

Waste Related Planning Casework



**PCAC
PEDW**

Penderfyniadau Cynllunio
ac Amgylchedd **Cymru**
Planning & Environment
Decisions **Wales**

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Key legislation and policy

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| Primary Legislation | <ul style="list-style-type: none"> • EC Waste Framework Directive 2008/98/EC (rWFD) • Directive (EU) 2018/851 Amending Directive 2008/98/EC • EC Waste Landfill Directive 1999/31/EC • EC Industrial Emissions Directive 2010/75/EC (has replaced EC Waste Incineration Directive 2000/76/EC) • EC Batteries Directive 2006/66/EC • EC End of Life Vehicles Directive 2000/53/EC • EC Waste Electrical and Electronic Equipment Directive 2012/19/EC • EC Packaging Waste Directive 1994/62/EC • EC Mining Waste Directive 2006/21/EC • Environmental Protection Act 1990 • Environment Act 1995 • Pollution Prevention and Control Act 1999 |
| Secondary Legislation | <ul style="list-style-type: none"> • Waste (England and Wales) Regulations 2011 • Controlled Waste (England and Wales) Regulations 2012 • Waste (England and Wales) (Amendment) Regulations 2014 • Environmental Permitting (England and Wales) Regulations 2016 • Waste Enforcement (England and Wales) Regulations 2018 |
| National policy and guidance | <ul style="list-style-type: none"> • Planning Policy Wales • TAN21: Waste • Towards Zero Waste, One Wales: One Planet - Overarching Waste Strategy for Wales, June 2010 |

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| Judgments | <ul style="list-style-type: none"> • Gateshead MBC v Secretary of State and Northumbrian Water Group plc, Court of Appeal [1995] Env LR 37. • See Case Law paragraphs below for others. |
| Other guidance | <ul style="list-style-type: none"> • NRW Guidance Notes |

Other relevant chapters and websites

The Manual chapter on Environmental Permitting may also be of relevance, as may the following websites:

- <https://www.recycle-more.co.uk/glossay>
- <http://www.wrap.org.uk/>
- <http://www.wrapcymru.org.uk/>
- <https://naturalresources.wales/guidance-and-advice/environmental-topics/waste-management/?land=en>
- <https://www.audit.wales/news/waste-management-wales>

Introduction

1. Most of this chapter is concerned with waste planning casework, though the section on facilities and techniques is also applicable to development plan work. The chapter on Environmental Permitting includes a lengthy Annex with a glossary of waste management terms, which is a useful reference. Accordingly, it is not repeated in this chapter.
2. Under the EC Revised Waste Framework Directive 2008/98/EC (rWFD), waste is defined as “any substance or object which the holder discards or intends or is required to discard”, and waste management is defined as “the collection, transport, recovery and disposal of waste, including the supervision of such operations and the after-care of disposal sites, and including actions taken as dealer or broker”.
3. The most common “waste streams” are: Inert Waste; Municipal Solid Waste (MSW); Household Waste; Hazardous Waste; Clinical Waste; Industrial Waste; Commercial Waste; Radioactive Waste; and Biodegradable Waste. The European Waste Catalogue sets out the many types of waste for classification purposes. Although mainly used for the purposes of regulation and pollution control, the categories are sometimes relevant to waste planning casework.

Policy, Legislation and Guidance

EC Directive Policy Drivers

4. Turning waste into a resource is one key objective of EU waste policy, using the principles of a “circular economy” (see below). The objectives and targets set in European legislation have been key drivers to improve waste management,

stimulate innovation in recycling, limit the use of landfilling, and create incentives to change consumer behaviour.

5. Improved waste management also helps to reduce health and environmental problems, reduce greenhouse gas emissions (directly by cutting emissions from landfills and indirectly by recycling materials which would otherwise be extracted and processed), and avoid local impacts such as landscape deterioration by landfilling, increases in water and air pollution, and litter.
6. The “Waste Hierarchy” lies at the heart of policy and legislation, originating from the EC Waste Framework Directive. The hierarchy gives top priority to waste prevention, followed by preparing for re-use, then recycling, other types of recovery (including energy recovery), and the least desirable being disposal (e.g. via landfill). The 2011 Regulations require those involved in waste management (and waste producers) to take all ‘reasonable’ measures to apply the hierarchy (except where justified). Regulators under the Environmental Permitting regime must ensure the hierarchy is applied when exercising their functions. This also applies to waste planning authorities and other decision-makers.



7. In addition, the proximity principle highlights a need to treat and/or dispose of wastes in reasonable proximity to their point of generation. The self-sufficiency principle works to establish an adequate ‘local’ network of waste facilities for recovery of mixed municipal waste collected from private households using the most appropriate methods and technologies, taking into account best available techniques (BAT).
8. The circular economy emphasises the use of waste as a resource, which means a greatly increased attention to the economic benefits of waste management, rather than relying solely on the original principles of environmental protection and human health. As well as creating new opportunities for growth, a more circular economy will:
 - reduce waste;
 - drive greater resource productivity;

- deliver a more competitive UK economy;
- position the UK to better address emerging resource security/scarcity issues in the future;
- help reduce the environmental impacts of our production and consumption in both the UK and abroad;



9. The EC Waste Landfill Directive 1999/31/EC sets targets for member states for the reduction in the amount of biodegradable municipal waste sent to landfill, and emphasis now is on waste recovery, re-use and recycling.

National Waste Policy and Legislation

10. The Welsh Government's Waste Strategy, Towards Zero Waste, sets out its overarching strategy for waste management in Wales, in response to the rWFR and subsequent Waste Regulations. It encompasses matters such as: measures for improved re-use, recycling, recovery and disposal of waste; assessment of future developments; assessment of existing waste installations, including specialist facilities; assessment of changes needed to this infrastructure; locational criteria for future site identification; and details of waste management policies.
11. In addition, the 2011 Waste Regulations include obligations on: packaging and packaging waste; the promotion of recycling, including separate waste collection arrangements; the separate collection and treatment of bio-waste; and the promotion of re-use of products. The Regulations also included 2020 targets for the re-use and recycling of household waste and the recovery of construction and demolition waste. The 2018 EU Amending Directive extends these targets for municipal waste to: 55% by 2025; 60% by 2030; and 65% by 2035.

12. Modern waste control goes back to the Control of Pollution Act 1974, which initiated much wider control of waste disposal and waste sites. The Environmental Protection Act 1990 introduced provisions for waste management licencing as we know it today, and the Environment Act 1995 established the Environment Agency as the responsible body for waste regulation in England and Wales under the environmental protection regulations. So far as planning is concerned, the Planning and Compensation Act 1991 made amendments to the 1990 Act in regard to waste materials, and the Waste (England and Wales) Regulations 2011 brought the “waste hierarchy” into UK law, including duties to improve the use of waste as a resource and the requirement for waste management plans.
13. Planning Policy Wales and TAN21, Waste, provide the framework for relevant planning policy in Wales. These provide guidance on the interaction of the planning and environmental protection regimes, and planning authorities should assume that the latter will operate effectively. The focus of the planning system should be on whether the development is an acceptable use of the land and the impact of that use, rather than control processes for health and safety or emissions, which are subject to approval under the EPR regime. However, it is appropriate for the planning permission decision-maker to satisfy themselves that these issues can and will be adequately addressed through the EPR regime.
14. On some matters the dividing line between the two regimes may not be clear-cut, e.g. noise, dust, odour and hours of operation and, where these relate to the use of the land, they are a material planning consideration. It is also appropriate to take into consideration the degree to which NRW is able to consider these risks under the EPR regime (where BATNEEC principles are applied). It is possible for an Inspector to conclude that, even if BATNEEC principles were followed, they would not adequately overcome the concerns in question. The classic legal judgement on this is *Gateshead MBC v Secretary of State and Northumbrian Water Group Plc, Court of Appeal [1995] Env LR 37*, which has been supported in subsequent cases.
15. Whilst applicants are encouraged to make concurrent applications for planning permission and a waste environmental permit, they are sometimes reluctant to do so before planning permission is granted due to the considerable costs involved in the EPR process. Thus, even at the appeal stage, it may not be known what conditions NRW would be likely to impose or even whether they are likely to grant a permit. In these circumstances, the Inspector can glean some idea from NRW’s consultation responses and from taking into account the subject areas of the 2 control regimes.
16. If an EPR application has also been made, the Inspector should find out from the main parties how it is progressing. In the event that an EPR permit has already been granted or is likely to be granted during the course of the planning appeal, then it is useful to obtain a copy of the permit and NRW’s decision document, which is particularly useful as it contains details of the application and the site history, a record of NRW’s decision making process and how it has been determined, and shows how relevant environmental factors and key issues have

been taken into account. It also explains the justification for specific permit conditions. This information can be useful in dealing with environmental effects and public concerns raised in the planning appeal and with the adequacy of the environmental management techniques proposed for the operation.

Waste Management Facilities and Techniques

Range of Waste Management Operations

17. These may be classed as household waste and bring sites, recycling and disposal sites, and waste treatment and energy recovery sites.
18. Household waste sites (sometimes called civic amenity sites because they started with the Civic Amenities Act 1967) are operated by the Waste Disposal Authorities (WDAs) for householders to dispose of a wide range of waste items. Notwithstanding their benefits to the wider community, planning applications for such facilities can attract strong objections on grounds of noise and traffic generation, particularly as they are generally open at weekends. "Bring sites" provide a smaller scale facility for the disposal of bottles, paper, cardboard etc. However, their location still needs to take account of their potential for noise nuisance and potential use at any time of the day or night.
19. Recycling facilities are of 2 types, though they are often co-located: waste transfer stations (WTS) are depots for the temporary deposition of co-mingled municipal waste, prior to its loading on to larger vehicles for bulk transport to processing or disposal sites; materials recovery facilities (MRF – often referred to as "Murfs") are facilities for the separation and preparation of recyclable or re-usable materials for "end markets". MRFs are often described as "clean", where the incoming waste has already been separated, or "dirty", where the waste is co-mingled.
20. Although waste treatment options are now the major policy driver, landfill sites are still needed for disposal of waste not used higher up the waste hierarchy, though it is now rare for new landfill sites to be developed. A modern non-inert landfill is usually implemented in a series of cells which are filled in sequence. Each cell is prepared by lining the base and sides with low permeability material (clay and/or an artificial liner), over which a drainage blanket is laid, including perforated pipes to collect leachate and convey it from the site for treatment and disposal. Tipping then proceeds in a series of 'lifts', within which pipework is installed to collect landfill gas.
21. The waste tipped each day is covered with inert material to minimise odours and windblown litter, keep out birds and vermin and reduce water ingress. On completion the cell is covered with an impermeable layer, keyed into the basal liner, and interim restoration is carried out pending the completion of restoration when the relevant phase is complete, which may consist of one or more cells. Landfill sites are strictly regulated, and many wastes are now banned (e.g. all liquids and hazardous wastes, unless in designated cells or at the very few designated hazardous wastes landfill sites).

22. Most installations put forward for planning permission nowadays are for waste treatment or energy recovery of the following types: biological treatment (particularly composting or anaerobic digestion [AD]); mechanical biological treatment (for the separation of mixed waste); mechanical heat treatment (also for the separation of mixed waste); or thermal treatment (incineration, pyrolysis, gasification).

Biological Treatment

23. Composting is generally carried out in windrows (linear piles), which provide natural degradation for garden waste. The process can be accelerated and improved by regular turning of the waste and by forcing air through it. Material containing food waste needs to be heated to kill pathogens (to conform with animal by-product regulations), which can be achieved by “in-vessel composting”, often followed by a period of outdoor composting.
24. Anaerobic digestion is a microbial process which takes place in the absence of oxygen in an enclosed vessel. Biodegradable municipal waste can be converted into “digestate”, liquor and biogas. The output products (digestate and liquor) can be applied to land as fertiliser, and the biogas can be burned for electricity generation or combined heat and power (CHP).

Mechanical Biological Treatment (MBT)

25. MBT is a multi-stage process suitable for municipal solid waste (MSW). It involves: a preparation stage to split the bags and reduce the size of the waste materials; mechanical separation into recyclables, biodegradable content, combustible materials and a “reject” fraction unsuitable for further processing; and biological treatment, involving either drying (to produce refuse-derived fuel [RDF] for use in CHP, cement kilns or co-firing with coal or biomass), use in Advanced Thermal Technologies (such as pyrolysis or gasification) or composting/AD for applying to land and production of energy from biogas.

Mechanical Heat Treatment (MHT)

26. MHT is also a multi-stage process suitable for MSW. It involves: an initial mechanical separation stage to remove large and “reject” materials; heat treatment either by “autoclaving” to “cook” the waste using heat and steam in a pressure vessel, or a continuous process in a non-pressurised rotating kiln, which softens, flattens and cleans the material, removes labels and glue and greatly reduces the volume of the waste; and materials separation to remove recyclable materials (glass, metals and plastics) and provide fibre and floc which can be treated for use as RDF or by composting/AD.

Thermal Treatment

27. MSW or RDF can be combusted to reduce volume and hazardous properties and to generate electricity and/or heat. Most incinerators use “moving grate technology” where waste is fed into the furnace continuously (undergoing complete combustion) and ash is continuously discharged at the other end.

“Fluidised bed combustion” is another technology which involves waste being processed to reduce particle size and then suspended by the action of a blown bed of bubbling or circulating particles (coarse sand). This process provides a more effective breakdown of chemicals and heat transfer. The “rotary kiln” is a third type and involves a complete or partial rotation vessel and a 2-stage process where waste is rotated in the kiln (exposing it to heat and oxygen) and then moves down into a secondary combustion chamber (for complete combustion).

28. The bottom ash from incineration can contain metals (for recycling). Any remaining solid ash can be used for aggregate replacement or be disposed of as non-hazardous waste. The gases from combustion (NO_x, SO_x – i.e. oxides of nitrogen and sulphur, etc.) are cleaned using ‘scrubbers’ prior to release. Fly ash, i.e. ash produced (in small dark flecks) by combustion and carried in the air, can also contain hazardous material such as heavy metals, dioxins and Polycyclic Aromatic Hydrocarbons (PAHs), which have been linked to cancer.
29. Pyrolysis and gasification are more advanced thermal processes which have yet to be proven for large scale use. Pyrolysis can only deal with carbon-based materials so MSW or RDF need to be pre-sorted. The process involves heating without oxygen and produces gas (syngas), which can be condensed to form oil, and solid char, which requires specialist disposal or further treatment.
30. Gasification also requires pre-sorted MSW or RDF which is heated at higher temperatures in the presence of air/oxygen and steam which “cracks”, producing further oxygen, reacting further with the carbon. Syngas is produced along with solid ash, which can be recycled or disposed of.
31. All waste incinerators have to comply with the requirements of the Industrial Emissions Directive (which has repealed the former Waste Incineration Directive), which are applied through the EPR regime in regard to emissions, the disposal of ash and for flue gas clean-up measures (via scrubbers). Incinerators may be classed as either a disposal operation or a recovery operation (as defined in the rWFD), depending on the type of waste burned, the type of equipment and the energy efficiency (which should be at least 0.65). Government policy supports incinerators that are classed as recovery operations as they are higher up the waste hierarchy.

Hazardous Waste Treatment

32. Most hazardous waste is now subject to treatment rather than landfill, and there are only a small number of landfill sites (in Wales or England) that still accept hazardous waste. Some hazardous waste (oily sludges, contaminated soils/packaging, liquids, dangerous substances/clinical waste and low-level radioactive materials) can be dealt with by high-temperature incineration, and some municipal incinerators can accommodate specific hazardous waste, e.g. contaminated packaging. In addition, specialist recycling plants can deal with a range of hazardous waste including oils, batteries, WEEE (waste electrical and electronic equipment) waste and ELV (end of life vehicles).

33. Following the transposition of the Mining Waste Directive (2006/21/EC), hazardous waste also now arises from quarry and mining operations. In addition, the increase in the numbers of incinerators and EfW plants has led to increased production of filter/scrubber residue, which can have a high pH and contain high heavy metal and persistent organic pollutants, such as dioxin.

Emerging Technology

34. A number of new technologies are emerging to deal with waste, but at present are unproven. These include:
- Plasma torch/arc process, which uses very high temperatures to break down waste into plasma streams;
 - Infrared heating, which destroys waste by radiation at high temperatures;
 - Thermal processes, such as supercritical water oxidation, catalytic incineration, microwave, and solar reflectors;
 - Chemical techniques, including dechlorination, oxidation to break down organic waste components, and electrochemical incineration; and
 - Biological techniques, such as activated sludge treatment (adapted from the sewage treatment process) and designer organisms to deal with compounds that are difficult to break down (such as PCBs, pesticides and herbicides).

Casework Considerations and Procedures

35. Regard should be had to paragraphs 13 – 16 above, which provide guidance on the interaction between the planning and EPR regimes.
36. The main issues in waste management planning casework are usually siting, need, effects on the environment and on public amenity and health, and effects on the landscape and visual amenity. Cases are often contentious due to the nature of the issues arising, and public opposition is often highly subjective. Nevertheless, fears over effects of waste management activities on public health may raise human rights and PSED issues, which will need to be appropriately addressed.

Public opinion/perception of waste/waste facilities

37. Public opinion of proposed waste facilities is usually negative, due to many factors including a lack of understanding of the processes involved, the views of the media and perhaps an embedded perceived mistrust of waste companies (in view of a relatively few high-profile major pollution incidents at waste sites e.g. large fires, major odour incidences and vermin infestations). The Inspector will need to demonstrate at events that environmental concerns will be given due consideration as part of the determination of the application.
38. For waste incinerators in particular, the main concern of most objectors tends to be the impact of emissions on public health. This is difficult to deal with at a planning inquiry as controls over emission limits and their enforcement are matters for NRW via the environmental permitting regime, but the Inspector will need to satisfy him/herself whether those controls will be effective. Whether the

fears expressed are valid or not, they are certainly genuine and cause real anxiety, and in the interest of giving people a fair hearing it will normally be appropriate to hear such evidence. However, a proportionate approach will need to be taken to ensure that it does not require excessive Inquiry time or the submission of large volumes of evidence.

Traffic/access

39. HGV traffic is often an important issue, particularly given the nature of the material carried. Evidence usually needs to address the effects on the existing access or the effects on the road network of a new access, particularly additional traffic movements that would require reliance on local roads through residential areas.

Landscape/visual impacts

40. As with any development, the general considerations will include the effect of the development on landscape character and its visual impact. Landfill sites and incinerators have particular characteristics that have to be taken into account.
41. Most landfill sites will have a significant adverse visual impact during the operational phase. There is the sight of vehicles of various kinds moving about, litter fences, bunds and heaps of cover material, and often flocks of seagulls, usually in an otherwise rural area. The impact will vary during the life of the site as filling moves across the various phases and takes place at different levels. Often it is the final phase in creating a domed landform which is the most intrusive, although by then any screen planting will have had longer to mature. Careful planning of a landfill can greatly affect the degree of visual impact. The area which is operational and unrestored at one time should be kept to a minimum. Early restoration of the first phases gives an encouraging impression of progress and can be designed to screen later phases.
42. Waste incinerators are very large buildings with tall chimney stacks, and they will usually have a significant visual impact. Arguably, an operator's best course is to accept this and rise to the architectural challenge by commissioning a design which makes a positive contribution to the character of an area, rather than engage in the hopeless task of trying to conceal it. The locations where such a plant can be visually acceptable whilst also meeting the other constraints may be limited in some areas. Large industrial or brownfield sites may offer the best potential. On the other hand, these can be areas where the Council is pinning regeneration hopes, and the effect an incinerator would have on that may be an issue. Development plan documents should provide policy on locational criteria or suitable sites.

Nature Conservation

43. Landfill sites cover large areas of land, often in rural areas, and treatment plants (particularly incinerators) have the potential to affect air quality over a wide area if not adequately regulated and well operated. Thus, effects on nature conservation can be an important issue. It is not uncommon for existing landfill

sites to be located close to sites of international importance for nature conservation (Special Protection Areas, Special Areas of Conservation and RAMSAR Sites), sites with nationally recognised designations (Sites of Special Scientific Interest, National Nature Reserves) and ecological networks important for protected species.

Local Health and Amenity Issues

44. Emissions to air, odours, dust, noise and vibration may be relevant issues for the different types of waste installations. Considerations will include the proximity of sensitive receptors, including ecological as well as human receptors, and the extent to which adverse effects can be mitigated. Emissions to air can be controlled by the use of appropriate and well-maintained and managed equipment, such as scrubbers and filters using granular activated carbon. Noise and vibration can arise due to lorry movements, the tipping of waste and industrial machinery inside and outside buildings. Both intermittent and sustained operating noise may be a problem if not properly managed, and hours of working may be an issue. Noise assessment is usually carried out in accordance with BS4142 methodology (BS4142 - Methods for rating and assessing industrial and commercial sound).
45. Some waste management facilities, especially landfills which accept putrescible waste and facilities for the handling and treatment of household waste, can attract vermin and birds. Where birds congregate in large numbers, they may be a major nuisance to people living nearby. They can also provide a hazard to aircraft at locations close to aerodromes or low flying areas.

Conditions/Obligations

46. Planning conditions and Section 106 Agreements/Undertakings can be used to address a range of measures, depending on the type of waste facility involved. In addition to the types of conditions employed in other types of development, hours of working and of lorry visits to the site should be controlled by condition. Some types of plant (such as incinerators) usually operate 24 hours a day. However, the provision of buffer material storage can avoid lorries having to visit the site outside acceptable social hours. Conditions for the closing of doors can limit the effects of noisy plant operation.
47. It is not uncommon for lorry routing to be covered by a Section 106 Obligation. This is a difficult subject, as traffic cannot usually be prevented from using the public highway (except through a traffic regulation order), and so this cannot be fully dealt with by condition. The enforceability of any Section 106 Obligation depends on the control exercised by the operator over lorry drivers visiting the site and what disciplinary measures are available in the event of breaches. This is relatively simple if all drivers are directly employed. However, contracts for other drivers will need to include suitable terms, and casual visitors may need to be deterred.
48. If an operator can show sufficient control over all vehicles (or more particularly, all lorries) visiting the site, there would seem to be no obstacle in principle to an

agreement binding the route(s) to be followed. Evidence on this will need to be considered carefully and advice sought if necessary. Some lesser control can be exercised by conditions governing the design of the access and road signage to encourage drivers to enter and leave a site only in one direction. Section 106 agreements may also cover improvements to local roads and the provision of passing bays, if appropriate.

Procedures for Conducting Cases, especially Site Visits

49. Waste management proposals on any significant scale are likely to go to inquiry because of the degree of public interest, and often they are of sufficient complexity and duration as to require a PIM. There may also be an Environmental Statement in such cases, and this is likely to be complex. Also adding to the bulk of the file there may be lots of plans (especially in landfill cases) and perhaps a copy of the Environmental Permit application or draft application. For landfill cases there may also be a hydrogeological risk assessment.
50. Waste management sites are often large, especially landfill sites, and this should be taken into account when planning site visits. If it is an existing waste site an unaccompanied pre-inquiry site visit can be useful, and during an inquiry an adjournment to allow an accompanied visit to be made can be helpful in understanding the evidence. This will shorten the post-inquiry site visit, though this will normally still have to be carried out. Even in written representations cases the site visit often takes considerably longer than usual, especially because of the size of landfill sites.
51. On large sites you should plan your itinerary carefully to ensure you see everything you need to. Sometimes the parties will offer to convey you around the site by vehicle, and it is for you to decide whether this is appropriate, balancing the savings in time against the better impression that you might gain on foot. Sometimes you may need to see other locations in the vicinity (or you may be asked to visit them), and it is useful to get the parties to prepare an itinerary and provide transport. If everyone can fit in a minibus or similar, this can be more effective (and safer) than travelling in convoy.
52. If there might be ambiguity about the meeting place on large sites, ask the office to liaise with the parties. You will usually need to use your safety hat, shoes and clothing to visit an existing waste management site. Where additional protection is required (e.g. eyewear) this should be provided by the site operator. Be mindful that any open wounds or areas of broken skin should be covered when visiting a site where bio-aerosols are likely to be present.

Case Law

53. R (Bristol City Council) v SSCLG [2011] EWHC 4014 (Admin) – confirmed the importance of robust analysis of the capacity needed to deal with commercial and industrial waste.

54. D Skrytek v SSCLG, Derbyshire County Council & Resource Recovery Solutions (Derbyshire) Ltd [2013] EWCA Civ 1231 - confirmed the Inspector's reasoning that EfW (even if not sufficient to be defined as "recovery") comes higher than disposal by landfill in the hierarchy.
55. Veolia ES (UK) Ltd v SSCLG, Hertfordshire CC, Welwyn Hatfield BC, New Barnfield Action Fund & Gascoyne Cecil Estates [2015] EWHC 91 (Admin) – confirmed the need to evaluate the consequences of a Waste Site Allocations Plan (where finding the proposed waste site complied in principle with Green Belt policy).
56. Hertfordshire CC v SSCLG & Metal and Waste Recycling Ltd [2012] EWCA Civ 1473 – where breach of planning permission has been defined in an enforcement notice as a material change of use (MCU) due to an increase in throughput, the LPA cannot introduce different issues not related to increase in throughput and not referred to in the enforcement notice in order to establish a MCU.

Example Decisions

S78 Planning Appeals

57. **APP/H4315/A/14/2224529** – Refusal of permission for change of use of warehouse building to form a 10.6MW Energy from Waste plant (with 39 metre high stack) to use feedstock comprising refuse derived fuel (RDF), together with relocation of existing materials reclamation/recycling facility to accept non-hazardous waste to the application site, and demolition of the existing waste recycling facility. Main issues were: the need for the proposal; the carbon output; impact on residential and environmental quality; impact on listed canal lock; whether the proposal constitutes sustainable development and in accordance with the development plan. Inspector concluded that: i) the EfW plant was not in accordance with the development plan and the potential harm is not outweighed by the benefits and that that element should be dismissed; ii) the relocation of the recycling facility and redevelopment of the former site for industrial uses has clear advantages and should be allowed. Appeal allowed in part.
58. **APP/H4315/A/14/2215104** – Refusal of permission for 4.8MW combined heat and power plant (including external plant and machinery and 27 metre exhaust stack). Main issues were: the effect of traffic on highway safety; and the effect on local residents in regard to noise and disturbance and air quality. Inspector concluded that on balance the harm to highway safety and the Council's waste management strategy (raised by interested parties) is not outweighed by other matters. The proposal would not amount to 'sustainable development'. Appeal dismissed.
59. **APP/Y1138/W/15/3003677** – Failure to decide on a s73 application for permission for an Anaerobic Digestion facility (revised scheme) without complying with condition 10 regarding installed capacity (500Kw), as an increase in capacity to 1000Kw was sought. Main issue was whether varying the condition would result in harm to the local amenity, in terms of noise and disturbance due to increased traffic to supply the increase in feedstock. Inspector concluded that

the appeal did not adequately address the potential harm to the local amenity.
Appeal dismissed.

Enforcement Appeals

60. The appeals below relate to 2 notices on the same site.
61. Notice 1: **APP/D0121/C/15/3006506 & 3006507** - Enforcement notice alleging without planning permission the change of use of land from agriculture to mixed use of agriculture and the deposit/spreading of waste on the land. The notice requires cessation of depositing/spreading of waste on the land, restoration of the land to its former level, and reseeded with grass. The appeals were made on grounds (b), (c), (f) and (g).
62. Notice 2: **APP/D0121/C/14/3000364 & 3000365** – Enforcement notice alleging without planning permission the deposit/spreading of waste on the land. The notice requires cessation of depositing/spreading of waste on the land, removal of all imported waste material, restoration of the land to its former level, and reseeded with grass. The appeals were made on grounds (a), (b), (c), (f) and (g).
63. The main issues were identified as: i) whether or not the waste (used under a U1 use of waste in construction waste exemption) ceased to be classed as waste once it had been engineered onto the land (to be used as a platform for a barn granted prior approval in 2012); ii) whether or not the development was permitted development, as there was no active agricultural use on the land; and iii) was the development operational development or a material change of use of the land? And if so, whether or not it amounted to inappropriate development in the Green Belt.
64. The Inspector concluded that: i) there was no evidence that the imported material had ceased to be waste; ii) the development did not benefit from PD rights under Class A of Part 6 of Schedule 2 of the GPDO, as the land was not in agricultural use at the time; and iii) the development was a material change of use, the activities required planning permission and it would constitute harm to the Green Belt. All appeals were dismissed, and the enforcement notices were upheld with variation of the compliance periods.