷ Williamson Main Proof para 5.3

²⁸ CD 7.01, p. 112

²⁹ CD 7.02, p. 20.

³⁰ CD 7.04, p. 34 and p. 41.

³¹ CD 9.01, p. 50.

³² A list is given at para 7.24 of the SOCG.

³³ Barnwell Manor Wind Energy Ltd v East Northants DC and others [2014] EWCA Civ 137.

which they collectively cover. This is a group of nationally important assets that convey the extensive maritime and naval history of Portland. That history includes the construction of the first safe anchorage for a naval steam-driven fleet, which created (when built) the largest man-made port in the world. It includes a range of naval defences specifically orientated to protect this harbour, which reflect advances in military technology and use during two World Wars. Indeed, the range and level of survival of assets of 19th century date in Portland is exceptional.³⁴

21. The Council has assessed the development's impact on each of these assets individually, concluding that the development will result in less than substantial harm to an array of these assets, with the harm ranging within the scale of such harm from the lower right up to the upper end.³⁵ Of course, the site sits within an established port location, an environment which has evolved over time and continues to evolve, but the change which has occurred has, for the most part preserved the significance both of the heritage assets individually and a group. The port location does not justify attaching less weight to the harms which the appeal proposals would cause to the significance of the assets.

22. In line with paragraph 202 of the NPPF,³⁶ the Council has weighed those harms against the public benefits for the proposals, including the measures proposed by the Appellant through its Framework Heritage Mitigation Strategy. Whilst that strategy provides some benefits, these are limited and do not include any

³⁴ Kelly Main Proof para 8.1

³⁵ Kelly Main Proof para 8.4

³⁶ CD 9.01, p. 57.

mitigation to the assets most significantly affected by the development.³⁷ Historic England agrees that the strategy is unlikely to offset the harm caused to a large group of nationally significant heritage assets and questions whether proposals in the strategy could not be achieved by other voluntary means.

23. Overall, the public benefits of the proposals come nowhere near outweighing the heritage harm found in this case.

24. There is conflict with Policy 19 of the Waste Plan,³⁸ Policy ENV4 of the West Dorset, Weymouth & Portland Local Plan,³⁹ Policy Port/EN4 of the Portland Neighbourhood Plan,⁴⁰ and paragraphs 197 and 202 of the NPPF.⁴¹

Other matters

25. Beyond these three RfRs, there are a number of matters in respect of the appeal proposal, which the Council does not take issue with. These include: (i) traffic and highways, (ii) ecology and biodiversity, (iii) flood risk, (iv) air quality and public health, (v) amenity, (vi) noise, (vii) land contamination and stability.

Scheme Benefits

26. Notwithstanding the harms identified, the Council recognises that the scheme will bring with it a number of benefits. Beyond those already mentioned, these

³⁷ Kelly Mian Proof para 9.5

³⁸ CD 7.01, p. 125.

³⁹ CD 7.02, p. 33.

⁴⁰ CD 7.04, p. 30.

⁴¹ CD 9.01, pp. 56-7.

include the socioeconomic benefits predicted by the Appellant, including the expected addition of 300 construction jobs and 35 full time permanent jobs (as well as 60 indirect jobs) in an area which is acknowledged to include significant areas of deprivation.

27. The extent of the scheme's benefits and the weight to be accorded to them will be explored more fully during the inquiry, and the fact that we do not refer to all of them in opening should not be taken as indicating that the Council does not recognise them. However, when they are properly weighted they do not either individually or cumulatively outweigh the harms in this case.

Planning Balance

28. In light of the conflicts noted above, the development is not in accordance with the development plan as a whole. As a result, as per section 38(6) of the Planning and Compulsory Purchase Act 2004, permission should be refused unless material considerations indicate otherwise.

29. Whilst the Council recognises that the scheme will bring with it some benefits, these do not outweigh the harms of the scheme, including the conflict with the development plan. It is noteworthy that, for the purposes of this appeal the Appellant has felt it necessary to re-visit its earlier assessments of harm both to the landscape and heritage assets in an attempt to support the argument that the balance should weigh in favour of the appeal proposals. That re-visiting is

unconvincing; the earlier assessments downplayed the significance of effects and the Appellant's attempts to reduce these further is simply not credible.

Conclusion

30. For these reasons and others which will be more fully set out in evidence, you will in due course be invited to recommend that the appeal is dismissed.

SIMON BIRD KC
MERROW GOLDEN
5 DECEMBER 2023