COGGESHALL PARISH COUNCIL

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Dear Sir or Madam

Dated 20-Sept 2021

Re application ref ESS-36-17-BTE-01 (66) Discharge of Condition 66

The Parish Council **objects** to the discharge of Condition 66.

Whilst we acknowledge that the applicant has complied with condition 66 insomuch as they have provided a plan of action within the timeframe required, the **Plan of Action (PoA) does not meet the full requirements of condition 66. Consequently, Coggeshall Parish Council (CPC) objects to the removal or discharge of Condition 66** on the basis that the PoA

1. Is non-compliant;
2. Contradicts the Authorised permission granted in 2016;
3. Is not viable as consented by their own admission and therefore ECC must stop the development;
4. Goes against the express wishes of the inspector's original decision;
5. Does not comply with waste hierarchy as stated in the ESS/36/17/BTE stack height refusal;
6. Does not represent 'non-material changes' and as such requires a new application
    a. Changes significantly,
    b. Is described in a different way,
    c. Has components removed meaning it is designed differently,
    d. Will result in different objections;

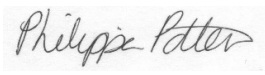
    and
7. Contravenes the policies W8A and now W10B and W10C.

Consequently, the Plan of Action is unacceptable with respect to discharging condition 66.

Furthermore, as the applicant confirms they will not adhere to the authorised permission, CPC requires ECC to enforce condition 66 and cessation of the development coupled with a scheme of rehabilitation.

Please find this response to the planning application in the following pages.

Yours faithfully



Philippa Potter

Locum Parish Clerk

For and on behalf of Coggeshall Parish Council

1 Introduction

This document sets out the reasons for the objection to the discharge of Condition 66 by Coggeshall Parish Council.

1.1 Relevant history and background

In 2010 the Inspector permitted an Integrated Waste Management Facility (IWMF) in its entirety, and the then Secretary of State (SoS) supported this. At no point did he allow for individual components to be omitted, with the IWMF being described as

> *The Integrated Waste Management Facility comprising: Anaerobic Digestion Plant treating mixed organic waste, producing biogas converted to electricity through biogas generators; Materials Recovery Facility for mixed dry recyclable waste to recover materials e.g. paper, plastic, metals; Mechanical Biological Treatment facility for the treatment of residual municipal and residual commercial and industrial wastes to produce a solid recovered fuel; De-inking and Pulping Paper Recycling Facility to reclaim paper; Combined Heat and Power Plant (CHP) utilising solid recovered fuel to produce electricity, heat and steam.*

The above description has been used in all subsequent applications and in each of the many variations, notably the removal of the geographic limits, other time extensions and ESS/34/15/BTE.

In 2015 the applicant applied for a 2-year extension to the 2010 planning permission to build an integrated waste management facility and was granted a 1-year extension with the history to that point demonstrating ongoing delays, changes and planning creep.

In 2016 ECC granted ESS/34/15/BTE for the 'Variation' of condition 2 (application drawings) of planning permission to allow the amended layout of the IWMF, with some 69 conditions.

This variation changed the overall capacities of the IWMF. It reduced the anaerobic digestion and Mechanical Recovered Fuel by 70% and increased incineration from 365,000 tpa to 600,000 tpa.

These changes demonstrated an early desire to move towards a totally incineration-based solution.

It is worth noting that in condition 3 imposed within the decision notice for ESS/34/15/BTE the footnote 2 clarifies that the '*IWMF shall be defined as the buildings, structures and associated plant and equipment for the treatment of waste at the site'.*

Aside from the liaison meeting in early 2021, at no point has the applicant indicated that they would not comply with the authorised permissions.

After lengthy delays and 3 attempts to secure an Environment Agency (EA) permit, including a rejection of the increased stack height and the need for the incinerator by the Development & Regulation Committee, the applicant finally acquired a permit to operate in conjunction with their new operator Indaver in mid-2020 with a continuation of site operation around the same time.

Furthermore, and as a result of ESS/34/15/BTE (granted 28th February 2016) the applicant entered into a S106 agreement.

They fully accepted all the conditions at their own risk, with no EA permit to operate and no operator making a legal start on 2nd March 2016, just days after the capacities change was permitted.

Condition 66 sets out

> In the event that the IWMF is not brought into beneficial use within 5 years of commencement of the development (as notified under condition 1) the operator shall within 6 months of the end of the 5 year period submit a plan of action for an alternative use or a scheme of rehabilitation for the **site for approval by the Waste Planning Authority**. The Plan of action for an alternative use or scheme of rehabilitation shall be implemented within 6 months of approval by the Waste Planning Authority.
>
> Reason: To ensure that if the development of the IWMF is not progressed to a beneficial use within a reasonable period, that the site is either planned for an alternative use or the site rehabilitated in the interests, of minimising the adverse environment impacts of incomplete implementation and in accordance with WLP W8A, W10E and MLP DM1 and BCS policies CS5 and CS8.

2 Reasons for our objection

The following table is a brief summary of the IWMF components as per the authorised permission and shows the implications if the proposals from the applicant are accepted.

IWMF component	Description	Proposals
Anaerobic Digestion (AD) facility	For treating food and green waste generating biogas for production of electricity on site and generating a compost like output.	**To remove this element primarily as there is no market and the recent award of the AD to an existing provider in Essex.**
Materials Recycling facility (MRF)	Sorts through waste recovering recyclables such as paper, card, plastics and metal. Recyclables, except some paper would be exported from the site for reprocessing.	**To be removed from the integrated approach implying the incineration of municipal waste as well as commercial and industrial waste.**
Mechanical Biological Treatment (MBT) facility	Treats waste by mechanical treatment e.g. shredding and then biological treatment using air and moisture to bio-stabilise the waste, the output being a Refuse Derived Fuel (RDF)	**To be removed from the Integrated approach as there is no market and awarded to an existing MBT plant in Essex.**
De-Ink Paper pulp plant	Reprocess waste paper imported to the site, as well as any suitable paper recovered by the MRF and would utilise, heat, steam and power generated by the CHP. Paper pulp board would be exported from the site	**To be removed from the integrated approach as not commercially viable.**
Combined Heat and Power (CHP) plant	Intended to use RDF generated on site and some imported to RDF/Solid Recovered Fuel (SRF) to generate heat, steam and electricity to be used on site. Some electricity would be exported to the National Grid.	**The ONLY component to be retained.** **The removal of the RDF means total reliance on imported fuel waste.** **The removal of the Paper pulping significantly reduces efficiency as energy is wasted going up the stack.**

It needs to be highlighted that the correspondence from the applicant's planning representative was received on the last day of the timeframe (2nd September 2021) dictated by condition 66. It was received with no offer of restitution during the 6 month grace period despite their informing the liaison committee on 26th February 2021 of their intentions to build only the incinerator and that they were in breach of condition 66 on 17th June 2021.

Given the above and all the 'historical meanderings and planning creep' it is also clear that the applicant had no intention of progressing IWMF to a beneficial use within the required time frame, has no intention of meeting condition 66 or complying with the permission granted insomuch as the details provided pursuant to Condition 66 (ie the Plan of action for an alternative use or a scheme of rehabilitation);-

1. are not acceptable in terms of the original Inspector's decision (endorsed by the then Secretary of State);
2. are not in accordance with the authorised planning permission;
   and
3. place the Waste Planning Authority (WPA) in a position where they are forced to accept further unknown changes irrespective of their nature;
   and finally
4. are not Non-Material in themselves, representing the second major change and, as such require a new application.

Turning to the letter ref OXF1170 it provides and action plan with 3 options:

2.1 Option 1;-Adhere to the 'authorised planning permission'

Whilst this option masquerades as compliant, the submission contradicts itself by stating that while their immediate focus is on the incinerator, **'other consented components'** may be developed that **'might'** be brought forward. This implies an arbitrary approach to the authorised planning permission.

2.1.1 Reason for objection

The option is without any substance, detail or timeframe and is therefore NOT a plan of action and certainly bears no resemblance to the authorised planning permission.

Furthermore this option states there may be 'Commercial or Technical reasons' preventing the IWMF completion as authorised.

Commercial reasons are not material to this application and as such must be dismissed whereas technical reasons are the responsibility of the Environment Agency and not a planning consideration. (It is a commonly held belief that it will not be possible to operate the site with a 35m stack above local ground level.)

2.2 Option 2;- Build commercial and technically viable elements

Again this is not an action plan but limits the submission to reliance on the commercial and technical viability and clearly states yet again *'the possibility of us not building out certain elements of the consented scheme if they prove untenable technically or commercially'.*

This option simply tells the planning authority what they are not going to do and forces the WPA to accept this and other future changes.

2.2.1 Reason for objection

As stated above, commercial reasons are not material to this application and must be dismissed. In contrast, technical reasons are the responsibility of the Environment Agency and not a planning consideration.

We would further extend our comment on the stack height adding that, whilst the 35m has been proven in models and in theory, there is no other stack this low in the UK[1], or operational evidence that successful operations have ever been delivered with a stack this low coupled with the proposed capacity of this process (600,000 tpa).

We believe that this and other technical and operational risks are now manifesting themselves and the lack of detailed design is deliberately intended to obscure these technical issues.

2.3 Option 3;- Increased power output

The applicant states that 'should we wish to apply for something that falls outside the scope of the current planning permission, we will of course approach you'. However, as we have identified above, this is simply not true: the capacity has already been increased by over 60% and a further increase is irresponsible.

2.3.1 Reason for objection

Of even greater concern is the aspiration to increase the meagre output of the incinerator. This can be achieved with further changes to the design and an increase in capacity, meaning an even bigger incinerator.
It cannot be acceptable to have an option within a plan of action that is so vague and so controversial, and that introduces substantial risk across the board, especially since we have already seen the applicant's intention to reduce the integrated element and to 'focus' on incineration.

Our summary of the Plan of Action and proposed options is that they do not comply in any way with the authorised planning permission; neither do they tell the WPA what is being delivered. The applicant cites flawed reasonings at the expense of the planning system that would serve to inject considerable unacceptable commercial and planning risk and uncertainty.

3 Applicable policies

Condition 66 refers to a variety of policies in support of its inclusion as a condition, namely

1. Waste Local Plan W8A, W10E
2. Minerals Local Plan DM1
   and

[1] Source Environment Agency

3. Braintree Core Strategy policies CS5 and CS8

These policies are now ever more relevant as we have a significant increase in climate change, more and more climate change data is becoming available, and there is far greater knowledge now then there was in 2016, let alone 2010.

3.1 Waste Local Plan

The WLP has recently been reviewed and whilst the policies cited were part of the original Plan applicable in 2016, they still apply.

3.1.1 Policy W8A

The policy referred to as W8A sets out the requirements for the management of waste. We now know that the D&R committee rejected the requirements for the incinerator with the increased stack height application ESS-36-17-BTE not only on the grounds of visual impact but

> *It has not been demonstrated that there is a need for the waste treatment capacity of the IWMF, in Essex and Southend-on-Sea, beyond those shortfalls identified in Policy 1 of the Waste Local Plan and as such would be, likely to give rise to waste not being managed in accordance with the principles of the Waste Hierarchy, of achieving net self-sufficiency for waste management in Essex and Southend-on Sea and the Proximity Principle, contrary to the NPPW and would undermine the strategic objectives of the Essex and Southend Waste Local Plan 2017[2].*

Consequently, the lack of adherence to the authorised planning permission extends to not conforming to Policy W8B and W8C below

> *b. the proposed development (including landfill) has been demonstrated to be the most appropriate and acceptable development in relation to the Waste Hierarchy, and;*
> *c. the proposal would not cause any unacceptable adverse impacts to the environment, human health or local amenity.*

3.1.2 Policy W10E

This policy states- Proposals for waste management development will be permitted where it can be demonstrated that the development would not have an unacceptable impact (including cumulative impact in combination with other existing or permitted development) on: a. local amenity (including noise levels, odour, air quality, dust, litter, light pollution and vibration);

This is now reinforced within the WLP 2021 review page 75, section 9.51
Mitigating and Adapting to Climate Change
9.51 There is a need to reduce the contribution to climate change from waste management activities while also adapting to its potential effects.

[2] Source ESS/36/17/BTE decision notice

3.2 Minerals Local Plan

3.2.1 MLP Development Management Policy DM1 as amended

Proposals for minerals development will be permitted subject to it being demonstrated that the development would not have an unacceptable impact, including cumulative impact with other developments, upon:

1. Local amenity (including demonstrating that the impacts of noise levels, air quality and dust emissions, light pollution and vibration are acceptable),

2. The health *and wellbeing* of local residents, *as well as the wider community,* adjoining *who could be impacted by operation of* the site *development*,

3.3 Braintree District Council Core Strategy Policies

The following Braintree District Council Core Strategy policies are applicable:

3.3.1 Policy CS 5 The Countryside

Development outside town development boundaries, village envelopes and industrial development limits will be strictly controlled to uses appropriate to the countryside, in order to protect and enhance the landscape character and biodiversity, geodiversity and amenity of the countryside.

3.3.2 Policy CS8 Natural Environment and Biodiversity

All development proposals will take account of the potential impacts of climate change and ensure the protection and enhancement of the natural environment, habitats and biodiversity and geo-diversity of the District. This will include where appropriate protection from:-

- Air, noise, light and other types of pollution
- Excessive use of water and other resources

Further information from section 8.4

The Ecological Footprint for the world is 2.2 global hectares per person, but the UK average is 5.4 global hectares per person. This is 65% higher than our ecological budget (the sustainable amount we can use). The Ecological Footprint for Braintree District as at 2002 was just below 5.5 global hectares per person (Stockholm Environment Institute). There is therefore a need to reduce the impact of the District.

3.4 Reason for objection

Based on the above it is clear that the Plan of Action contravenes all these policies especially given the evidence now available with respect to climate change, Global warming, the impact of CO2, air quality and changes in knowledge that have occurred since 2016 when these policies are overlaid on Condition 66.

4 Duty to Cooperate

The Waste Planning Authority has to Cooperate to *establish existing spare capacities both inside and outside the Plan area to manage such waste*[3].

As part of that duty to cooperate, we wish to point out there is now significantly more available incinerator capacity and as such there is an opportunity to collaborate with other Waste Planning Authorities as part of this Duty to Cooperate.

At present, there are 54 fully operational facilities which in 2019/20 had a capacity of 16.13 million tonnes.

In the same year 11.6 million tonnes was incinerated, leading to a 4.53 million tonnes spare capacity[4] (over 30%).

It needs to be taken into account considering these changes and the need for a new application.

5 Conclusion

The world has changed in the decade since the IWMF was permitted and conditions imposed, and not just due to Covid.

This objection is not just to the incinerator, it is also an objection to the way in which the applicant has shown total disregard for the Planning Authority, the Secretary of State and the planning process designed to protect human health and our environment with continuous change, planning creep and by disguising their ultimate objectives and continuing to hoodwink the planning authorities.

In the decade of delays and change we have gained a much deeper understanding of how air quality impacts human health and the environment and the incinerator has become unacceptable.

We now understand the impact of poor air quality and the damage that the emissions from the incinerator will do to both our environment and our health with Climate change, small particles, and with CO2 emissions taking centre stage and driving an unprecedented 2.7^{o}C increase in global warming[5].

How is it acceptable to permit this level of CO2 under these circumstances?

Furthermore there is now irrefutable case-based evidence that poor air quality is a leading cause of fatal respiratory diseases in children and vulnerable adults, and degenerative neurological conditions such as dementia;- we cannot ignore such facts.

[3] Source WLP

[4] Source Defra

[5] Source COP21

All that this Plan of Action does is to abuse the use of conditions, question their validity and inject a huge level of unacceptable risk and uncertainty;- it is simply not clear what will be delivered.

On this basis, ECC must now stop development on the site, understand what is being built and require a new application based on emerging standards, not the ones that prevailed 5-10 years ago, before making a much more informed decision

Addressing condition 66 provides the opportunity to reassess environmental impact and climate change impact in light of current data, thinking and evidence.

5.1 Reason for objection

Given that options 1 & 2 are in themselves non-compliant and therefore unacceptable, CPC objects to the discharge of Conditions 66 because the Plan of Action;-

1. Has no substantial detail;
2. Contradicts itself;
3. Contravenes the authorised permissions;
4. Contravenes the original Inspector's decisions supported by the Secretary of State;
5. Does not conform to the waste hierarchy;
6. Opens the possibility for an even bigger incinerator (to increase electrical output);
7. Forces ECC into an unrecoverable position concerning future changes; and
8. Results in significant commercial and planning risk and subsequent exposure.

In addition, the changes are material, substantial and therefore require a new application since the proposals

1. Significantly change the size and proportions; as shown in the table on page 3;
2. Alter the description from an integrated waste management facility to an incinerator only; as shown in the table;
3. Change the application site area as regards the allocation of land to Indaver and the land retained by Gent Fairhead along with the change in associated activities;
4. Significantly alter the design of the facility changing from an integrated waste facility to that of incineration; as shown in the table; and
5. Would affect objections to the original proposal.

In addition the letter ref OXF1170 admits that the IWMF lacks commercial viability but makes it very clear the developer has no intention of adhering to the authorised permission.

Consequently, the only alternative is to halt works on site enforce conditions laid down by ECC and force a completely new application for either the changes to the authorised permission or the alternative use as stated in option 3.

Furthermore, the applicant is adopting this approach as it is less risky and costly than a new application, which they know to be the correct course of action, even considering the legalities of challenging a refusal from the D&R committee.