Your ref WS010003
ARROW ref 10024954
Nicola Escott ref 10024302

ARROW 16 – Comments on Whitemoss Summary of October Hearing

by
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Timetable:

1. The timetable for comments on the summaries of the October hearing is very tight given the volume of material submitted by Whitemoss – the 30th October hearing summary runs to 412 pages alone.
2. This presents a particular difficulty for a community group like ARROW which operates on a small budget and which, unlike the applicant, does not have a large team of lawyers and consultants retained specifically for this application, but is reliant on the availability of external expertise for technical issues.
3. These comments are therefore constrained by the timescale available and do not represent the full response ARROW would wish to make. They are submitted for the deadline in order to highlight some of the more important issues but ARROW would request confirmation that further submissions in response to the documents can be made by the 17th November deadline for "Outstanding comments on documents submitted before 17 November 2014".

Comments on Schedule A to the letter to R Ranger dated 30th October 2014

i. Need

4. The applicant suggests that the Secretary of State should not consider whether there is a 'need' for the landfill.
5. Evidence has already been presented to show how, if the application had been for a smaller hazardous waste landfill site, consideration of capacity and 'need' would be an important issue in the local determination of the application. The burden would have been a heavy one given the policies in the Minerals and Waste Local Plan. This followed the removal of the allocation for the Whitemoss site after careful scrutiny of the 'need' issue during the EIP. It would be quite anomalous for the land use planning regime to require a more stringent test for a smaller landfill than for a larger one[1].

[1] We should note that we maintain our concerns that the application is not, in any case, being determined appropriately with the use of the NSIPs procedure. Besides the question of actual capacity this application is not for a new facility but rather for the "alteration of a hazardous waste facility in England where the main purpose of the facility is the final disposal or recovery of

6. It is convenient for the applicant that WML appear to misunderstand the intention of the NPS in reaching the conclusion that s.3.1 relates to the quantum need rather than need for the types of facilities considered in the NPS.
7. This is clear from the two references in the NPS to the Secretary of State assessing applications for infrastructure covered by the NPS "on the basis that need has been demonstrated". The first reference in simply in the summary of s.3.1 and this derives from the second reference at §3.4.14 which makes it clear that the need relates to "these hazardous waste infrastructure facilities" i.e. the types of facilities discussed in the section, which covers a range of different technologies including hazardous waste landfill.
8. Any other interpretation of 'need' would be irrational in relation, particularly, to landfill. Government policy "requires a reduction in reliance on landfill, with landfill only being used where, overall, there is no better recovery or disposal option" (See Principle 2, §2.4.1) and the NPS emphasises at 3.1: "There is a need to substantially reduce the relatively large amounts of hazardous waste continuing to be sent to landfill"
9. "A strategy for Hazardous Waste Management in England" also confirms that "The planning system already has a role in restricting the availability of landfill" – this would not be possible if the capacity of any large landfill proposal was not considered as part of the application and determination.
10. Furthermore the Government requires applicants "to provide evidence that the proposed facility will manage hazardous waste at the most appropriate point on the waste hierarchy and demonstrate how the facility will help to achieve the principles set out in the Strategy for Hazardous Waste Management" (§ 4.13.1). It is not possible to do this for landfill disposal without considering the quantity of waste to be be disposed and what the alternative options may be - yet the applicant has not discharged this obligation as part of the application.
11. If over-provision of landfill is made then it is inevitable that waste which would otherwise be treated higher up the hierarchy would be disposed to landfill – not

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hazardous waste" as such the NSIPS procedure is only appropriate where the alteration is expected to have the effect "in the case of the disposal of hazardous waste by landfill or in a deep storage facility" of increasing by more than 100,000 tonnes per year the capacity of the facility. The current capacity is 150,000 tonnes per year and there is thus no increase in the capacity and the NPS confirms "This means that where existing facilities are expanded, capacity would need to be increased by at least these amounts to meet the threshold requirements for consideration under the Planning Act, irrespective of whether the capacity of the original facility exceeded those thresholds". On the matter of operational timescales the guidance says only "Applications for the renewal of time-expired planning permissions would also not meet the threshold requirements set out in the Planning Act unless the capacity of the existing facility is being increased by more than the thresholds set out in the Planning Act." If this is not considered to be an "alteration" of an existing facility but an entirely new site then it follows that the existing site should be treated as a greenfield site (as the applicant now accepts it is in planning terms – see §A39) for the purposes of the application and the selection of the new operations should give no benefit to the proximity to the current operation.

least because no prudent investor will develop alternative provisions for waste if they risk being undercut on price by landfill.

12. The pricing information provided by WML at §A13 does not show that treatments higher up the waste hierarchy than landfill are cheaper than landfill. Rather it simply compares the costs of landfilling hazardous soils and asbestos contaminated materials with the price of incineration of municipal waste for energy recovery. The WRAP report does not, and was never intended to, provide comparative price data for alternative hazardous waste treatments.

Previous Planning Permissions for extensions of time to complete landfilling

13. The fact that three applications to extend the completion date were required within just ten years indicates the high levels of uncertainty with the hazardous waste market. At the time of applications it was argued by WML that the extensions were essential to allow the safe restoration of the site and that there was no alternative but to grant the applications.

14. It is also incorrect to suggest that the landfill was just meeting a regional demand at that time. The May 2011 Appendices to the LCC position statement confirmed that: "Of the 147,000 tonnes of hazardous waste produced in the Plan area in 2009, only 4,000 tonnes was sent direct to landfill. The majority of this 4,000 tonnes was deposited in the North West (70%). 1,660 tonnes (40%) of this was deposited in Lancashire: 1,200 tonnes at Whitemoss and 460 tonnes at Clifton Marsh."

15. The vast majority of the waste was therefore imported from outside Lancashire but, crucially, the waste input to the site has only recently risen, for just one year, to half the input that it is now claimed will be maintained for twenty years. That was in 2013 and is entirely due to the landfilling of an exceptional 42, 411 tonnes of recyclable[2] CRT glass (see ARROW 9). This was a specific waste stream which (fortunately for future compliance with the waste hierarchy) will not be available in large quantities in the future for reasons explained at the hearing.

The likelihood of lower levels of waste being deposited in the future

16. The information provided in relation to the Minosus site does not assist in identifying the overlap of waste types which can be disposed at the two sites.

17. From the information supplied previously by WML it appears that the majority of the waste meet the requirements of being dry; in solid granular or powder form; non-volatile; non- combustible or flammable; non-biodegradable; non-

[2] Xu, Qingbo, Mengjing Yu, Alissa Kendall, Wenzhi He, Guangming Li, and Julie M Schoenung. 2013. Environmental and economic evaluation of cathode ray tube (CRT) funnel glass waste management options in the United States. *Resources, Conservation and Recycling* 78 (0): 92-104. This confirms that overall, pyrometallurgy appears to be the most environmentally friendly and economical CRT funnel glass waste management option and that the hydrometallurgy option represents the lowest human health impact due to minimised lead emissions. Landfill fares worse than the other options.

reactive and non-radioactive. Without a significant moisture content and less than 3% Total Organic carbon.

Table 3: Whitemoss Landfill Annual Hazardous Waste Deposits by Waste Category 2009 - 2013

Year	2009	2010	2011	2012	2013
Waste Categories					
Asbestos	2808.55	3349.70	3516.18	2882.23	3519.30
Chemical & Metallic	1317.16	2340.72	2264.44	1895.62	2552.28
Glass	492.08	570.22	884.38	4022.84	42411.10
APCs/ Incinerator Slag	883.20	347.68	163.96	981.76	4360.28
Mixed	30.38	42.70	181.72	22.40	3013.76
Packaging & Filters	420.80	342.00	289.68	226.74	224.76
Sludges & Filter Cake	8986.07	7516.87	4294.86	2910.26	1947.58
Soils & Construction	11457.86	11290.62	9862.88	23004.78	14828.84
Non Hazardous Soils	163.86	1202.56	1195.98	1242.74	3151.84
Total	**26559.96**	**27003.07**	**22654.08**	**37189.37**	**76009.74**

18. WML has not identified a single significant waste stream which has been landfilled and for which there are not alternative options available within the region.

19. WML were asked at the hearing to provide evidence from Ineos, the operators of the Randle site, to support the WML claim that the site was no longer operational. The email at p241 of the bundle was sent to Randle by the consultants acting for WML – this does not provide evidence from Ineos!

20. Furthermore even taking the contents of the email at face value waste input is low but not stopped and they confirm that 150,000 tpa capacity for imported waste will be available when the new cell is engineered and that there is no intention by Ineos to hold void capacity for residues from the Ineos incinerator (as had previously been suggested by WML).

21. It is clear, therefore, that the Randle site is available for future waste arisings and that increasing the capacity in the region to give three long term disposal sites plus the SNRHW cells would give disproportionate high proportion of the national landfill disposal capacity in the NW as indicated in earlier submissions by ARROW.

22. At §A29 WML give an example of a "recent change in the implementation of a Hazard Code for ecotoxic substances and claim that wastes which contain zinc hydroxide are now defined as hazardous at concentrations of more than 0.25%. No reference is given for this claim and it is believed to be incorrect. The applicants may have mistaken the 2007 change in the H14 classification to include zinc oxide for zinc hydroxide. If so this is an unfortunate error for those involved with promoting a hazardous waste landfill site. The latest version of

the Environment Agency guidance[3] confirms that zinc oxide is ecotoxic - but not zinc hydroxide.

Possible use of inert waste for completing the site:

23. Whilst it may be technically possible to complete the site using inert waste the applicant has not addressed the significant difficulties in obtaining large quantities of suitable inert materials. The local Round 'O' quarry has permission for restoration by inert waste and the previous operators claimed that it was impossible to secure sufficient waste for restoration.

Green Belt

24. In Timmins/Lymm v Gedling BC Mr Justice Green also took the view (§26) that:

> Paragraph 79 [of the NPPF] emphasises that a "fundamental aim" of the Green Belt policy is "keeping land permanently open". The "essential" characteristic of Green Belt is its "openness". Paragraph 87 takes as its starting point that inappropriate development is "by definition" harmful to the Green Belt. In answering the question why is development "inappropriate" it is, in my view, because it is adverse to "openness". As I explain below at paragraphs [68]-[75] openness means the absence of buildings or development. Paragraph 87 reflects the policy objective of preserving the Green Belt by stating in effect that any development should not be approved except in very special circumstances. The first sentence at paragraph 88 uses the all embracing "any" on two occasions. It applies to "any" planning application. It thus applies in every circumstance. It also provides that "substantial weight is given to any harm to the Green Belt". Again the word "any" is notable: Any development constitutes an impairment of openness, at least to some degree.

25. The applicants position appears to be that "completed restored site will lead to a result that has no impact on openness nor harm to the purposes of the Green Belt, because it will be an unbuilt site covered with grass and trees" which is obviously not consistent with Timmins – not least because openness does not mean simply 'unbuilt' but 'absence of buildings or development'. The scale of the landfill development is massive and would fundamentally changes the nature of the landscape – not least by restricting existing views from a number of locations and residents.

26. We are not aware of any precedence for the applicants approach at the hearing of breaking the operations at the site down into discreet components rather than considering the operation of the site holistically in relation to the Green belt issues. It appears from the summary that it is now accepted that if part of the development is inappropriate development then it follows that very special

[3] https://www.gov.uk/government/publications/waste-classification-technical-guidance Environment Agency. 2013. *Technical Guidance Hazardous Waste: Interpretation of the Definition and Classification of Hazardous Waste (WM2) 3rd Edition.*

circumstances are needed to justify the development as a whole (but then goes on to argue that some of the elements should not be considered in the balance…). This issue is largely addressed by Mr Justice Green in Timmins and particularly in relation to discussion about the "Kemnal Manor point" at §41 to 45.

Timescale to reach the post-operational phase

27. This is an important planning issue – particularly in the context of the sustainability of very long-term environmental risks and the associated maintenance or operational requirements.

28. WML say (§B46) that the management of leachate will continue for as long as necessary – but give no indication of the time over which active pumping and treatment is necessary for the proposed mode of operation. It is, frankly, absurd to infer that pumping of leachate from within the site to maintain the inward hydraulic gradient will be continued for the hundreds of years that are necessary.

29. There are certainly historic landfill sites which will have serious difficulties in ever reaching completion but ARROW maintain that there is no precedent in the current framework of the NPPF with it's 'golden thread' of sustainable development for a hazardous waste landfill site to be approved with such long timescales over which pumping would be required to protect human health and the environment.

30. WML makes reference to financial provision at §B48 as though it addresses these concerns. WML do not say, however, that the financial provision covers just 60 years with a 5% contingency and would obviously be completely inadequate for the demands of pumping and maintenance over hundreds of years.

Other hazardous waste sites with mineshafts

31. At the hearing we asked WML for details of any other hazardous waste landfill sites situated over old mine shafts. In response they have provided (unreferenced) details of two non-hazardous waste sites claimed to be built over mines.

32. It is not clear that the two examples given are actually over shafts or just close to areas with old shafts but as no details were provided for any hazardous waste sites it is assumed that WML were unable to find any examples and that this would therefore be an unprecedented experiment in a sensitive hydrogeological location.

Engineering Requirements of the Landfill Directive

33. At §E15 WML appears to be suggesting that in spite of the fact that the site sits below the water table and needs to be pumped for hundreds of years with financial provision is only being made for 60 that they have established that the landfill poses no potential hazard to soil, groundwater or surface water.

34. This represents an obvious confusion between hazard and risk[4] and it is untenable to suggest that a hazardous waste landfill does not present a potential *hazard* to the environment. The level of risk depends on the mitigation and engineering but none of this affects the *hazard*. In any case the risk assessment relies on maintaining the inward hydraulic gradient for an impractically long period of time so the real risk is actually far greater than that assessed in the hydrogeological risk assessment.

35. The concerns raised in ARROW 14 about the failure to meet the engineering requirements of the Landfill Directive in the current design therefore remain.

[4] Put simply a *hazard* is anything that can cause harm whilst the *risk* is the chance of harm being done