



RTPI

mediation of space · making of place

Royal Town Planning Institute
41 Botolph Lane
London EC3R 8DL
Tel +44(0)20 7929 8178
Fax +44(0)20 7929 9490

Email online@rtpi.org.uk
Website: www.rtpi.org.uk

Registered as a charity in
England (number 262865) and
Scotland (SC 037841)

Patron HRH The Prince of Wales KG KT PC GCB

Review of Waste Policies
Defra
Area 6C, Ergon House
Horseferry Road
London, SW1P 2AL

Sent by email to: waste.review@defra.gsi.gov.uk

7 October 2010

Dear Sir/Madam,

Review of Waste Policies

Thank you for the opportunity to respond to this consultation. The RTPI represents some 23,000 spatial planners, existing to advance the science and art of town planning for the benefit of the public. Members of the RTPI are directly involved in planning for waste management facilities, at all levels, from the provision of strategic-scale processing plants, to the location and design of domestic bin stores. Their involvement is largely (but not entirely) restricted to the management of land-uses and the provision and design of facilities necessary to process, store and re-use waste.

The attached response represents the views of professional planners, including “generalist” planners and specialist waste planners, working in the fields of planning policy, development management and enforcement. Planners working in these fields encounter the direct concerns of members of the public with waste facilities, since they are involved with delivering and managing these facilities on the ground.

I also attach separately a response prepared by the National Association for Planning Enforcement (NAPE). Although NAPE is affiliated with the RTPI, membership is not restricted to chartered town planners, thereby enabling the full range of enforcement professionals to participate, whatever their background. NAPE’s views are consistent with the wider views of the RTPI response, but obviously focus on the issues particular to enforcement.

I also attach our recent response to the Defra consultation on the transposition of the Waste Framework Directive, in case this is of any interest to you.

Please do not hesitate to contact me if the RTPI or NAPE can be of further assistance.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Matt Thomson', followed by a long horizontal flourish.

Matt Thomson
Head of Policy & Practice

cc
enc

RTPI response to DEFRA Review Of Waste Policy In England 2010-2011: Call for Evidence

In the following comments, paragraph references are to the Defra document:

Introduction, para. 1.3

One of the Government's stated overarching objectives in this review is to assist the drive to localism, whereby decision-making powers are decentralised to local authorities and beyond them to communities themselves (though how these are to be defined presumably awaits publication of the Localism Bill later this year).

There are multiple risks here to the timely delivery of the necessary facilities for modern waste management, implicitly required to deliver the review's objectives. Waste management is one of the least popular forms of development. While planning approval rates for waste management facilities have been consistently high (usually 80-90%), that may well have reflected strong and clear national policy in PPS10, support from the Government Offices (GOs) and in two-tier areas from County Councils, which could be blamed locally for "imposing" unwelcome waste facilities. However, the GOs have already been abolished, and there are now question marks about whether national statements of planning policy will continue at the level of detail at present in PPS10.

CLG's Chief Planner has signalled that national planning policy is to be digested down to a shorter more "high level" statement of general principles in a National Policy Framework, leaving local discretion on how far more detailed policies are framed and adopted in local plans.

Given the general local hostility to any form of waste management facility, and the proposed strengthening of local opinion through the likely increased use of local referendum powers on controversial proposals, there must be a significant risk that suitably clear and robust policies will not be put into plans (particularly over the vexed issues of specific locations and locational criteria) and that approval rates for applications for waste management facilities will fall.

The time taken to consider and decide waste applications (often already much longer than the norm for development generally) will inevitably increase where applications trigger a local referendum.

Neither outcome would work in favour of the Review's stated objectives. Views on how to deal with any adverse effects of the removal of regional Government and increased opportunities for local opposition to proposals should therefore explicitly be sought in Defra's formal consultation on the Review in due course.

General questions

2.3: a Zero Waste Economy would require a wider range of waste management sites, facilities and other development than at present, to ensure that all waste streams are appropriately treated to recover materials for recycling, re-use and/or use in Energy from Waste (EFW). That in turn would need to be supported by clear and positive national planning policies. To replace PPS10 at national level by a brief high-level statement of broad planning principles, as seems to be under consideration, leaving it to local authorities to decide whether to supplement that with detailed local policies on waste, would work against, rather than supporting, the zero waste objective for the following reasons:

1. Waste facilities are not popular locally, and waste plans under both the previous and present plan-making systems have made painfully slow progress over the past 20+ years. (So much so that the European Commission has for a number of years been expressing concern that the UK is not fulfilling the long-standing requirement under successive versions of the Waste Framework Directive to put in place a compliant National Waste plan – which the UK has conceded comprises national Waste Strategies, national policy statements such as PPS10 and, crucially, local waste plans. A widespread failure to identify in these plans suitable locations for waste management facilities or to include clear locational criteria has been of specific concern). It is not realistic to expect local authorities to be enthusiastic about writing detailed local planning policies for waste management to replace the present level of detail in PPS10 (and any modifications the outcome of the present Waste Strategy review might require) or to be more specific about locations, especially in the climate of local discretion to be created by the Localism Bill. It could plausibly be argued locally that if the Government reduces what it says about planning for waste management in any new national statement of planning policy that can only mean it is reducing the priority it attaches to this area of national infrastructure;
2. Even if motivated to write such policies, authorities are unlikely to have the resources to take on this additional work at a time of severe and increasing expenditure restraint. Somerset County Council, a waste disposal and waste planning authority, recently announced it was contemplating a cut of 25% in its staff. It is probable that similar intentions are being framed in many other waste authorities.
3. See comments on disposal at 2.8 below; it is clear that there will always be some waste that needs to be disposed of, and it could be argued that the ‘Zero Waste Economy’ is therefore unattainable. It might be more honest if this title is dropped in favour one that reflects an economy where **waste is valued as a resource**. This will have the benefit of turning the industry into one of resource management, which sounds much more neighbourly and environmentally friendly, and has positive implications for long-term employment opportunities. Communities need to understand that at the moment much of this resource is being lost to our economy, both by poor quality waste treatment but more particularly because much of the high value waste e.g. paper, card, plastics and metals are being exported for use abroad, both in Europe and the Far East. Wood is also increasingly being exported, for use in renewable energy generation plants abroad. In other words we are allowing others to benefit from our lack of facilities at home, and to advance towards a higher proportion of renewable energy supply at our expense.
4. At present, the UK’s waste industry is primarily represented by ESA, the membership of which is dominated by the large waste companies, largely foreign-owned. However, much of the introduction of new and improved waste treatment is happening at the local level by myriad small companies. A way must be found to harness their skills and knowledge to allow the sharing of experience and the provision of guidance on continuing to develop the industry, without compromising their commercial and competitive position.
5. On the question of local authority responsibilities and minimisation of illegal activity, please note the response by NAPE, which forms part of the RTPI response on the need for resources to monitor and control the environmental impacts of the waste industry.
6. The new strategy needs to take account of the fact that the Proximity Principle has caused significant commercial problems. It no longer forms one of the bases of the National Waste Strategy, having been dropped when BPEO was removed. The Government had gone beyond the EU Directives, which require the Proximity

Principle to be demonstrated only for waste being disposed of and had encouraged all waste to be managed in accordance with the principle. Many local authorities still place far too much reliance in their decision making process on this principle, causing problems with developing or making viable new, advanced waste treatment facilities which may require a wider “catchment area”, maybe across a number of authorities’ areas, but in return offer a better outcome in terms of ultimate waste minimisation. Government policy should revert to that required by the EU Directives. A detailed explanation is included in the attached Appendix 1.

2.4: Waste prevention: the planning system has little part to play in the prevention of waste, therefore our comments here are limited. However, a potentially key aspect of waste prevention that could be considered is the impact of redevelopment on the production of waste building materials, and whether greater emphasis in national planning policy on the re-use of existing buildings where possible, rather than their demolition and redevelopment, might have a role in reducing the production of waste.

2.5: Preparation for re-use: the first and third bullets (increasing activities to prepare for re-use, and removing barriers) both imply that the local planning process (both in plan-making and the consideration of individual applications for permission to develop) ensures that sufficient and suitable facilities are made available, either by allowing for the conversion or change of use of existing sites or by consenting the development of new facilities in appropriate locations.

The step-change in re-use which this Review seeks to achieve will require a step change in planning activity to deliver the required facilities. This is why the emerging direction of change in planning (the ending of regional planning activity, greatly reduced and higher level national policy, and the impending reduction in resources for planning in local government) is so worrying – because it points in the opposite direction from that which the stated objectives of this Review imply, and indeed will require.

This review of waste policy in England would be the opportunity for Government in parallel to change the General Permitted Development Order, to introduce PD rights for the waste industry. A detailed response was made to Government in 2004 by ESA (a copy can be provided upon request) which set out the industry’s proposed additions. The introduction of some PD rights for the industry would help to reduce the burden that currently exists as a result of any change at a waste site requiring planning permission. Such a change would be in line with the Government’s broader deregulation agenda.

This review of policy is also the opportunity for Government to amend the Use Classes Order within the planning system to allow certain waste treatment operations, for waste re-use and for recycling to be carried out in what are categorised as industrial (use class B2) buildings. A detailed case in this regard is to be prepared by members of the RTPI’s EPP Network and will be forwarded to DEFRA in due course (see also the RTPI’s response to the consultation on the transposition of the Waste Framework Directive – attached).

2.6: Recycling: the comments under para. 2.5 apply equally to 2.6.

2.7: Energy recovery: in relation to all the issues raised, hostile public attitudes reflected in and reinforced by local political attitudes have made proposals to develop incineration with energy recovery plants particularly contentious. Even where applications are made for plants of over 50MW in output, and therefore fall to be considered by the Secretary of State for Energy and Climate Change under the Electricity Act (and now through the nationally significant infrastructure projects system), the controversy can migrate from the local planning process to judicial review applications, leading to considerable delay in implementing proposals. High levels of hostility have been generated by various environmental groups since the 1990s, sustained by at best an ambivalent attitude to

incineration by the previous Government's ministers from 1997 until the early 2000s. A Prime Minister's Strategy Unit report in about 2003 ("Waste Not, Want Not") tried to reverse this by addressing head-on the allegations of health hazards, and putting these into their proper statistical and scientific perspective.

Anaerobic Digestion (AD) does not appear to have attracted the same degree of public hostility as incineration with energy recovery but still suffers from the general local dislike any specific waste management proposals, as well as a more understandable distrust of new waste technology. There are a number of difficulties in the delivering the high level of renewable energy from this technology as follows:

1. Due to the potential for odour problems, these facilities must be located in the open countryside, where the extent of built development is likely (usually rightly) to be contrary to policy, especially if the open countryside is Green Belt, National Park, AONB or other protected landscape.
2. Although AD has been around for centuries and is well developed on the continent of Europe, the waste industry in this country is having difficulty in finding the right technical solution for the waste streams that it is handling. Each AD technology, and there are many to choose from, requires its own specific recipe of inputs and getting this recipe right is the key to the efficient working of the plant. Much R&D remains to be done; providing financial or other assistance from Government would help to move this forward more quickly.
3. The capital investment is large and securing it requires an operator to guarantee a level of inputs sufficient to make the plant profitable. Given the particular mix of inputs needed for the chosen technology, this can be very difficult to achieve at a commercial scale.
4. The Government needs to learn from the recent experience of the industry in getting sites up and running; inviting successful and unsuccessful operators to discuss their problems would be one way of achieving a better understanding of the problems facing the industry in rolling out the level of energy recovery that the Government is aiming for.

Despite the continuing difficulties, there seems to have been some increase in acceptance and hence of permissions for EfW plants in recent years. However, cases can still be controversial, and success is patchy. Success is likely to be due partly to a number of smaller schemes coming forward for pyrolysis and gasification rather than incineration. If the Waste Review is to call for a step change in the scale of EfW through thermal treatment and AD, concerted effort to support local decision-makers needs to be mounted by the Government. Without this, and in the expected climate of increased local choice to be created by the Localism Bill, local authorities and communities are not going to deliver the sought after outcome, either in framing suitably pro-EfW policies in their plan documents, or in their decisions on cases.

There must therefore be a concerted effort to demonstrate the benefits of EfW to local communities – including the dispelling of myths, but this must be supported by clear national policies in favour of EfW, along with maintenance of the landfill tax escalator, to keep up the pressure to divert out of landfill as the default option. And for the larger EfW plants up for ministerial decision, legal challenges must be robustly defended where good applications are based on sound planning principles (as they always should be). In addition, for smaller projects that have had to resort to the normal planning appeal process Inspectors at PINS need to be trained or encouraged to minimise the weight given to fears of adverse health issues in the arguments. Inspectors also need to be fully briefed on the newer technologies such as pyrolysis and gasification, and indeed on AD, with which they are at present naturally less familiar.

The Government needs to promote the approach taken in the wind power industry in providing community benefits from EfW.

2.8: Disposal: Landfill may still be needed for EfW (thermal treatment) residues for which there is no further economic use and it will still be needed for inert sub-soils and construction excavation clays which cannot be re-used and which are needed for the restoration of mineral workings. (Even the EU Landfill Directive does not envisage zero landfill). The Landfill Tax escalator is proving effective and needs to be maintained. Remember that each step towards zero landfill becomes harder (and more costly) to achieve. There may well come a point where further effort is not the best use of scarce resources, which could be used more effectively elsewhere to improve the overall environmental performance of the waste management sector.

Additional comment: The call for evidence makes no mention of the distinct possibility in the future of mining old landfills to recover the non-biodegradable materials that now have a value e.g. metals, hardcore, hard plastics. In some locations the value of the cleaned up land for housing development will make such an operation economic. Policies need to be in place to encourage but control it, where this approach is appropriate.

Appendix 1 Proximity Principle

The Waste Framework Directive 1975 Article 5 and the Proximity Principle derived from it applies to waste disposal – see note below. The Waste Framework Directive 2008 makes it clear that Energy from Waste is classed as recovery.

A key objective of **Planning Policy Statement 10 Planning for Sustainable Waste Management** is to reflect the needs of business whilst encouraging competitiveness. It is possible that a restriction specifying a waste catchment area, in accordance with the Proximity Principle, represents a restraint of trade. This causes a risk of creating a situation whereby once one site has been developed, no new site of that waste management type will be created within the catchment area of that site, because of the problem of sourcing sufficient input, which will create an effective monopoly within that area. This will directly lead to decreased competition and drive up prices. Whilst it may be possible to argue that a limited number of facilities are all that might be required for municipal waste treatment (although there is a strong case for competition in that case to provide best value to the taxpayer) the commercial and industrial sectors produce a great deal more waste than the total municipal output, and as such desperately need an unregulated and unhindered choice of waste treatment options, to provide sufficient capacity and choice.

PPS10 does not mention a 'proximity principle' or 'regional self-sufficiency' and only refers to policies that '*enable waste to be **disposed of in one of the nearest appropriate installations***'. (Para.3. emphasis added).

Note

Waste Framework Directive 1975: Article 5 states that

1. Member States shall take appropriate measures, in cooperation with other Member States where this is necessary or advisable, to establish an integrated and adequate network of disposal installations, taking account of the best available technology not involving excessive costs. The network must enable the Community as a whole to become self-sufficient in waste disposal and the Member States to move towards that aim individually, taking into account geographical circumstances or the need for specialized installations for certain types of waste.

*2. The network must also enable waste to be **disposed of in one of the nearest appropriate installations**, by means of the most appropriate methods and technologies in order to ensure a high level of protection for the environment and public health.*

Proximity principle

The proximity principle exists in European law (Waste Framework Directive 1975, amended 1991) and states that waste should be **disposed of** in one of the nearest appropriate installations. This limits the environmental impact of transporting waste long distances and helps to ensure that communities take responsibility for their own waste rather than dumping it on others. The UK's interpretation of the proximity principle was stronger than European law in the last version of waste planning guidance:

- it referred to all forms of waste management, not just disposal;
- it referred to the need for waste to be managed as near as possible to its place of *production*;
- it was supported by the principle of regional self-sufficiency which stated that "*Each region should provide for facilities with sufficient capacity to manage the quantity of waste expected to need to be dealt with in that area.*"

RTPI/NAPE response to Defra call for evidence on a review of waste policy and delivery in England.

National Association for Planning Enforcement

Further research is required to engage with waste operators, to understand their views and operating challenges to ensure the appropriate delivery of waste handling facilities, and to prevent an enforcement system based on 'systematic compliance' disproportionately influenced by planning enforcement officers

In the absence of further research it is still possible to identify a number of barriers to the effective enforcement of waste sites. These include:

1. Lack of (council) resources
2. Financial gains to be made
3. Low level of penalties
4. Discretionary nature of enforcement
5. Poorly worded or inappropriate conditions

To address this, it is recommended that the monitoring system currently applied to minerals sites be expanded to incorporate waste sites. The monitoring system would generate a fee income to help address the resource requirement for effective enforcement and pro-active monitoring.

There is likely to be some resistance to this proposal by those in the waste industry, particularly where there is seen to be a duplication of roles between the LPA and the EA. However, if conditional planning permissions are framed within the context of PPS23 then there should be a minimal overlap of regulations. Where the LPA and EA do have joint responsibilities, the pragmatic approach would be for joint visits, with only one agency charging per visit. This would facilitate closer working between the agencies and an improved understanding of the overall site, thus prevented contradictory operational demands of the operator.

The current monitoring system does not include any charges for unauthorised or unregulated sites. An argument can be made for charging for such visits. However, the introduction of a more punitive system is likely to undermine the current process of negotiation that can bring forward acceptable developments.

Given the continuing absence of a definitive definition of waste, it is difficult to justify the criminalisation of breaches of planning control in respect of waste. However, following from Perksy's (1988) findings and the 1976 Stevens Report, it is recommended that operators forfeit the profits made from unauthorised activities that continue following formal enforcement action. Alternatively, the maximum fines could be increased with provision for the courts to require the remediation of the harm to amenity either through a form of community sentence, or by using the fine income.

Whilst there is little call for additional powers to deal with the vast majority of planning breaches, there is a consistent concern that the current enforcement system is not geared to adequately address habitual abusers of the planning system. A streamlining of the application and enforcement processes, with clearer timescales, as set out above would reduce the unauthorised financial gains to be made.

However, intelligence sharing on habitual planning abusers is currently reliant on informal networks between the different agencies. It is therefore recommended that these existing networks be enhanced to improve intelligence sharing.

Further, there is currently no central record of the formal notices served, or of the recipients of such notices. A central database would help to identify habitual abusers of the planning system. This would assist LPAs in preparing a robust cost-benefit analysis, and inform Members, when considering whether to serve a SN or to take out an injunction. This database could potentially be administered by NAPE with the assistance of the PAS, as the national association representing those involved in enforcement.

It is clear that the waste industry is set to continue to grow, as landfill supply diminishes and that this may extend the range of materials that can be recycled or reprocessed. Therefore, it is key that a clearer definition of waste is agreed to facilitate an effective planning system, and therefore clarify the changes of use that can occur within permitted development. It is recommended that the use classes order be amended to introduce a new waste class, in line with the ESA (2004) proposal. Additionally, proposed changes in the types of material handled on a site should be referred back to the LPA given their varying potential impacts and allow for the appropriate conditions to be applied. For example, glass recycling is likely to have more noise but fewer odours associated with it as compared to composting.