



Department for Communities and Local Government

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Our Ref: APP/T4210/A/14/2224754

26 November 2015

Dear Sir,

TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78 APPEAL BY PEEL ENVIRONMENTAL SERVICES LTD AND MARSHALLS MONO LTD: FLETCHER BANK QUARRY, RAMSBOTTOM, BL0 0DD

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, I Jenkins BSc CEng MICE MCIWEM, who held a public local inquiry, which opened on 10 March 2015, into your clients' appeal against the refusal of Bury Metropolitan Borough Council (the Council) to grant planning permission for the construction and operation of an anaerobic digestion plant in accordance with application ref: 57118, dated 17 January 2014, at Fletcher Bank Quarry, Manchester Road, Ramsbottom, Greater Manchester, BL0 0DD.
2. The appeal was recovered for the Secretary of State's determination on 11 March 2015, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990 because the proposal involves significant development in the Green Belt.

Inspector's recommendation and summary of the decision

3. The Inspector recommended that the appeal be dismissed. For the reasons given below, the Secretary of State agrees with the Inspector's recommendation and dismisses the appeal. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

Procedural matters

4. The Secretary of State notes that the Inspector adjourned the Inquiry on 1 April 2015, for the reasons set out in IR1.3.2, and closed the Inquiry on 7 May 2015 (IR1.3.2). He also notes that in September 2014 the appellants wrote to the Planning Inspectorate indicating that since the submission of the original planning application they had worked with the company which would operate the proposed facility to optimise its layout which had resulted in a number of design changes (IR5.2). The Secretary of State, like the Inspector will refer to the original scheme, upon which the Council's

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determination was based, as proposal A and the revised scheme, which incorporates the design changes proposed by the appellants, which is the subject of Environmental Statement (ES) Addendum December 2014 (ESA2), as proposal B (IR5.3).

5. For the reasons set out in IR5.8-5.10, the Secretary of State agrees with the Inspector that the appeal should be determined on the basis of the original scheme, proposal A (IR5.10). However, the Secretary of State notes that both proposals A and B were discussed at the inquiry and are dealt with by the Inspector in the conclusions and recommendations to his report (IR5.10) and he has given due consideration to both proposals in his determination of the case.
6. The Secretary of State considers that the Environmental Statement, July 2013 (ES), together the *Environmental Statement Addendum-Air Quality and Planning Policy, January 2014* (ESA1), the *Revised Layout Environmental Statement Addendum, December 2014* (ESA2) and the further information relating to the ES provided by the appellants during the inquiry (IR6.1-6.4), meet the purposes of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 2011 and provide the data and information required to adequately assess the impacts on the environment of the proposed development.
7. The Secretary of State is in receipt of comments submitted by Cllr Ian Bevan dated 17 August and Mr Ian McKinley dated 21 August 2015. He has given consideration to those comments but as they do not raise new matters that would affect his decision, he does not consider it necessary to circulate them to parties prior to reaching a decision on this appeal. A copy of these comments can be provided on request to PCC@communities.gsi.gov.uk.

Policy considerations

8. In deciding this appeal, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004, which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. In this case, the development plan comprises the saved policies of the Bury Unitary Development Plan (UDP) (1997) and the Greater Manchester Joint Waste Development Plan Document (GMWP) (2012). The Secretary of State considers that relevant development plan policies include those set out in IR3.2-3.4.
9. Other material considerations which the Secretary of State has taken into account include the *National Planning Policy Framework* (The Framework) and the associated Planning Guidance; The National Planning Policy for Waste; The Government Review of Waste Policy in England 2011; The Anaerobic Digestion Strategy and Action Plan Annual Report (2014) (Defra); Local Air Quality Management Technical Guidance (Defra); Review of Dispersion Modelling for Odour Predictions (Environment Agency); H4 Odour Management – How To Comply With Your Environmental Permit (Environment Agency); Guidance on Land Use Planning and Development Control (Institute of Air Quality Management); and Guidance on the Assessment of Odour for Planning (Institute of Air Quality Management).
10. In accordance with section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, the Secretary of State has paid special attention to the desirability of preserving or enhancing the character or appearance of conservation areas.

11. For the reasons in IR3.5, the Secretary of State, like the Inspector, gives no weight to the provisions of the withdrawn Bury Local Plan Publication Core Strategy, July 2013.

Main issues

12. The Secretary of State agrees with the Inspector that the main issues in this case are those set out in IR13.2.1, and are the same whether the appeal is determined on the basis of proposal A or B. (IR13.2.2).

Inappropriate development in the Green Belt

13. The Secretary of State agrees with the Inspector that, whilst the position of the site within the quarry bowl limits the visibility of the land, this would not mitigate the impact of the development within the site (IR13.3.3); and that, for the reasons in IR13.3.4, the appeal site contributes positively to the openness of the Green Belt. The Secretary of State, like the Inspector, gives weight to the fallback position¹ but, for the reasons in IR13.3.5, agrees that the impact of the permitted scheme on the openness of the Green Belt would be small in comparison with the proposed development. He also agrees that the development would be in place for a substantial number of years, during which time it would cause significant harm to the openness of the Green Belt (IR13.3.6); and that, for the reasons in IR13.3.7, it would conflict with the Green Belt purpose of checking the unrestricted sprawl of large built up areas. However, he agrees that it would not harm the character, appearance or setting of the Ramsbottom and Holcombe Conservation Areas (IR13.3.9 and IR13.8.6). Overall, the Secretary of State agrees with Inspector's conclusion that, under the terms of UDP Policy OL1/2, the proposals, which would harm the openness of the Green Belt and conflict with one of the purposes of Green Belts, would constitute inappropriate development in the Green Belt (IR13.3.10).

14. For the reasons in IR13.3.11-13.3.15, the Secretary of State agrees that the appeal site does not constitute previously developed land under the terms of the definition in the Framework, and that the appeal scheme would comprise inappropriate development in the Green Belt under the terms of the Framework (IR13.3.15). The Secretary of State affords substantial weight to this.

Living conditions of sensitive receptors in the local area - Odour

15. For the reasons in IR13.4.1-13.4.34, the Secretary of State agrees with the Inspector at IR13.4.35 that there is a considerable degree of uncertainty concerning the impact of either proposals A and B on the living conditions of sensitive receptors in the local area, and a significant risk that they would routinely release odours at levels which would have a notable detrimental effect. He also agrees that this would be contrary to the aim of the Framework in terms of securing a good standard of amenity for all existing and future occupants of land and buildings; and that this would amount to an unacceptable impact on amenity, contrary to the aims of UDP Policy EN4/1, and an unacceptable level of air pollution, contrary to the aims of UDP Policy EN7/1.

¹ The Secretary of State notes (IR4.2 – 1st bullet) that planning permission Ref 43048 was granted, with conditions, in December 2006 for operations including a construction and demolition waste recycling and composting facility - which the appellants have identified as a fallback position (IR13.3.5).

Living conditions of sensitive receptors in the local area - Noise

16. For the reasons in IR13.5.1-13.5.4, the Secretary of State agrees with the Inspector that, subject to the imposition of conditions, the proposals would be unlikely to have an unacceptable detrimental effect on the living conditions of local sensitive receptors, with particular reference to noise; and in this respect the proposals would not conflict with UDP Policy EN7/2 (IR13.5.5). He also agrees with the Inspector that the characteristics of noise associated with the proposals are likely to be materially different from those associated with a construction and demolition waste recycling facility (IR13.5.6).

Air quality (excluding odour)

17. For the reasons in IR13.6.1-13.6.4, the Secretary of State agrees with the Inspector that the proposal would be unlikely to have an unacceptable effect on air quality (excluding odour) in the locality and in this respect would not conflict with the aims of UDP policies ENV4/1 and ENV7/1 or the Framework (IR13.6.5).

Safety and convenience of highway users

18. For the reasons in IR13.7.1-13.7.13, the Secretary of State agrees with the Inspector at IR13.7.14 that the proposals would be unlikely to have a material adverse effect on highway safety and, whilst they would harm the convenience of highway users, this would be unlikely to amount to a severe detrimental effect and consequently, under the terms of the Framework, would not be sufficient on its own to justify withholding planning permission. He also agrees with the Inspector that although the effect of the proposals in these respects would not conflict with the aims of UDP Policy EN1/2, the harm, albeit limited, weighs against the scheme.

Character and appearance of the local area

19. For the reasons in IR13.8.3-13.8.5, the Secretary of State agrees with the Inspector that the effect of the proposals on the character and appearance of the area would be acceptable and in this respect they would not conflict with the aims of UDP Policies EN9/1 and EN1/2 (IR13.8.7).

Local economy

20. For the reasons in IR13.9.1, the Secretary of State agrees with the Inspector that the proposals would be unlikely to have a significant detrimental effect on tourism or the wider local economy, and would not conflict with the Development Plan in this respect.

Other matters

21. For the reasons in IR13.10.1-13.10.3, the Secretary of State agrees with the Inspector that: a lighting scheme could be designed which addresses the operational needs of the proposals whilst ensuring that it does not give rise to unacceptable levels of **light pollution** (IR13.10.1); no weight should be given to the concerns raised in relation to **public health**; and the effect of the proposal on **ecology** would be acceptable and would not conflict with UDP Policy EN6.

Green Belt balance

22. The Secretary of State agrees with the Inspector that the proposals would harm the openness of the Green Belt, conflict with one of the purposes of Green Belts, and constitute inappropriate development in the Green Belt (IR13.3.10 and 13.3.15). The Secretary of State affords substantial weight to the harm to the Green Belt. The Framework indicates that the very special circumstances necessary to justify inappropriate development in the Green Belt will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations - as considered in the next paragraph.
23. In relation to **waste management**, the Secretary of State agrees with the Inspector (IR13.11.2-13.11.7) that there is significant uncertainty as to the likely tonnage of waste per annum that would be diverted away from landfill as a result of the proposals, and that the benefits of the scheme in this respect should be given only moderate weight; and that the scheme would conflict with GMWP Policy 10. In relation to **renewable energy**, the Secretary of State agrees (IR13.11.8-IR13.11.10) that significant weight is attributable to the renewable energy benefits of the scheme, but that the scheme does not qualify for the support given to renewable energy projects by UDP Policy EN4/1, due to the identified conflicts with a number of its criteria. In terms of **economic benefits** (IR13.11.11-13.11.15), the Secretary of State agrees with the Inspector that, whilst the Framework gives encouragement to development that would provide economic benefits, in this case the economic benefits would be modest and should be afforded moderate weight. Finally, the Secretary of State also agrees that limited weight is attributable to the **locational benefits** claimed by the appellants (IR13.11.16-13.11.19).

Conclusion on Green Belt balance

24. Having carefully considered the Inspector's analysis and comments at IR13.11.20-13.11.23, the Secretary of State agrees that significant weight should be given to the renewable energy benefits of the scheme, which include a contribution towards meeting local and national climate change objectives; and that the locational and economic benefits of the scheme cited by the appellants should be given moderate weight (IR13.11.22). However, he also agrees with the Inspector that the scheme would harm the openness of the Green Belt and conflict with one of the purposes of the Green Belt designation, amounting to inappropriate development which is, by definition, harmful to the Green Belt (IR13.11.21).
25. Overall, the Secretary of State agrees with the Inspector that, having had regard to the particular economic, social and environmental aspects of proposals A and B, the harm is not clearly outweighed by other considerations, whether considered individually or cumulatively and notwithstanding that the Framework identifies that very special circumstances may include the wider environmental benefits associated with increased production of energy from renewable sources, he agrees that very special circumstances do not exist (IR13.11.23).

Conditions

26. The Secretary of State has considered the proposed conditions, as set out in Appendix D to the IR, and the Inspector's comments on them at IR12.1-12.8. He is satisfied that these conditions are reasonable and necessary and would meet the tests

of the Framework and the guidance. However, he does not consider that the imposition of these conditions would overcome his reasons for refusing the appeal.

Overall conclusion

27. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. For the reasons set out in this letter, the Secretary of State concludes that neither proposals A or B would be in accordance with the development plan. He has gone on to consider whether there are any material considerations which would overcome this conflict.

28. The Secretary of State concludes that significant weight should be given to the renewable energy benefits of the scheme and that the locational and economic benefits of the scheme should be given moderate weight. However, he agrees with the Inspector that the proposals would conflict with the aims of the Framework and would not amount to sustainable development (IR13.12.1). Taking all of the benefits of the proposed development into account, both on an individual basis and cumulatively, the Secretary of State concludes that the harm to the Green Belt has not been clearly outweighed, and that very special circumstances do not exist to justify allowing the inappropriate development. He also concludes that there are no material considerations sufficient to overcome the conflict he has identified with the Development Plan.

Formal Decision

29. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby dismisses your client's appeal and refuses planning permission for the construction and operation of an anaerobic digestion plant, in accordance with application ref: 57118, dated 17 January 2014, at Fletcher Bank Quarry, Manchester Road, Ramsbottom, Greater Manchester, BL0 0DD.

Right to challenge the decision

30. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. From 26 October 2015, this must be done by making an application to the High Court within six weeks from the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.

31. A copy of this letter has been sent to the Council.

Yours faithfully

Jean Nowak

JEAN NOWAK

Authorised by Secretary of State to sign in that behalf

Report to the Secretary of State for Communities and Local Government

by I Jenkins BSc CEng MICE MCIWEM

an Inspector appointed by the Secretary of State for Communities and Local Government

Date 28 September 2015

TOWN AND COUNTRY PLANNING ACT 1990

BURY METROPOLITAN BOROUGH COUNCIL

APPEAL BY

PEEL ENVIRONMENTAL LTD. AND MARSHALLS MONO LTD.

Inquiry opened on 10 March 2015

Fletcher Bank Quarry, Manchester Road, Ramsbottom, Greater Manchester, BLO 0DD

File Ref(s): APP/T4210/A/14/2224754

File Ref: APP/T4210/A/14/2224754

Fletcher Bank Quarry, Manchester Road, Ramsbottom, Greater Manchester, BLO ODD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Peel Environmental Ltd and Marshalls Mono Ltd against the decision of Bury Metropolitan Borough Council.
- The application Ref. 57118, dated 17 January 2014, was refused by notice dated 19 March 2014.
- The development proposed is the construction and operation of an anaerobic digestion plant.

Summary of Recommendation: That the appeal be dismissed.

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1. PROCEDURAL MATTERS

1.1 Whilst I was initially appointed by the Secretary of State for Communities and Local Government to determine this appeal, on 11 March 2015¹, in exercise of his powers under section 79 and paragraph 3 of Schedule 6 of the *Town and Country Planning Act 1990*, the Secretary of State issued a Direction to the effect that he will determine the appeal himself. The reason given for the Direction is that the appeal involves proposals for significant development in the Green Belt.

1.2 Statement of Common Ground

1.2.1 The following Statement of Common Ground, setting out matters agreed as well as differences between the parties that were signatories to it, were submitted by:

- The Council and the appellants
 - Statement of Common Ground, dated November 2014 (SoCG)².

1.3 The Inquiry

1.3.1 The Inquiry sat for 13 days in total, on: 10-13 March 2015; 16-19 March 2015; 22-23 March 2015; and, 30 March 2015-1 April 2015. An accompanied appeal site visit was undertaken on the 2 April 2015, in addition to which a number of unaccompanied site visits have been conducted. I explain below the circumstances leading to the adjournment between 1 April 2015 and 7 May 2015.

1.3.2 I adjourned the Inquiry on 1 April 2015, having dealt with all other matters, to allow: the appellants to have an opportunity to respond in writing to questions raised by me, which could not be answered by its witnesses at the Inquiry, primarily related to noise; and, the parties to comment on proposed noise conditions. A timetable for written representations was agreed, which included an opportunity for other parties to comment on the appellants' responses to my Inquiry questions. Prior to the adjournment, I confirmed that, following this round of written representations, it would be my intention to close the Inquiry in writing before the agreed resumption date of the 11 May 2015, unless I considered that matters raised necessitated the resumption of the Inquiry. There was no objection to this approach. Following the submission of written representations and confirmation from the Council and appellants that they did not wish to raise any other matters, I closed the Inquiry in writing on the 7 May 2015.³

1.3.3 At the start of the Inquiry, the appellants requested that I visit an operational anaerobic digestion (AD) facility. They proposed the Tamar facility at Halstead on the basis that it is similar in character to that which is proposed. Although the Council identified a number of alternative sites, the appellants objected to them being visited on the basis that they are dissimilar. Having heard the evidence of the Council's witness on odour, which was based on limited first

¹ ID127.

² CD24.

³ ID126.

hand experience of operational anaerobic digestion facilities, I determined that it would be necessary to visit the Halstead site. I carried out the site visit on 19 March 2015 accompanied by representatives of the Council, appellants and the residents group known as Ramsbottom Against the Waste Site (RAWS).

1.4 The Report

1.4.1 In this report I set out the main substance of the cases for the parties who appeared at the Inquiry, summarise the main points raised in the written representations submitted as well as review suggested conditions. I then set out my conclusions and my recommendations to the Secretary of State.

Appended to the report are lists of:

- Appearances at the Inquiry;
- Inquiry documents submitted by the parties;
- A schedule of abbreviations; and,
- A schedule of conditions.

2. THE SITE AND SURROUNDINGS

2.1 The development for which planning permission is sought in this case is described on the planning application form as construction and operation of an AD plant. The proposed AD plant would be located within Fletcher Bank Quarry (FBQ), which is situated on the eastern edge of the town of Ramsbottom, as show on drawing no. FBA1/1⁴. FBQ is an active gritstone quarry of some 35 hectares. The quarry is located on the upper section of the valley and the moorland adjacent to the southeastern boundary of FBQ rises to a height of around 290 metres above ordnance datum (AOD). The lower western boundary of the quarry has a rim height of around 212 metres AOD, to the west of which the ground level falls significantly. Whilst the quarry site straddles the administrative boundary between Bury Metropolitan Borough Council (the Council) and Lancashire County Council, the appeal site is entirely within Bury Metropolitan Borough Council's area.

2.2 The operations within the quarry are split into 3 areas. The northern part, which includes the site of the proposed AD plant, was excavated to a depth of around 175 metres AOD. Infilling has taken place in this northern area with inert waste and ground levels to the north of the appeal site have been raised to around 212 metres AOD. The AD plant would have a ground level of around 200 metres AOD. To the south of the site of the proposed AD plant a weighbridge and associated 'Portacabin' type office, which are used in connection with the infilling operations, are situated on the northern side of the quarry access road. The southwestern part of the quarry is largely occupied by a concrete products factory operated by Marshalls Mono Ltd, which has permanent planning permission and comprises buildings, stocking area, site offices and quarry plant. Quarrying operations are taking place along the eastern edge of the quarry, where there is a rock face around 60-70 metres high.

2.3 Access to the quarry is along a dedicated access road from its junction with Manchester Road, A56. There are residential and commercial properties to the northwest and west of the quarry, with the M66 motorway and the town centre

⁴ Planning Statement, December 2013 section 1.

of Ramsbottom beyond to the west. Land to the north and northeast is characterised by agricultural land with a scattered pattern of properties.

3. PLANNING POLICY

- 3.1 The Development Plan comprises the Bury Unitary Development Plan, August 1997 (UDP)⁵ and the Greater Manchester Joint Waste Development Plan Document (GMWP)⁶. Of the Policies drawn to my attention, I consider that the following are of particular relevance.
- 3.2 The Council's reasons for refusal cite saved UDP Policies OL1/2, EN4/1, EN7/1 and MW4/1. The SoCG also identifies GMWP Policy 10 as being relevant.
- 3.3 UDP Policy OL1/2 identifies that the construction of new buildings inside the Green Belt is inappropriate development, unless it is for one or more of a number of identified purposes. UDP Policy EN4/1 indicates that the Council will encourage proposals for the provision of renewable energy sources, subject to compliance with other policies and proposals of the Plan. Furthermore, it indicates that the Council will seek to ensure, amongst of things, that proposals: do not involve an unacceptable loss of amenity; would not have an unacceptable adverse impact on the setting of Conservation Areas; would not have an unacceptable adverse impact on areas of Green Belt; would not result in a health or safety risk, or nuisance to the public; and, would not have an unacceptable adverse impact on the Borough's natural environment. UDP Policy EN7/1 identifies that the Council will not permit development which would result in unacceptable levels of atmospheric pollution. Although UDP Policy MW4/1 is also referred to, it has been replaced by a series of Policies contained within the GMWP, including GMWP Policy.⁷
- 3.4 GMWP Policy 10 indicates that applications for waste management facilities on unallocated sites will be permitted where the applicant can demonstrate that: the proposal fits within the spatial strategy set out in the GMWP and contributes to the GMWP aim and objectives; and, the proposal meets the same assessment criteria as allocated sites. The reasoned justification for the Policy indicates that all allocated waste sites were assessed against a series of identified criteria, which include the Green Belt.
- 3.5 The examination of the *Bury Local Plan Publication Core Strategy, July 2013* (CSe)⁸ was suspended in June 2014. On the 4 March 2015 the Council resolved to withdraw it from the examination and to commence work on a new Local Plan to align with the emerging Greater Manchester Strategic Framework. Under these circumstances, I give no weight to the provisions of the withdrawn CSe.

4. PLANNING HISTORY

- 4.1 FBQ has, in part, been subject of mineral extraction since the 19th Century. The historic mineral permissions for the quarry were the subject of review,

⁵ CD12.

⁶ CD14.

⁷ CD14 page 102.

⁸ CD16.

under the Environment Act 1995, which was approved in April 2009 and indicates that mining operations shall cease in 2042.

4.2 The other key permissions related to the site include:

- Planning permission Ref. 43048 - *Quarry extension, construction, demolition and excavation waste landfill operation; construction and demolition waste recycling facility and green waste composting operations*. This was granted with conditions in December 2006. The approved site for the construction and demolition waste recycling and composting facilities coincides approximately with the site of the proposed AD plant.
- Planning permission Ref. 56576 – *Revised restoration for the northern part of FBQ involving further importation of inert waste (950,000 cubic metres) up to December 2036*. This was granted with conditions in October 2013.

4.3 In July 2013 a planning application was submitted for an AD plant which was subsequently withdrawn in November 2013.

4.4 The Marshalls Mono Limited (Marshalls) concrete products factory has the benefit of permanent planning permission and is a freestanding manufacturing operation not linked to the quarry operation.

5. THE PROPOSED DEVELOPMENT

5.1 The appeal scheme (the scheme) involves the construction and operation of an AD plant which would take up to a total of 45,000 tonnes/annum of waste, comprising by-products from the food industry together with selected agricultural wastes, to: generate heat and electricity, from the collection of and burning of biogas; and, a digestate for use as a biofertiliser. The proposed facility would be temporary, linked to the life of the adjacent quarry which expires in 2042.

5.2 The Council gave notice of refusal of planning permission for the proposed development in March 2014 and the associated appeal was submitted on 1 September 2014. In September 2014 the appellants wrote to the Planning Inspectorate indicating that since the submission of the original planning application, they have worked with the company which would operate the proposed facility, Tamar Energy (Tamar), to optimise its layout. This has resulted in a number of design changes, which the appellants would like to be considered at the Inquiry. The appellants stated they consider that the proposed modifications would not amount to significant changes to the scheme considered by the Council and so would be unlikely to prejudice the interests of anyone. Furthermore, they consider that any perceived prejudice could be effectively addressed through further consultation in advance.

5.3 I will refer to the original scheme, upon which the Council's determination was based, as proposal A and the revised scheme, which incorporates the design changes proposed by the appellants, which is the subject of an ES Addendum December 2014 (ESA2), as proposal B. The plans representing Proposal A are listed at paragraph 4.6 of the SoCG and those associated with Proposal B are listed in paragraph 3.6 of ESA2.

- 5.4 Prior to the Inquiry, the Planning Inspectorate confirmed to the parties, on my behalf, that in the first instance the appeal would be considered on the basis of the scheme upon which the Council's determination was based. Furthermore, I would not be in a position to give a ruling as to whether Proposal B would also be taken into account until the full supporting information was available and other parties had been given an opportunity to comment upon its implications. I anticipated that some of those comments may not be available until the Inquiry. Before I was in a position to rule on the matter at the Inquiry, the authority for determining the appeal was recovered by the Secretary of State. I confirmed at the Inquiry that I would recommend to the Secretary of State the basis upon which the appeal should be considered and it would be a matter for him to decide.
- 5.5 Proposal B differs from Proposal A in both physical and process terms. The changes are intended to broaden the options as regards the form in which digestate (bio-fertiliser) could be exported from the site. Whilst ESA2 provided details of the proposed physical changes to the scheme, it contained little detail regarding the process changes, in relation to which further information was provided at the Inquiry.
- 5.6 In physical terms; there would be no change to the overall footprint and height of the proposed plant. The main differences would be as follows:
- The office/welfare facilities would be removed from the main process building, to be housed in a new building. The main process building would be reduced in size slightly and the number of large doorways in its western elevation would be increased from 2 to 9 doors.
 - 3 of the 6 tanks within the tank farm area of the plant would be replaced by a larger number of smaller tanks and a new water treatment building.
- 5.7 In process terms, following the anaerobic digestion stage, proposal A would involve the dewatering of digestate to produce a liquor for re-circulation within the plant, with the remaining digestate, still in liquid form, being tankered off site for use as a fertiliser. Under proposal B the digestate would be dewatered to a greater extent. At the Inquiry it was confirmed that the process would produce a digestate cake and a liquor. The digestate cake would be taken off site using roll-on/roll-off skips, the traffic and noise implications of which were explained at the Inquiry. Some of the liquor would be re-circulated within the plant. However, the remainder would either be tankered off site for use as a fertiliser or treated in the additional water treatment building, with the treated effluent being discharged to the public sewerage system under the terms of a Trade Effluent Consent.
- 5.8 It is clear from the consultation responses to the original application and appeal concerning Proposal A, which included a substantial number of letters of objection, that a large number of people have an interest in the scheme. The ESA2 was publicised in the press and site notices were posted inviting comments. In addition the Council invited comments from those statutory consultees who were consulted on the original planning application and RAWS. However, in stark contrast to the original response, no responses were received from interested parties other than the small number directly contacted by the Council, which included RAWS and a Councillor. RAWS objected to the appeal being determined on the basis of Proposal B for a

number of reasons, including the increased potential for noise and odour emissions and concerns that the effluent discharged to the sewerage system would itself cause odour problems.

- 5.9 I consider that Proposal B so changes the scheme that those with an interest could reasonably expect an opportunity to comment. Key changes include: the introduction of a digestate cake production operation, involving additional traffic in and out of the process building with potential implications for odour release, the use of roll-on/roll-off skips with potential noise implications ; and, the discharge of effluent to the public sewerage system at a point close to residential properties, with potential odour implications. Whilst ESA2 indicated that a sewer connection would be required to dispose of excess liquids from the dewatering process, no further details had been provided. At the Inquiry, the appellants confirmed that it would be their intention to discharge the effluent into the public sewerage system at one of two manholes both of which are located alongside terraced residential properties. I have no reason to doubt that the system is likely to have sufficient capacity to accept the proposed volume of discharge. As to whether the effluent would be odorous, whilst Tamar suggested that it would be close to drinking water standard, this was revised to high quality compared to other inputs to the sewerage system. SLR suggested it would be no worse than agricultural slurry or than effluent entering a sewage treatment works.⁹ Neither party was able to provide any empirical evidence concerning odour characteristics. There remains a considerable degree of uncertainty concerning this aspect of the character of the effluent.
- 5.10 I have had regard to the views of the appellants set out in section 8.3 below. Nonetheless, in light of the history of substantial levels of local objection to the scheme followed by such a small number of consultation responses in relation to local publicity concerning the ESA2, I consider that it cannot be concluded with any significant degree of confidence that the publicity given to the ESA2 was an effective means of consulting those with an interest in the scheme. Furthermore, judging by the limited numbers of interested parties who attended the Inquiry each day, many of those who objected to Proposal A would not have been in attendance to hear the new evidence. I conclude that Proposal B would so change the development from the original that to grant planning permission on the basis of the revised scheme would be to deprive those who could reasonably expect to be consulted of an opportunity to comment. I consider therefore, that the appeal should be determined on the basis of the original scheme, Proposal A. Nonetheless, both proposals A and B were discussed at the Inquiry and are dealt with in my conclusions and recommendations

6. ENVIRONMENTAL IMPACT ASSESSMENT

- 6.1 In July 2013 a planning application Ref. 56575 was submitted for an AD plant within FBQ which was subsequently withdrawn in November 2013. That application was supported by an Environmental Statement, July 2013 (ES). The application was resubmitted in January 2014, planning application Ref.

⁹ Cross-examination of Mr Branchflower by RAWS.

57118, and was supported by the same ES. In addition, an *Environmental Statement Addendum-Air Quality and Planning Policy, January 2014 (ESA1)*, which provided further information with respect to air quality, was submitted. This formed the basis of the Council's determination.

- 6.2 In their letter of 1 September 2014 to the Planning Inspectorate, the appellants indicated that, in support of proposal B, it was their intention to prepare an addendum to the ES, which revisits its findings in light of the proposed changes to the scheme. The submission of this new evidence would be published in the press, providing an opportunity for interested parties to comment. The Planning Inspectorate's initial response to the appellant's request indicated that the addendum to the ES would be likely to constitute 'other information' under the *Town and Country Planning (Environmental Impact Assessment) Regulations 2011*. That is 'any other substantive information relating to the environmental statement and provided by the appellant'. Furthermore, it should be publicised in advance of the Inquiry.
- 6.3 The submission of the *Revised Layout Environmental Statement Addendum, December 2014 (ESA2)* in support of the appeal was advertised to the public using a notice posted on site and in a local newspaper on 24 December 2014, which indicated that anyone wishing to make representations should do so by 18 January 2015. Upon receipt of the ESA2 the Council also notified those statutory consultees who were consulted on the original planning application and RAWS.
- 6.4 Further substantive information relating to the ES was provided by the appellants during the Inquiry.
- 6.5 Although both the Council and RAWS clearly challenge the findings of the Environmental Statement there appears to be no remaining technical issue of adequacy of environmental information raised by any party as a separate procedural point. I am satisfied that there are none.

7. THE CASE FOR BURY METROPOLITAN BOROUGH COUNCIL (the Council)

7.1 Introduction

- 7.1.1 The Council refused planning permission for the following 2 reasons (reasons for refusal)
- 1) The proposed development would constitute inappropriate development within the Green Belt as it does not meet the exceptions in paragraphs 89 and 90 of the National Planning Policy Framework (Framework). Very special circumstances have not been demonstrated to outweigh the in-principle harm by reason of inappropriateness and as such the proposal is contrary to Green Belt policies in the Framework, paragraph 007 of the renewable and low carbon energy advice in the national Planning Practice Guidance (PPG) and Policies OL1/2 and EN4/1 of the Bury Unitary Development Plan (UDP).
 - 2) The proposed development is likely to result in a severely detrimental impact upon the residential amenity of nearby sensitive receptors as a

result of odours arising through the operations and lack of accurate local micro climate data to demonstrate sufficient dispersion would occur.

As such, the proposal is contrary to the Framework, the PPG and Policies EN4/1, EN7/1 and MW4/1 of the UDP.

7.1.2 This appeal has been recovered by the Secretary of State because the appeal involves proposals for significant development in the Green Belt¹⁰. It is noted also that there appears to have been no previous Secretary of State decision in relation to an anaerobic digestion plant.

7.1.3 A list of main issues has been provided by the Inspector. The Council's case focuses on Green Belt issues and Odour which were the Council's reasons for refusal, namely:

- a) Whether the proposed development is inappropriate in the Green Belt;
- b) Openness and the purposes of the Green Belt; and,
- c) Very special circumstances.

7.2 The approach to determination

7.2.1 The approach to the determination of this appeal was put to the Appellant's planning witness Mr Owen on Day 8 in cross-examination and agreed as follows:

- a) In the light of statute¹¹ and the Framework, paragraph 11, the appeal is to be determined in accordance with the Development Plan unless material considerations indicate otherwise;
- b) Proposed development which accords with an up-to-date Local Plan should be approved and proposed development that conflicts should be refused unless other material considerations indicate otherwise¹². The Secretary of State says that '*Local Plans are now at the heart of the reformed, democratic planning system*'¹³;
- c) It is highly desirable that local planning authorities should have an up-to-date plan in place¹⁴. Mr Owen agreed that successive Governments have taken this approach in the interests of certainty; and,
- d) The golden thread running through the planning system is the presumption in favour of sustainable development which means approving development proposals that accord with the Development Plan, and where the development plan is absent, silent or relevant policies are out of date granting planning permission unless there is conflict with the policies in the Framework¹⁵.

¹⁰ Letter dated 11 March 2015.

¹¹ 2004 Act section 38(6) and section 70(2) of the 1990 Act.

¹² Framework para 12.

¹³ P8 Appendix D.

¹⁴ Framework para 12..

¹⁵ Framework para 14.

7.2.2 In addition, the core planning principles set out in the Framework¹⁶, and relevant to this appeal and underpinning decision-making, were agreed also by Mr Owen for the appellants:

- a) Planning should be genuinely plan-led, empowering local people to shape their surroundings with succinct local and neighbourhood plans setting out a positive vision for the future of the area;
- b) Planning should proactively drive and support sustainable economic development to deliver business and industrial units and infrastructure that the country needs. Every effort should be made objectively to identify and then meet the business needs of an area and Plans should set out a clear strategy for allocating sufficient land which is suitable for development in their area taking account of the needs of business communities;
- c) Planning should always seek to secure a good standard of amenity for all existing and future occupants of land and buildings;
- d) Planning should always take account of the different roles and character of different areas, protecting the Green Belts around our main urban areas;
- e) Planning should support the transition to a low carbon future in a changing climate and encourage the use of renewable resources, for example by the development of renewable energy;
- f) Planning should contribute to conserving and enhancing the natural environment; and,
- g) Planning should encourage the effective use of land by reusing land that has been previously developed (brownfield land) provided that it is not of high environmental value.

7.3 The Development Plan

7.3.1 The Development Plan in this case comprises the UDP¹⁷ and the GMWP¹⁸.

7.3.2 The UDP was adopted in 1997 and thus precedes the Framework, as, self-evidently, do the saved policies relevant to this appeal OL1/2, ENV4/1 and ENV7/1.

7.3.3 The GMWP was adopted recently in April 2012 and runs from 2012 to 2027. It follows that this Plan is up to date, and Mr Owen accepted that his reference in his proof at paragraph 5.4 to the Development Plan being significantly out of date was wrong in relation to the GMWP, which is of course the most important element in the Development Plan in this case.

7.3.4 The overall aim of the GMWP is described in the Plan as 'to provide a spatial planning framework to deliver the sustainable waste management in Greater Manchester consistent with national planning policies and the Waste Strategy for England 2007'¹⁹. Mr Owen agreed that the GMWP accords with this aim.

¹⁶ Framework para 17.

¹⁷ CD12.

¹⁸ CD14.

¹⁹ CD14 para 12.

The spatial strategy is described in paragraph 13 of the Plan, and it aims to direct development to the right places in Greater Manchester.

- 7.3.5 Mr Owen agreed also that the plan-making process followed the usual consultation process²⁰, and this involved the industry and land-owners, including the appellants. The safeguarded waste policies within the UDP were prepared prior to the requirements of Article 28 of the EU Waste Framework Directive²¹ being made law in England through *The Waste (England and Wales) Regulations 2011 (SI 2011 No 988)*. Guidance for Local Planning authorities on implementing this directive²² requires all waste plans to identify how the waste hierarchy will be delivered; provide an assessment of existing and future waste generation over the plan period; identify where waste will be managed; consider capacity at existing facilities and identify future capacity they may provide; and, identify the number and type of new waste management facilities required.
- 7.3.6 It was put to Mr Owen that the adopted GMWP addresses these points and that it is also Directive compliant. He agreed. He agreed specifically that the GMWP complies with the Checklist in the Guidance. It will be recalled that he was asked specifically about Annex 2 to the Guidance and he agreed that the GMWP complied with articles 4, 13, 16 and 28 of the Directive. This is important because article 28 provides that waste planning authorities should ensure that, as far as practicable, sufficient waste disposal facilities for the recovery of mixed municipal waste collected from households exist within their local waste plan area. Mr Owen agreed also that the GMWP is sound and legally compliant.
- 7.3.7 The GMWP contains a Site Allocations Policy, Policy 4 which lists 7 sites. The purpose of Policy 4 is to make provision for the waste management facilities to meet the capacity identified by the Plan²³.
- 7.3.8 It also contains an Area Allocations Policy, Policy 5, and under this policy there are 4 Area Allocations for Bury. The purpose of Policy 5 is to provide additional choice to developers/investors, particularly for new, unidentified waste management technologies.²⁴
- 7.3.9 It is agreed that the appeal site is not allocated under either Policy 4 or 5. Mr Owen agreed also that his reference, in his proof at paragraph 5.54, to paragraph 4 of the National Planning Policy for Waste²⁵ must be read on the basis that that paragraph refers to the plan-making process and not to decision-making.
- 7.3.10 Policy 11 safeguards sites, not areas, allocated for waste management in the Plan and sites required for the delivery of the Municipal Waste Management Strategy. Again the appeal site is not listed in this Policy.

²⁰ paragraph 3 of the Plan

²¹ Mr Martin's Proof ID 8 para 6.4 and Appendix B

²² Mr Martin's proof ID 8 Appendix C.

²³ Plan CD1 4 page 62 para 3.17.

²⁴ Plan page CD 14 62 para 3.17.

²⁵ CD5.

7.3.11 Policy 10 permits consents to be granted on unallocated sites where appellants can demonstrate that:

- I. The proposal fits with the spatial strategy set out in the GMWP and contributes to the GMWP aim and objectives; and,
- II. The proposal meets the same assessment criteria as allocated sites.

7.4 Appeal site not allocated in the Development Plan

7.4.1 In his proof Mr Owen²⁶ states that the appeal site was not proposed for a waste allocation in the GMWP because the site had planning permission for waste use in the form of recycling and composting. He agreed that this is not stated in the Plan. Subsequently, the appellants produced an extract from the Outcome Report on Issues and Options Stage 2, and, in response, the Council repeated the point that the GMWP did not take forward sites for inert waste as stated in the GMWP²⁷.

7.4.2 It is agreed that there is a relevant planning permission for a waste use, namely, planning permission Ref. 43048 and 14/04/0610²⁸ - *Quarry extension, construction demolition and excavation waste landfill operation; construction and demolition waste recycling facility and green waste composting operations at Fletcher Bank Quarry, Manchester Road, Ramsbottom*, granted with conditions on 21 December 2006.

7.4.3 However it is important to note that:

- a) a systematic approach was taken by the Plan to identify the final list of sites and areas within the plan;
- b) The Executive summary to the GMWP²⁹ makes it clear that complying with the duty under the previous national policy in PPS10 to 'identify in development plan documents, sites and areas suitable for new or enhanced waste management facilities for the waste management needs of their areas' was to be achieved in the GM GMWP by providing 'sufficient opportunities for new waste management facilities of the right type, in the right place and at the right time';
- c) The criteria for site selection was identified in consultation with stakeholders as explained by Mr Martin in his evidence³⁰;
- d) The Site Search Methodology³¹ (SSM) is referred to in the Plan itself³²;
- e) The Plan³³ and the SSM explains the various stages of the Plan making, including Stage 2 Issues and Options and paragraph 2.2 of that document

²⁶ ID7 Para 5.55.

²⁷ CD14 para 3.24.

²⁸ The latter is the number of the Lancashire County Council permission- a small area to the east which has a lagoon within it. See ID4c, 25 and 62.

²⁹ CD14 Paragraph 3.

³⁰ ID 8 Paragraph 7.16 and Appendix F and Waste Plan CD14 paragraph 3 of the Executive Summary.

³¹ CD 15 and Appendix F to Mr Martin's evidence ID 8.

³² See CD14 para 3.9 page 56.

³³ CD14 Eg page 56.

explains that the Stage 2 Built Facilities Report was the first stage of the process; the Call for Sites was for Built Facilities and this was followed by further exploration before a long list of sites was 'sieved' by assessment against inclusionary and exclusionary criteria;

- f) The Appendix³⁴ to the SSM identifies all Sites and Areas which were considered throughout the GMWP production process. Those in bold are identified within the adopted Plan;
- g) The appeal site is not identified in bold. It is identified as RW23³⁵. The source and origin of inclusion is described as 'Stage 2 Issues and Options-Residual Waste Disposal Report- Nominated by industry and is an existing landfill site'. The reason for removal is "Noted within the GMWP for reference purposes only as it is an existing landfill site, no extension proposed";
- h) Whilst the inclusionary criteria include existing waste facilities, the exclusionary criteria include Green Belt and the appeal site failed against this criterion;
- i) In the light of the existing planning permission it is noteworthy that paragraph 2.5 of the SSM recognises that certain categories of land cannot be absolutely excluded via this process, for example sites within the Green Belt may be appropriate for specific waste facilities such as composting. As explained by Mr Martin this is because with composting there is no built development. Mr Owen agreed that any built development with composting is likely to be ancillary. In so far as the existing planning permission permits recycling such is not in the least unusual in a quarry context;
- j) In addition, Mr Owen agreed that the planning permission for the appeal site was for inert landfill and that no inert landfill sites are identified in the Plan³⁶; and,
- k) The evidence demonstrates that the appeal site was not included in the GMWP and the reason for removal is stated clearly in the SSM.

7.5 **Assessment of the appeal site against GMWP Policy 10**

- 7.5.1 Given that the appeal site is not allocated in the Plan it falls to be assessed against Policy 10. In particular, Policy 10 ii which requires the site to meet the same assessment criteria as allocated sites.
- 7.5.2 The assessment of unallocated sites is dealt with at page 71 of the Plan. It begins by emphasising that there are enough sites identified in the Plan to meet the future need for new waste management facilities with additional flexibility provided through the identification of areas.
- 7.5.3 It is not, of course, appropriate to try and re-run the plan-making process in an appeal against refusal of permission, and it is important to bear in mind at

³⁴ ID8 Appendix F 2F 24 also CD 15 page 22.

³⁵ CD 15 page 51.

³⁶ See also Plan CD14 page 63 para 3.24.

all times that the GMWP is up-to-date for the purposes of the Framework. It is acknowledged that, in line with usual practice, paragraphs 4.21 and 4.22 and Policy 10 itself, of course, allow applications to come forward on unallocated sites which comply with the Plan.

- 7.5.4 Equally, however, it is not sufficient for the appellants to simply seek to assess the appeal site against one specific allocated site or against a few selected allocated sites and to seek to criticise those allocations, whether explicitly or implicitly by seeking to set up some sort of 'beauty parade' as between the appeal site and one or some of the allocated sites.
- 7.5.5 This is however what has been done by Mr Owen in his proof, where for example he refers to site OL5³⁷ and to site BU1³⁸. This is a flawed approach.
- 7.5.6 In passing, and in any event, it is worth noting that the criticism in relation to BU1 is misplaced. In this respect it must be recalled that the purpose of Policy 4 is to make provision for the waste management facilities to meet the capacity identified by the Plan, and the purpose of Policy 5 is to provide additional choice to developers/investors, particularly for new, unidentified waste management technologies³⁹.
- 7.5.7 BU1 is an *area* allocation and, as pointed out in Policy 5 and Appendix 1c to the Plan, this is an area identified as suitable for waste management facilities. However, *it is not safeguarded*. Paragraph 4.34 of the Plan⁴⁰ makes it clear that area allocations are not included in the safeguarding Policy because they are likely to be suitable for a range of industrial or employment uses, not just waste uses. The Inquiry Note⁴¹ showing the recent decisions or 'minded to' decisions related to area allocations must be viewed in this light.
- 7.5.8 What Policy 10 ii requires of an unallocated site is that it must meet the same assessment criteria as allocated sites. It requires an assessment of the appeal site to be made against the criteria set out in paragraph 4.24 of the GMWP and that list of criteria includes Green Belt.
- 7.5.9 It is necessary, therefore, for any application to comply with national policy in relation to Green Belt as well as the UDP Policy on Green Belt, in so far as the latter is consistent with up to date national policy as set out in the Framework.

7.6 Bury UDP

- 7.6.1 The UDP Green Belt Policy OL1/2 provides that the construction of new buildings in the Green Belt is inappropriate development unless it is for one of the purposes set out in OL1/2 a) to d).
- 7.6.2 Mr Owen agreed that the only part of this policy engaged in this appeal is OL1/2 b⁴² which allows for development which provides 'essential facilities for outdoor sport and outdoor recreation, and for other uses of land which

³⁷ K Owen ID 7 paragraph 5.7 and APP 11.

³⁸ K Owen ID 7 5.70.

³⁹ Plan CD 14 page 62 para 3.17.

⁴⁰ Page 74 CD15.

⁴¹ ID Inquiry note 2 – York Street and Dumers Lane.

⁴² CD12- UDP at page 65.

preserves the openness of Green Belt and which do not conflict with the purposes of including land in it’.

7.6.3 This issue will be dealt with under the heading ‘Green Belt’.

7.7 Green Belt

Built Development

- 7.7.1 It is important to recall that the appeal proposal involves very significant built development, involving buildings structures and pipework⁴³.
- 7.7.2 It is acknowledged that there is planning permission Ref. 43048, granted in 2006 for composting/recycling. It is agreed by Mr Owen however, that there is no Use Classes Order conferring a right to change the use of the land from composting to a built waste facility. In addition, it is clear from the evidence of Mr Owen⁴⁴ that in the event that this appeal fails the appellants are unlikely to commence a composting operation at this site. The fallback position therefore attracts little weight in this appeal. In any event, recycling is often associated with a quarry.
- 7.7.3 Paragraph 79 of the Framework 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. Development is inappropriate because it is adverse to ‘openness’ and openness means the absence of buildings or development⁴⁵.
- 7.7.4 Paragraph 87 of the Framework 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 of the Framework 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 degree⁴⁶.
- 7.7.5 The combined effect of the language used in paragraphs 79, 87 and 88 is that all developments proposed for the Green Belt are *prima facie* treated as ‘inappropriate’ and can only be justified by reference to very special circumstances.
- 7.7.6 It is also clear from paragraph 88 of the Framework that substantial weight is to be given to any harm to the Green Belt and very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and other harm, is clearly outweighed by other considerations.

⁴³ Details including footprint see plan (Proposed AD site areas, Drawing 2).

⁴⁴ In answer to Inspector’s questions.

⁴⁵ ID15 Green J in *Timmins v Gelding* BC paragraphs 26, 68- 75 [2014] EWHC 654 (Admin) approved CA.

⁴⁶ *Ibid.*

7.7.7 Paragraph 89 of the Framework requires a decision-maker to regard the construction of new buildings in the Green Belt as inappropriate subject to certain exceptions. In addition paragraph 90 provides that other forms of development are also not inappropriate in the Green Belt provided they preserve the openness of the Green Belt and do not conflict with the purposes of including land in Green Belt.

7.7.8 The structure of the reasoning in paragraphs 87-90 is, first, to lay down a general rule and, secondly, to lay down the exceptions to the general rule. Paragraphs 89 and 90 represent those exceptions. Exceptions exist for 'new buildings' in certain defined circumstances set out in paragraph 89; and, 'certain other forms of development' set out in paragraph 90. The fact that paragraphs 89 and 90 concern 'buildings' and 'other forms of development' suggests that the prima facie rule (in paragraphs 87 and 88) applies to any 'development' whether it comprises a building or some other usage or change thereof.⁴⁷

7.8 Inappropriate Development

7.8.1 In the present case it is agreed that the proposed development is inappropriate development⁴⁸. In cross-examination Mr Owen agreed that none of the first 5 exceptions in paragraph 89 were relied upon by the appellants. He agreed also that the appellant was not relying on the exceptions in paragraph 90.

Previously-developed land

7.8.2 In relation to the final bullet point number 6 in paragraph 89, this provides an exception for limited infilling or partial or complete development of previously-developed land which would not have a greater impact on openness of the Green Belt and the purpose of including land within it than the existing development.

7.8.3 Consideration of this exception requires consideration also of whether the appeal site is previously-developed land for the purposes of the Framework. Annex 2 to the Framework provides:

'Previously developed land: Land which is or was occupied by a permanent structure, including the curtilage of the developed land (although it should not be assumed that the whole of the curtilage should be developed) and any associated fixed surface infrastructure. This excludes: land that is or has been occupied by agricultural or forestry buildings; land that has been developed for minerals extraction or waste disposal by landfill purposes where provision for restoration has been made through development control procedures; land in built-up areas such as private residential gardens, parks, recreation grounds and allotments; and land that was previously-developed but where the remains of the permanent structure or fixed surface structure have blended into the landscape in the process of time'.

7.8.4 In this respect:

⁴⁷ Ibid para 6.5.7.

⁴⁸ Statement of Common Ground CD24 para 8.1.

- a) Mr Owen expressed ambiguous views at times in relation to this issue⁴⁹;
- b) Mr Martin's evidence was that the site was a working quarry and, whilst there was also a permission for a permanent concrete factory within the quarry void which had been implemented, the usual modes of restoration provided for in Schedule 5 to the *Town and Country Planning Act 1990* (1990 Act) would apply to the remainder of the quarry, namely agriculture, forestry and recreation;
- c) Mr Martin also explained how the quarry would likely be restored and commented that the likely option would be for this site to be restored to amenity rather than agriculture or forestry. Mr Martin also stated that the site would be reviewed under the requirements of the Review of Old Minerals Permissions and this would capture the whole quarry including the appeal area and the area where planning permission has been granted⁵⁰. In the event that the appeal is dismissed it would be realistic to expect that the quarry in its entirety would be restored and this would soften the flat area where the recycling and composting permissions are located;
- d) Mr Owen agreed that in addition to the planning permission Ref. 43048 for composting etc (which had never actually started to be used and in respect of which various conditions in that permission have not been discharged) there was also a recent permission containing revised restoration conditions Ref. 36288, dated 22 April 2009⁵¹;
- e) In addition, Mr Owen agreed in cross-examination that the restored landform envisaged by the restoration conditions in these permissions would bring about an improved appearance in the Green Belt; this is important because such an outcome would be consistent with paragraph 81 of the Framework, which requires local planning authorities to plan positively to enhance the beneficial use of the Green Belt, such as looking for opportunities to provide access and opportunities for recreation and to enhance landscapes.

7.8.5 In these circumstances the facts lead to the conclusion that the appeal site is not previously-developed land for the purposes of the Framework and the application of paragraph 89 in this appeal. This is consistent with the agreement by the appellants⁵² that the appeal proposal is inappropriate development in the Green Belt.

7.9 Openness and purposes

7.9.1 In any event, in relation to the final bullet point number 6 in paragraph 89, and also in relation to UDP Policy OL1/2 b)⁵³, in the event that, contrary to the above submission, the appeal site was considered to be previously-developed land, the appellant cannot rely upon this exception in respect of this appeal, because in any event the complete development of this land as envisaged

⁴⁹ Proof para 6.6 - *if not previously developed*.

⁵⁰ Plan FBA3/1 shows the two areas and where they overlap.

⁵¹ ID 99.

⁵² Statement of Common Ground.

⁵³ See above paragraph.

would have a greater impact on openness of the Green Belt and the purposes of including land within it than the existing development.

7.9.2 This is because:

- a) the footprint of the proposed development is significant;
- b) the proposal involves very significant built development in respect of buildings structures and pipe-work, as we saw on the site visit to Halstead;
- c) there would be sprawl in that what is proposed involves built development on a part of the site which is at present not built upon;
- d) whilst there is built development to the south of the location of the proposed AD site in the form of offices and a factory, the effect of consenting the appeal proposal would be to expand built development further north into the Green Belt, rather than grouping of built development to the east or north-east of the offices thereby potentially minimising impact on openness;
- e) In this respect the real problem facing the appellants is that in reality they have chosen not to seek to develop the AD facility to the east/northeast of the existing offices because that choice would undermine their vision of maximising development on the appeal site to further their commercial interests;
- f) The corollary of this vision, whilst understandable from a commercial perspective, involves substantial further development in Green Belt to the east of the existing offices, including:
 - 1) a secondary processing facility, (Mr Redfern proof 11.3.3 and in cross-examination);
 - 2) a stone sawing and finishing works likely to be 1,000 m² and 9 metres high, utilising permitted development rights (proof Mr Redfern 11.3.4 and cross-examination);
 - 3) Replacement offices (proof Mr Redfern 11.3.5 and cross-examination);
 - 4) Logistics Hub (proof Mr Redfern 11.3.6 and cross-examination);
 - 5) Concrete/ mortar Plant (proof Mr Redfern 11.3.7 and cross-examination);
 - 6) Business Park (proof Mr Heller Appendix 9 page iii , which refers to proposed future expansion, Table 2.1 at page 3 , Table 5.2 at page 13 , paragraph 5.4.1 page 16 and Table 5.6).
- g) Accordingly, the appellants are forced by their own vision to seek the present consent in the appeal location. Whilst future applications would fall for consideration at the time of any application, and although there might be some permitted development rights capable of being utilised, the inevitable effect of consenting this appeal proposal would be to 'salami slice' the Green Belt and subject it to 'death by a thousand cuts';

- h) In his proof Mr Owen states⁵⁴ that consenting this proposal would further urbanise this part of the Green Belt. Moreover, whilst there might well be existing urbanising features present or permitted within the quarry floor, it must be true to say that this, in itself, does not justify consenting this proposal; two wrongs do not make a right;
- i) Further, in so far as reliance is placed by the appellants on the presence of crushing and screening equipment in the quarry, such equipment is moveable and therefore it has no impact upon the purpose of restricting sprawl and safeguarding the countryside from encroachment;
- j) In terms of the latter purpose it is important to underline also that the permanent concrete factory is separated by the road from the appeal proposal to the north;
- k) In relation to the urban regeneration purpose, whilst Mr Owen argues that the consent would enable disused and disturbed land with planning permission for waste operations to be brought back into a positive use, he has also agreed that there are restoration conditions in the two relevant permissions and that a restored land form would bring the land back into a positive use that would enhance openness. This further emphasises the threefold Schedule 5 uses for quarries as explained above⁵⁵, and, in this respect, one cannot overlook the fact that there is an existing right of way PROW189 RAM running along the western boundary of the quarry;
- l) Also in relation to urban regeneration, whilst Mr Owen⁵⁶ argues that no other sites are capable of meeting the appellants' requirements for the direct wire connection between the AD plant and the factory, the appellants have not conducted a full assessment of all alternative sites. In this respect it is instructive to note that the original submission did not consider alternative sites; the original ES⁵⁷ states:

'With the exception of the 'do-nothing scenario', no other alternative sites were considered by the applicants as part of the EIA process'
- m) Whilst Mr Owen provides an alternative sites assessment in his proof⁵⁸ which was undertaken on the express basis of providing the factory with electricity and heat via a direct wire connection⁵⁹, it is clear that no consideration has been given to an alternative site to the east /north east of the existing offices, even though such a location has the potential to have less impact on openness and the purposes of including land in the Green Belt. It is acknowledged that Mr Redfern said in evidence that there is no room for the AD plant to the east. However, there is no document or assessment which sets out the result of a comparative analysis of that alternative and the appeal proposal;

⁵⁴ Proof 6.27.

⁵⁵ Para 6.8.4.

⁵⁶ Proof 7 6.42.

⁵⁷ See EIA para 1.30 page 1-7.

⁵⁸ Appendix 19.

⁵⁹ See proof paragraph 3 page 1 Appendix 19.

n) Finally, whilst UDP policy OL1/2 b must be applied in a way which is consistent with the more up to date national policy, the UDP policy applies whether land is previously-developed or not. Accordingly in the present case for the reasons set out above the proposed development fails when assessed against OL1/2. The proposal does not preserve openness and it conflicts with the purposes of including land in the Green Belt.

7.9.3 The appellants argue that the appeal proposal is for a temporary permission with the result that harm is reduced when compared to a permanent facility. However:

- a) it is always open to the appellants to make an application under section 73 of the Town and Country Planning Act 1990 to vary or remove a temporary condition;
- b) no obligation is offered to take away the right to apply under section 73;
- c) there is no proposal to withdraw permitted development rights whether under the appeal proposal, which could be done by condition, or in relation to existing permitted development rights, which could be done by obligation. As Mr Redfern confirmed this was a right which the appellants consider might be available in relation to one or more of the proposed future development which he describes;
- d) The 'temporary' issue is further considered below.

7.9.4 It follows that in reality this proposal is to be considered as involving the construction of a substantial group of buildings structures and pipework by expanding development northwards into the Green Belt, and Tamar would have a long lease of the appeal site for 25 years with covenants permitting the construction and maintenance of the buildings etc together with the right to apply to the court for an extension of the lease under the Landlord and Tenant Act 1954 for an additional period of up to 15 years. In the absence of any exclusion of the right to statutory protection an arrangement starting off as what is described as "temporary" would assume the character of permanent, especially bearing in mind that the claimed advantage of supplying electricity to the concrete factory relates to a factory that has a permanent permission.

7.10 Harm

7.10.1 In the light of the foregoing analysis paragraph 88 of the Framework requires substantial weight to be given to any harm to the Green Belt.

7.10.2 Over and above the harm by reason of inappropriateness, the harm to the Green Belt by the construction of the very substantial buildings structures and pipework in this appeal proposal would be significant, as explained by Mr Martin in his evidence and as is clear from the plans and the footprint as well as the Halstead site visit.

7.10.3 Additional harm would be caused by the harm to residential amenity by reason of odour, which I will return to below.

7.11 Very special circumstances

- 7.11.1 It is necessary to consider whether very special circumstances have been established which clearly outweigh the harm to the Green Belt. In this balancing exercise the appellants rely upon a number of alleged circumstances individually and cumulatively. The Council deals with each of these alleged contributions in turn below and in doing so follows the way in which the issue is summarised in the evidence of Mr Martin. Although Mr Owen lists a number of issues, those issues overlap each other.
- 7.11.2 The strategically important nature of the existing Marshalls Concrete Products factory is not a very special circumstance. This is because the claimed connection between the concrete factory and the development of an AD Plant in the Green Belt would appear to be tenuous. Moreover, whilst it may well be the case that the concrete factory is a major strategic hub⁶⁰ for Marshalls as claimed, this does not of itself provide an exceptional circumstance to overcome the harm to the Green Belt in this case.
- 7.11.3 The Appellants contend also that the AD plant would provide a substantial proportion of the energy requirements of the Marshalls factory.
- a) It is agreed that the provision of renewable energy to assist with the requirements of the industrial concrete manufacturing plant is to be welcomed, and it is clear that such provision is supported by the Framework;
 - b) In making a judgement on this point, however, it is submitted that it is highly material to note the plans of the appellants for the appeal site and the quarry. These plans have been described above and they amount to incremental industrialisation in the Green Belt;
 - c) Moreover, it is pertinent to observe that the *Planning Act 2008* sets out thresholds above which certain types of infrastructure development are considered to be nationally significant and which require a type of consent known as 'development consent'⁶¹. In this respect the appeal application (page 4-9 of the December 2013 Planning Statement) introduces National Policy Statements (NPS) which are issued by the Department of Energy and Climate Change. Policy EN-1 *The Overarching National Policy Statement for Energy*⁶² aims to clarify the use of the document for proposals that fall outside the criteria of Nationally Significant Infrastructure Projects by stating "*In England and Wales this NPS is likely to be a material consideration in decision making on applications that fall under the Town and Country Planning Act 1990 (as amended). Whether, and to what extent, this NPS is a material consideration will be judged on a case by case basis*"⁶³;
 - d) Significantly the threshold for an onshore generating station being considered a National Significant Infrastructure Project is provided in

⁶⁰ Mr Owen proof para 9.24.

⁶¹ See Mr Martin's proof Appendix G.

⁶² CD1.

⁶³ See the Policy at CD 1 paragraph 1.2.1.

section 15 of the Planning Act 2008 as "*its capacity is more than 50 megawatts*". Clearly proposals that fall near to that figure but do not cross the threshold are more likely to engage the policy advice provided in the NPSs. However, whilst all renewable energy production is to be welcomed, the appeal site could generate about 2 MW of heat and have a rated electrical capacity of 1.8 MW and this falls considerably below the threshold of a National Significant Infrastructure Project. In addition the Hatfield case relied upon by the appellants involved 26 MW⁶⁴;

- e) The evidence of Mr Stevens is relied upon by the appellants in support of their case on renewable energy and very special circumstances. However, what is clear is that many actions and company policies in relation to renewable energy would continue to be carried out and followed by Marshalls in any event and regardless of the outcome of this appeal; this is for the very good reason that renewable energy is part of the DNA of the company as confirmed by Mr Stevens;
- f) The provision of renewable energy to assist with the requirements of the industrial concrete manufacturing plant is, of course, welcomed. The production of renewable energy and the uses of such resources are generally supported by the Framework and should be given appropriate weight in assessing an application of this type. However, PPG paragraph 007 makes it clear that the need for renewable or low carbon energy does not automatically override environmental considerations. This is important in the present case where the policy support for renewable energy is clearly outweighed by the substantial harm caused to the Green Belt by what is, effectively, incremental industrialisation. Accordingly, this circumstance does not provide a very special circumstance to overcome that harm.

7.11.4 The claim that the site has a number of locational advantages, which collectively make a significant contribution to demonstrating very special circumstances is also a claim without substance:

- a) The appellants rely upon: (a) the location of the site within an active quarry void; (b) the presence of existing infrastructure and a readily available grid connection; (c) the potential to use the digestate in the restoration of the quarry; and, (d) the quality of the highway access both in terms of connection to the public highway and links to the strategic highway network;
- b) The fact that the appeal site is in an active quarry void could apply to any appeal site in any quarry. This is not a very special circumstance;
- c) The presence of existing infrastructure and a readily available grid connection is not a very special circumstance;
- d) The potential to use the digestate⁶⁵ in the restoration of the quarry is not a very special circumstance. There is no condition requiring final

⁶⁴ Mr Owen proof para 9.12.

⁶⁵ Mr Owen proof 9.52.

restoration until the end of the landfilling in 2038⁶⁶. As discussed in cross-examination of Mr Owen, it is unlikely that digestate would be used on the benches shown in the sections of the restoration profile plan. In any event, only inert waste can be deposited in the quarry⁶⁷.

- e) As to the quality of the highway access, both in terms of connection to the public highway and links to the strategic highway network, this is not a very special circumstance either. The same could be said for instance of BU3⁶⁸ Pilsworth Industrial Estate, which is located directly off Junction 3 of the M66 and contains large industrial units with vacant plots;
- f) The claim by Mr Owen⁶⁹ that screening in effect amounts to a very special circumstance is not sustainable. In this respect the failure to consider the potential alternative location or locations in the quarry to the east /north east of the offices is also material in that such an alternative might well have had the potential to be even better screened. Also this is the sort of point that could apply to any quarry;
- g) Finally, in relation to this issue there is the policy point. The Department for Communities and Local Government (DCLG) has said the new policy document, National Planning Policy for Waste, *"changes the previous policy, and means councils can no longer give special consideration to locational needs, or wider economic benefits the site could bring, over other considerations, as justification for building waste facilities on Green Belt land"*⁷⁰. Whilst this press release is criticised by the appellants the Secretary of State must be taken to know what the Policy is;
- h) In these circumstances the claimed locational benefits do not constitute very special circumstances.

7.11.5 The need for new waste infrastructure that would divert waste from landfill, and promote the management of waste as a resource is not a very special circumstance.

- a) Waste Management has an important role to play in achieving the goal of sustainable development and there has been a move towards the sustainable consumption and production of resources, which is one of the Government's key priorities for sustainable development. A key driver in achieving sustainable consumption and production is the Waste Hierarchy, which looks at managing waste by prevention, preparing for reuse, recycling, other recovery, and disposal as a last resort;
- b) The appeal proposal falls under '*other recovery*' and is considered to be a preferable waste management option than landfill but not preferable to prevention, preparing for reuse or recycling;

⁶⁶ See Mr Redfern para 4.5

⁶⁷ CD14 para 3.24

⁶⁸ CD 14 Appendix 1 a.

⁶⁹ Proof 9.37 – 9.42.

⁷⁰ Appendix D Mr Martin

- c) The purpose of the GMWP⁷¹ is to set out a waste planning strategy to 2027 which enables adequate provision of waste management facilities in appropriate locations for local authority collected waste, commercial and industrial, construction and demolition and hazardous wastes;
- d) In respect of areas /sites that may be suitable for Anaerobic Digestion, the GMWP identifies 24 Areas all of which may be suitable. Four of these areas are within Bury: BU1 Dumers Lane - 35.54 ha; BU3 Pilsworth Industrial Estate – 50.01 ha; BU4 Fernhill Industrial Area – 17.17 ha; and, BU8 Land at Pimhole, Pimhole Road – 4.35ha.
- e) Of the seven sites identified in the GMWP as suitable for built waste management, six of them were considered potentially suitable for Anaerobic Digestion. The GMWP has provided sufficient locations through the allocation of both sites and areas to meet the energy requirements for the plan period and as such the appellant's argument does not provide a very special circumstance to overcome the harm to the Green Belt.

7.11.6 The temporary nature of the facility, linked to the ongoing mineral extraction, would ensure that there would be no long term impact on the Green Belt.

7.11.7 As set out above the appellants are seeking a temporary planning permission linked to the end date of the quarry. However,;

- a) the heat and electricity produced from the AD plant would be used by the concrete factory which is not linked to the lifetime of the quarry (2042) but has a permanent planning permission;
- b) the proposed development is not ancillary to the quarry workings and it would provide the energy needs for the concrete manufacturing facility, which itself is divorced from operations at the quarry. However, although the application links the appeal site to the end date of the quarry in 2042, there is nothing to prevent the appellants from applying for a permanent facility, although this, of course, would be judged on its merits if any such application is made;
- c) the temporary nature of the permission sought for the appeal site has no weight in providing a very special circumstance to overcome the harm to the Green Belt.

7.11.8 There is already planning permission Ref. 43048 for development on the appeal site, in the form of an open composting and inert waste recycling operation:

- a) The permitted open air composting facility, which has yet to be built, was part of a composite application to extend the boundary of the extraction area, increase the void space and the provision of waste recycling comprising of outdoor mobile crushing and screening plant. It would sit on an impermeable concrete base, to prevent leachate permeating into the ground, and is of similar design to that found on farms. This type of unobtrusive composting facility may well be suitable within the Green Belt;

⁷¹ CD14.

- b) However, the appeal proposal would have stacks 15 metres high and digestate tanks 18 metres in height and it is clearly industrial in nature. For this reason the permitted composting facility, which is not built development, and the industrial AD plant are clearly two different forms of development. The existing permission does not amount to a very special circumstance.

7.11.9 The appellants contend that AD facilities are frequently located within the Green Belt and decisions on planning applications for AD plants have recognised that very special circumstances exist to justify the grant of planning permission:

- a) This application for an AD plant is an application in relation to a working quarry. No other such application has been mentioned in evidence. Mr Heller agreed that none of the Tamar sites are in quarries;
- b) In his evidence⁷², Mr Owen relied upon Wardley which he said was very similar. However, this is the site of a former coal disposal depot⁷³ and not a quarry. The site was previously developed land⁷⁴ and it complied with Policy DM9 of the South Tyneside Development Plan. It is also noted that the nearest residential property in that case was 600 metres away.⁷⁵
- c) In any event each application has to be judged on its own merits and the claim does not provide a very special circumstance to overcome the harm to the Green Belt in the appeal case.

7.11.10 In relation to economic benefits, Mr Redfern produced the Regeneris report.⁷⁶ He confirmed, however, that the current Marshalls' operations and indeed, future company plans are not contingent on the approval of the appeal proposal. In addition, he agreed that any public or other references to 'safeguarding' of employment at the existing operation are not correct.

7.11.11 Having assessed all the reasons provided by the appellant, including the economic benefits and job creation, the submission of the Council is that, on the evidence in this case, the detail relied upon by the appellants does not either individually or cumulatively amount to very special circumstances to overcome the harm to the Green Belt.

7.11.12 In these circumstances, the Council invites you to recommend to the Secretary of State that the appeal is refused on the basis of Green Belt harm and that it would be contrary to the Framework policies 79-92, UDP policy OL1/2 and the PPG paragraph 007.

⁷² P7 para 5.18.

⁷³ Mr Owen Appendix 9 report para 1.1.

⁷⁴ Mr Owen Appendix 9 report para 4.6.

⁷⁵ Mr Owen Appendix 9 report para 1.9.

⁷⁶ P2 Appendix 12 (P1 Appendix 2).

7.12 **Odour control policy**

- 7.12.1 The relevant national policy background is agreed in the Statement of Common Ground⁷⁷.
- 7.12.2 The starting point is the core planning principles in paragraph 17 of the Framework which state that land use planning principles should underpin decision-making and planning should always seek to secure a good standard of amenity for all existing and future occupants of land and buildings. This is agreed by Mr Branchflower.
- 7.12.3 This core principle is underscored also in the PPG paragraph 007⁷⁸, which states that protecting local amenity is an important consideration which should be given proper weight in planning decisions.
- 7.12.4 The UDP Policy EN7/1 provides that development must not result in unacceptable levels of atmospheric pollution. If a level provides a good standard of amenity it is inevitable that it is acceptable. If the standard is not good it cannot be acceptable.
- 7.12.5 In addition, whilst UDP policy EN4/1 encourages proposals for renewable energy, compliance with policy EN4/1 a) requires that a proposal must not involve an unacceptable loss of amenity, and compliance with EN4/1 d) requires that a development would not result in a nuisance.
- 7.12.6 It follows that the synthesis of national policy and UDP policy means that the essential test is whether a proposal would provide a good standard of amenity.
- 7.12.7 In addition, as stated by Miss Gannon⁷⁹, paragraph 122 of the Framework provides that planning decision-makers should focus on whether the development itself is an acceptable use of the land, and the impact of the use, rather than the control of processes or emissions themselves where these are subject to approval under pollution control regimes. Planning decision-makers should assume that these regimes will operate effectively.

7.13 **Serious concerns with AD plants**

- 7.13.1 It is absolutely clear from the recent Defra *AD Strategy and Action Plan Annual Report 2014*⁸⁰ that 'the number of serious or potentially serious pollution incidents at AD plants remains a serious concern'. In particular, 'EA data shows that the biowaste treatment sector, particularly AD, had proportionately more serious and significant pollution incidents than the other waste treatment sectors regulated by the EA.' Indeed the report states that

'Recorded incidents increased from 0 in 2010 to 21 for every 100 permits in 2012. Compliance with environmental permits for biowaste treatment over the same period was the poorest in the waste sector'.

⁷⁷ CD24 paragraphs 7.5 and 8.6. There is now in addition CD 23.

⁷⁸ ID20.

⁷⁹ Proof Para 3.4.

⁸⁰ Appendix J Rebuttal evidence of Mr Branchflower page 9.

- 7.13.2 The same paragraph in the report informs us that 'The latest data (2013) showed biowaste treatment permit compliance was still the poorest of the waste sectors; AD permit compliance was only marginally better than composting'⁸¹.
- 7.13.3 In addition, Appendix A to Miss Gannon's evidence exhibits a very recent report (2013), which demonstrates the EA's concern in relation to the AD industry. This research suggests that, despite the use of biofilters, technical issues and gaps in information have been identified. Further research was recommended for confidence and consistency to improve odour removal in biofilters, and to perfect protocols for measuring odour.
- 7.13.4 In these circumstances it is not in the least surprising that, when consulted on the first planning application in the present case (subsequently withdrawn), the Environment Agency⁸² said that:

'AD plants in the North West have caused and continue to cause significant amenity problems, leading to a large number of complaints and public concern.'

- 7.13.5 In relation to the current application, the Environment Agency (EA) said:

*'...that an Environmental Permit will require the operator to minimise the impact upon human health through the use of appropriate abatement measures and management procedures. This does not mean that there will be no impact from the proposed activities.'*⁸³

- 7.13.6 In these circumstances it is clear that the confidence of the public and investors in the AD industry is undermined, as is also reported in the above report.⁸⁴ This is entirely consistent with Miss Gannon's answer to a question put by Mr Williamson in cross-examination about the evidence available to members when they made their decision:

'They did not have confidence in the material before them'

- 7.13.7 Mr Williamson also put in cross-examination that there is a need to have 'clear complete and trusted' information, and he quoted a policy document to this effect⁸⁵. The Council agrees. As a matter of fact, however, the problems associated with AD are very well documented.
- 7.13.8 In these circumstances, the importance of applying land-use planning principles to applications for planning consent for AD facilities is particularly important in this case.
- 7.13.9 In land use planning terms it is vital to note:

⁸¹ See also rebuttal evidence Mr Branchflower para 2.20 and Appendix E to his rebuttal-AD complaints still the highest of any sub-sector.

⁸² Miss Gannon summary proof 2.10.

⁸³ letter from EA dated 26 February 2014.

⁸⁴ Appendix J Rebuttal evidence of Mr Branchflower page 9.

⁸⁵ CD2 page 67.

- a) The concerns expressed by people and complaints made in relation to various consented and permitted plants, and referred to in Miss Gannon's evidence⁸⁶ and in the evidence of Dr Jackson⁸⁷, including Rothwell, Cannock, Cannington and HL Foods Lincolnshire;
- b) Mr Branchflower's evidence, which accepts the fact that complaints have been made at many AD plants, and indeed pages 7 and 8 of the Fichtner report validates most of the incidents referred to in Miss Gannon's evidence;⁸⁸
- c) Mr Branchflower makes the point that many of these complaints relate to containment and design related failures which have been, or are in the process of, being rectified as detailed in the review by Fichtner⁸⁹- although the fact that issues are in the process of being rectified is little if any comfort to those suffering;
- d) The Fichtner report identifies 'the root causes as poor maintenance, poor management, operator error or lack of secondary containment'⁹⁰. This judgement gives further cause for concern.
- e) The EA has issued advice as to how to comply with a permit and this advice, surprisingly, recognises that an Odour Management Plan (OMP) *'cannot cover every eventuality and even if you are taking all the appropriate measures specified in your approved OMP, odour pollution may occur'*⁹¹

7.14 **Serious concerns in relation to the Halstead Plant**

7.14.1 There is additional and pertinent evidence in relation to the Tamar Energy plant at Halstead, Essex. This is particularly relevant because Tamar is the proposed operator of the AD plant in this case. There is no doubt that the Halstead plant is an appropriate 'surrogate' for comparison purposes.⁹²

7.14.2 The following evidence is particularly relevant to the issues before this appeal:

- a) In relation to Halstead Mr Branchflower's evidence⁹³ recognises that there have been 'significant' odour issues;
- b) Mr Heller, the Chief Executive Officer of Tamar, gave evidence of a substantial number of complaints in relation to odour at the Halstead plant. In his evidence⁹⁴ he lists 123 complaints up to the date his proof was published. At the Inquiry he updated this, with the result that by the end of the first week in March 2015 there had been a total of 144 complaints in relation to odour and 74 related to noise. The complaints

⁸⁶ Proof para 4.12.

⁸⁷ Proof Section 1.

⁸⁸ Rebuttal Appendix 5-K pages 7 and 8.

⁸⁹ Mr Branchflower's Rebuttal para 2.34 and Rebuttal Appendix 5-K.

⁹⁰ Rebuttal Proof Appendix 5-K Executive Summary.

⁹¹ CD 19 H4 Odour Management section 2.2.

⁹² CD23 page 14.

⁹³ Proof para 5.65.

⁹⁴ Proof para 13.3.

emanated from the residential properties to the north east and from the industrial estate to the south;

- c) The EA has inspected the Halstead plant on 6 occasions in a 6 month period and issued one C2 Non Compliance Report (a non-compliance which could have a significant environmental effect)⁹⁵;
- d) The Odour Management Plan for Halstead⁹⁶ lists sensitive properties and it is clear from the evidence that there have been odour complaints substantiated by EA officers from a distance of 400 metres from the plant; a distance further away than the proposed plant to residential properties in the present case;
- e) The Halstead plant received planning permission in March 2011. This has been followed by an amendment to the design and layout of the plant and a further design and operational review. In January 2015 a further planning application was made to continue the development without complying with certain conditions, so that the engine building can be altered to avoid overheating⁹⁷;
- f) The Inquiry Note produced by Mr Branchflower⁹⁸ gives further cause for considerable concern in that:
 - 1) The permit condition, related to odour control, referred to in paragraphs 10 and 14 of that Inquiry Note is incapable of objective enforcement which is why it would fail to meet the tests for an enforceable planning condition⁹⁹. The EA permit condition for Halstead provides that 'Emissions from the activities from the site shall be free of odour at levels likely to cause pollution outside the site, as perceived by an authorised officer of the Agency';
 - 2) The ability to monitor the emissions from the stack effectively is not established in the light of the description of the SCADA system in paragraph 15. As explained by Miss Gannon following the site visit on 19 March 2015, the monitoring is not in the form of telemetry enabling continuous monitoring and the reality is that intervention would be subsequent to an emission, after the event;
 - 3) The EA's Compliance Monitoring Report, dated 12 January 2015¹⁰⁰ (Appendix 5 to the report), refers to a 'temporary malfunction', describes a 'Permit breach for failing to take appropriate measures-condition 3.3.1 (C2)' and states 'This is the second consecutive monthly breach for odour';
 - 4) Importantly this report then states that 'all odour reports received between 6-30 December were exclusively from the north-east of the site', that is the residential properties which are in the order of 400

⁹⁵ Mr Heller para 13.1.

⁹⁶ Mr Heller Appendix 3 page 17 of 64 paragraph 3.4.3 and Table 3.4.1 A Site Sensitive Receptors.

⁹⁷ Bury Council Inquiry Note 5 ID 29.

⁹⁸ ID 79.

⁹⁹ Framework para 206.

¹⁰⁰ ID 75.

metres away and described as sensitive in the Odour Management Plan (OMP)¹⁰¹. The report continues 'We consider this to be unsatisfactory, as it is unlikely to address the ongoing odour derived from the gas chamber outlet and is not regarded as a permanent appropriate measure';

- 5) The report¹⁰² states also 'We are still waiting for the operator to submit an effective odour abatement proposal for the gas chamber outlet as previously requested by 9 January 2015';
 - 6) There is no evidence of any further EA inspection having been made since that visit in order to ensure compliance, undertake sporadic monitoring or in response to further complaints by residents. This does not demonstrate stringent enforcement and vigorous attention to compliance and the result is continued complaints, suffering and loss of amenity, to continue for what length and period we cannot say.
 - g) Mr Branchflower confirmed in evidence¹⁰³ that there are no measurements of actual odour levels available from Halstead and also that there are no case studies in the documentation to confirm his suggested levels of odour used in modelling.
 - h) Mr Branchflower identified that odour was detected by him during the site visit at Halstead and odours were identified at the boundary and the Inspector detected that same distinct smell at least 100 metres from the site boundary. Mr Branchflower stated the odours 'should not have been there' and 'further investigation and indeed problem solving remained';
 - i) In these circumstances the question arises why, given that the EA is aware of the very large number of complaints and having 'verified' the odours about 400 metres from site over a 9 month (to date) period, it is not dealing with this issue in a 'very rigorous and effective' way. Indeed, following on the notice in January 2015, it would appear that to date the EA has not discharged that notice and verified that final works have been undertaken. Despite Mr Branchflower stating the EA has capabilities to revoke, suspend and even prohibit works on site, he stated he was not aware in his considerable experience of them ever doing so.
- 7.14.3 The real problem, of course, is that in the event of similar issues at Halstead occurring at the appeal site the significance of those issues would be greater given the larger population within close proximity to the appeals site.¹⁰⁴
- 7.14.4 The issues in relation to containment led to the Inspector's decision to visit Halstead and both Miss Gannon and Mr Branchflower have given their evidence as to what they observed during that visit on 19 March 2015, in particular in relation to odour detected. The Inspector has his own observations also of course and in questions to Mr Branchflower the Inspector

¹⁰¹ Mr Heller Appendix 3 page 17.

¹⁰² ID75 page 2 of 5.

¹⁰³ Inspector's questions day 10.

¹⁰⁴ CD 19 page 8.

explained, for example, that he detected a distinct odour at the Halstead industrial estate. Mr Branchflower agreed that the level of 10 ou_E/m³ was appropriate to describe an odour which was distinct.

7.14.5 In the light of the above, the Council submits that the Tamar track record in Essex leads to the reasonable inference that the public of Ramsbottom is justified in concluding that they would not enjoy a good standard of amenity if this appeal should succeed. There is evidence also in relation to complaints at Tamar's other sites¹⁰⁵. The Council has serious concerns about anaerobic digestion, Halstead and Tamar's other sites.

7.15 Predictions and the real world

7.15.1 In the light of the above matters, and, as a matter of commonsense, something must be amiss in relation to AD and the way in which the regulatory processes are operating. Something is not working. In the submission of the Council, the reason the regulatory systems are not working in relation to AD plants is that insufficient attention has been paid to land-use planning considerations as required by the Framework, paragraph 17.

7.15.2 Miss Gannon's evidence builds upon the serious concerns identified above, and focuses on the disconnect between: (1) what the industry has been predicting would happen before and during the regulatory process; and, (2) what actually has happened in the 'real world' after grants of planning consent and environmental permits have been made.

7.15.3 Whilst recognising the policy statement in paragraph 122 of the Framework Miss Gannon's evidence¹⁰⁶ demonstrates that the proximity and location of sensitive receptors to the appeal site in this case means it is inevitable that an unacceptable loss of amenity would be suffered by residents and others if planning consent is granted; the standard of amenity would not be good.

7.15.4 This is for the simple reason that predictions cannot be relied upon to protect amenity. There are many sources of odour generation, as explained in the evidence of Mr Branchflower¹⁰⁷. Miss Gannon emphasises that the main reception area is the main source; when doors are open this is the most complained about area.¹⁰⁸

7.15.5 Miss Gannon does not challenge the modelling itself. She queries the reliability and accuracy of the data for the appeal site. It is noted that Mr Branchflower asserts that the odour impact assessment in this case is the most comprehensive he has seen¹⁰⁹. However, compliance with best practice should result in every odour impact assessment being comprehensive so this 'is not something out of the ordinary'.

¹⁰⁵ P1 pages 21-24.

¹⁰⁶ Proof para 3.4.

¹⁰⁷ para 5.10 and following paragraphs and Table 2.

¹⁰⁸ Inspector's questions day 3.

¹⁰⁹ P6A para 7.12.

7.15.6 In any event, what has happened in the present case in relation to data does not alleviate the public lack of confidence, as acknowledged in EA documents,¹¹⁰ because:

- a) the first application used Manchester Airport meteorological (met) data and this is not appropriate since the airport is situated in the Cheshire Plain as opposed to the Pennine uplands location for the appeal proposal;
- b) whilst there is agreement between the appellants and the Council as to the appropriateness of the dispersion modelling software used subsequently,¹¹¹ it is plain from the serious concerns highlighted above that there is a disconnect between predictions and empirical evidence, and it is clear that the science is continuing to evolve;
- c) even if the appellants use the $C_{98,1\text{-hour}} 1.5 \text{ ou}_E/\text{m}^3$ standard benchmark and this is met¹¹² the fact remains that complaints can still occur at that level¹¹³ and in any event it is noted that there is a predicted exceedance at a residential property DR 4¹¹⁴ which is much closer to the appeal site than the residential properties affected at Halstead;
- d) the highest odour emissions occur in calm conditions and this is a feature of the local meteorology and topography, which changes as the quarry is worked, so if there is a change in wind direction, swirls can occur and odour can rise before dropping and lingering over houses¹¹⁵;
- e) there is a level of uncertainty with the data used so the $C_{98,1\text{-hour}} 1.5 \text{ ou}_E/\text{m}^3$ output metric depends upon the data inputted;
- f) Whilst a mobile weather station has now been put on site, if the appellants had complied with condition 23 in the 2006 permission¹¹⁶, they would have had local site specific data for a significant period of time. This condition was highlighted early in the Inquiry and both Mr Redfern and Mr Stevens were asked about the mobile equipment referred to by the appellants' Advocate in cross-examination of Miss Gannon; in Re-examination Mr Stevens identified the equipment, but he was not able to state when the mobile equipment was installed at site;
- g) In this respect it is noteworthy that the EA recommends¹¹⁷ that to represent conditions for an 'average year' hourly meteorological data for a period of at least three, preferably five years should be used. It would appear that if the appellants had complied with condition 23 they would have had additional local data which would have made a contribution to understanding the local conditions.

¹¹⁰ As acknowledged above.

¹¹¹ SOCG para 8.5.

¹¹² Letter dated February 27 2014 from appellants (Mr Branchflower ID 6 Rebuttal N).

¹¹³ CD23 page 18.

¹¹⁴ SLR Proposed Anaerobic Digestion Plant Environmental Statement Addendum Air Quality and Planning Policy, January 2014 page 15 table 3-3 1.62 ou_E/m^3 .

¹¹⁵ Inspector's questions.

¹¹⁶ Inquiry Note 3 ID 4a.

¹¹⁷ H4 Odour Management CD 19 page 34.

- h) The need for local data is particularly important in this case given that every unit of data input throughout the reports provided, along with the modelling all have error margins and percentages of error which result in small 'mistakes' throughout.¹¹⁸ The Council submits that this results overall in significant errors within the predictions.

7.16 Whether conditions could render the proposal consentable

- 7.16.1 It is necessary to consider whether planning conditions could render the proposal consentable.
- 7.16.2 As explained above, the standard EA odour condition is in a form which is not enforceable in terms of the standard approach to conditions in a planning context.
- 7.16.3 It is difficult to see how the odour issue can be controlled so as to render this appeal consentable. Certainly experience elsewhere does not inspire confidence.
- 7.16.4 In the light of the evidence presented to this Inquiry the application of land-use principles leads to the conclusion that it is not appropriate to grant consent in this case because the issues in relation to odour are such that the proposal would not give the local people a good standard of amenity and in any event the evidence demonstrates that the perception and fear of this proposal and lack of confidence by the public in the process is very genuine and real.
- 7.16.5 If the core planning land use principles are to be meaningful and if they are not capable of protecting amenity as required, the clear conclusion is that the appeal should be dismissed.
- 7.16.6 Indeed in the light of the above it is not in the least surprising that the Council members were unwilling to consent the application.

7.17 The schemes before the Public Inquiry

- 7.17.1 The Council invites dismissal of the appellants' scheme as determined by the Council, which is the subject of this appeal, Proposal A.
- 7.17.2 The Council also invites dismissal of the scheme as proposed to be amended, Proposal B. The Council did not resist consideration of this proposed amendment because it was satisfied that there had been sufficient publicity and consultation and that consideration of the amendment was consistent with the Wheatcroft principles referred to in Annex M of the Planning Inspectorate's Procedural Guide (1st April 2014).
- 7.17.3 However, the amended scheme has 9 doors as opposed to 2 and since the main reception area is the main source of odour and the evidence tested 2 doors, the presence of more doors means that there is further uncertainty as to whether risk of odour release would increase dramatically with the result that this scheme would be more harmful than the application as determined by the Council.

¹¹⁸ Mr Branchflower Day 10 xx by Dr Jackson.

7.18 Substantial local opposition

- 7.18.1 Self-evidently there is substantial local opposition in this case. Over 500 consultation responses at the appeal stage.
- 7.18.2 The Opposition to this appeal crosses party political lines. The Inquiry has heard articulate and responsible opposition on behalf of local people by Mr David Nuttall MP (Conservative), Councillor Hodgkinson (Conservative), and Councillor Fitzwalter (Labour) and submissions from the Bury Green Party. Councillor Bevan, Dr Jackson and others have led the presentation of the case for RAWs with care and skill.
- 7.18.3 Significantly that opposition is based on substantial planning grounds, in particular Green Belt and Amenity.
- 7.18.4 This substantial local opposition is entitled to considerable weight in our democratic society because it is founded on valid planning reasons.

7.19 Conclusions

- 7.19.1 Waste management has an important role to play in achieving the goal of sustainable development and there has been a move towards the sustainable consumption and production of resources, which is one of the Government's key priorities for sustainable development. A key driver in achieving sustainable consumption and production is the Waste Hierarchy, which looks at managing waste by prevention; preparing for reuse; recycling; other recovery; and disposal as a last resort.
- 7.19.2 It is accepted that the appeal site moves waste up the hierarchy, provides an amount of renewable energy and a digestate for use as a replacement fertiliser.
- 7.19.3 However, the development is inappropriate development and the proposal causes significant harm to the openness and purposes of the Green Belt.
- 7.19.4 The appellant has not identified any very special circumstances to overcome the harm to the Green Belt. This development is of the wrong type and in the wrong place and contrary to Policy 10 of the adopted GMWP, Policies OL1/2 and EN4/1 of the UDP and paragraph 79 and 88 of the Framework.
- 7.19.5 Whilst the production of renewable energy is capable of constituting very special circumstances¹¹⁹, the PPG makes it clear that the need for renewable energy does not automatically override environmental protections¹²⁰ and on the facts of this case there is not sufficient evidence to override environmental protections.
- 7.19.6 The acknowledged inappropriate development in the Green Belt is harmful and contrary to the aims of paragraphs 79-92 of the Framework, UDP Policy OL1/2 and paragraph 007 of the PPG.
- 7.19.7 The evidence of Miss Gannon indicates that the detrimental effect on the amenity of residents, pedestrians and others through adverse impacts from

¹¹⁹ Framework para 92.

¹²⁰ PPG para 007.

odour is unacceptable and should be given significant weight in assessing and rejecting this appeal.

- 7.19.8 For the above reasons the Council invites the Secretary of State to dismiss the appeal.

8. THE CASE FOR THE APPELLANTS

8.1 Introduction

- 8.1.1 The appeal is submitted by Peel Environmental Limited (Peel) and Marshalls Mono Limited (Marshalls). Marshalls operate both FBQ and the concrete products factory which has grown up adjacent to it. Peel own part of the freehold of the overall quarry area including part of the site upon which the proposed facility would be located. Tamar is a company who build and operate AD facilities in the UK and they have an agreement with the appellants in this case to develop the facility should planning permission be granted.
- 8.1.2 The proposed AD plant would process up to 45,000 tonnes of bi-products from the food industry, together with selected agricultural waste, to generate heat and electricity from the collection and burning of biogas. All AD projects, therefore, are a combination of both a renewable energy power station and a waste handling facility. In this case, however, the Inquiry has heard from the appellants' witnesses, Mr Redfern and Mr Stevens that the driver and primary purpose of bringing forward the proposals was to help meet the company's aspirations in respect of its climate change obligations. The concrete products industry, which is a heavy energy user and of which Marshalls is a key player, is committed to assisting the government with its obligations under the *Climate Change Act 2008*. The industry is currently working towards these goals on a voluntary basis but, along with other industry, faces a prospect of regulation or financial penalty, possibly through the Climate Change Levy, if voluntary action proves insufficient.
- 8.1.3 The development site comprises about 1.38 hectares of land although the red line encompasses 5.37 hectares in total. This forms part of a long established gritstone quarry whose currently active areas comprise 38.56 hectares, itself forming part of an overall land ownership envelope of about 71 hectares, that has been worked since the mid 19th century¹²¹. The site is located around 1 kilometre to the east of the centre of Ramsbottom.
- 8.1.4 Residential dwellings are located to the northwest and west of the quarry, with the M66 motorway and Ramsbottom beyond. Agricultural land and individual dwellings lie to the north and north east of the Appeal site.
- 8.1.5 It is agreed that the distance from the closest residential property to the Appeal scheme's proposed process building would be around 165 metres and 115 metres to the nearest edge of the yard area. The appeal site is separated from the closest residential properties by a high landscaped bank of at least 12 metres above the base level of the scheme. Consequently, the

¹²¹ The first records of quarrying activities on the site are dated 1844 (Para 4.3 and 5.1 of PEMM/GCR/01)

development would not be visible to the properties and areas to the northwest and west.

8.1.6 Section 2 of the SoCG provides an agreed, more detailed, description of the site context.

8.2 Planning history

8.2.1 The planning history of FBQ is apposite. Section 3 of the SoCG refers to the historic mineral permissions at the quarry, which were the subject of a review under the Environment Act 1995, approved in April 2009. Other key planning permissions include a permission relating to an extension to the quarry; excavation, construction/demolition waste landfill operation; a construction and demolition waste recycling facility and green waste composting operations, approved with conditions 21st December 2006¹²², Ref. 43048. The permitted area for the recycling and composting facility coincides approximately with the appeal site¹²³.

8.2.2 The status of planning permission Ref. 43048 was subject to consideration during the course of the Inquiry. Further to written submissions by the main parties¹²⁴, it was unequivocally confirmed by the Council's Advocate, that the 2006 Permission had been lawfully implemented. Any doubts as to the latter were overcome and as summarised by the Inspector was "no longer an issue". To the extent that any further information was required to satisfy planning conditions, the Council confirmed it would not be taking enforcement action. Rather the discussion served as a useful reminder to the appellants to complete the administrative exercise of discharging any outstanding conditions. It was confirmed that further to receiving instructions from the appellants, the requisite information was submitted to the Council on 31 March 2015¹²⁵.

8.2.3 Additionally, as recently as October 2013, planning permission¹²⁶ was granted for revised restoration of the quarry involving the further importation of inert waste (950,000 cubic metres) up to December 2036.

8.2.4 The Marshalls concrete products factory has the benefit of permanent planning permissions and is a freestanding manufacturing operation not linked, in planning terms, to the quarry operation,¹²⁷ although there is a strong synergistic relationship between the two.

8.2.5 Other relevant planning permissions are referenced at section 3 of the SoCG.

8.3 Plans and potential revisions

8.3.1 A list of the agreed plans upon which the application was determined is set out in draft condition 2 at section 10 of the SoCG.

¹²² Ref 43048

¹²³ Paragraph 3.3 SOCG

¹²⁴ SLR Note 3 (ID25) produced in response to the Council's Note IN3 (ID4c), the latter being updated by the Council's document "Response to Inquiry Note IN3A" (ID62).

¹²⁵ Planning Portal reference PP 04090122

¹²⁶ Ref 56576

¹²⁷ Paragraph 3.6 of the SOCG.

- 8.3.2 Since the submission of the planning application the subject of this appeal in January 2014, relatively minor revisions have been proposed to the detailed design of the appeal scheme. The amendments have arisen to reflect scheme improvements suggested by the intended operator of the AD facility, Tamar. Mr Heller's proof sets out¹²⁸ the purpose of the changes, which are with a view to broadening the options for the form in which digestate is exported from the site for use as biofertiliser.¹²⁹ Put simply, it would allow for liquid to be 'dewatered' from the digestate at the AD plant, thus reducing the volume of the material being exported by vehicle, with resultant reduction in traffic flows. The latter was explained by Mr Green in evidence in chief.
- 8.3.3 Section 4 of Mr Owen's proof sets out in detail the range of revisions to the appeal scheme, including the list of relevant plans¹³⁰. Further, Mr Owen refers to plans produced to provide a comparison of the appeal scheme as submitted and as revised.¹³¹
- 8.3.4 The introduction of the revisions has been heralded since July 2014, when discussed in a meeting between the appellants and the Council. The detailed revisions were set out in Section 2 of the Appellant's Statement of Case dated September 2014. Subsequently, further to liaison with the Planning Inspectorate, SLR confirmed¹³² that a public notice advertising the scheme changes and the accompanying ESA2 had been published in the Bury Times on 24 December 2014.
- 8.3.5 Understandably, PINS noted that the outcome of the consultation process should be awaited, prior to a determination being made as to whether the revised plans should be accepted. Annex M of the Planning Inspectorate Procedural Guide, 1st April 2014, provides advice on the amendments to schemes during the appeal process at paragraph M.2.2 (page 71):-

'Where, exceptionally, amendments are proposed during the appeals process the Inspector will take account of the Wheatcroft Principles when deciding if the proposals can be formally amended. In the Wheatcroft Judgement¹³³ the High Court considered the issue of amendments in the context of conditions and established that 'the main, but not the only, criterion on which judgement should be exercised is whether the development is so changed that to grant it would be to deprive those who should have been consulted on the changed development of the opportunity of such consultation'. It has subsequently been established that the power to consider amendments is not limited to cases where the effect of a proposed amendment would be to reduce the development¹³⁴.

¹²⁸ Paragraph 6.12 and 6.13 of ID1

¹²⁹ PEMM/Tamar/Note 1 (ID17)

¹³⁰ Paragraph 4.3

¹³¹ Paragraph 4.5

¹³² Owen Appendix 20

¹³³ *Bernard Wheatcroft Ltd v SSE* [JPL, 1982, P37]. This decision has since been confirmed in *Wessex Regional Health Authority v SSE* [1984] and *Wadehurst Properties v SSE & Wychavon DC* [1990] and *Breckland DC v SSE and T. Hill* [1992].

¹³⁴ See *Breckland DC v Secretary of State for the Environment* (1992) 65 P&CR.34.

- 8.3.6 It is submitted that the nature of the plan changes and consultation carried out by the Appellants in conjunction with the Council clearly falls within the above principles. Specifically;
- a) The plan revisions are of a relatively minor nature. This has been confirmed by the various responses to the consultation process, including the Council's own response, that the modifications do not raise any new substantive issues. Notably, the EA confirmed, further to the ESA2 being sent to them, that they had no further comments to make to those submitted previously;
 - b) The revised plans have been subject to public consultation for the requisite period and assessed by way of a voluntary ES addendum;
 - c) The proofs of evidence address the revised scheme as well as that originally submitted;
 - d) There has been no prejudice to any party, there having been ample opportunity to comment on the revisions
 - e) The above factors, in particular the modest nature of the changes and the lack of prejudice, fulfils the tests expounded in the *Bernard Wheatcroft* decision;
 - f) On the first day of the public inquiry, the Inspector canvassed the views of the parties as to the issue of the admittance of the revised plans. The Council reiterated its position, that it caused no objection on its part. Dr Jackson on behalf of RAWs did set out a range of concerns, the focus of which was the de-watering of the digestate and additional doors to the building. He did not, nor did any other party, state that they had not been properly informed of the plan revisions, or that they had not had the chance to consider the details properly, or that they had been prejudiced in any way. Indeed, RAWs provided a detailed response document to the ESA2, dated 20 January 2015. The written response provides substantive rather than procedural criticism. There is no suggestion of prejudice to the preparation RAWs' case. The Appellants submitted a direct response to part of their critique in Appendix 23 to Mr Owen's proof in respect of noise issues and generally via the full suite of proofs. Additionally, Dr Jackson went on to provide Evidence in chief and cross-examination on the issues RAWs considered arose from the plan revisions.
- 8.3.7 On the issue of the de-watering of the digestate, the appellants provided clarification throughout the course of the Inquiry, in response to RAWs' queries¹³⁵ and via the oral evidence of Mr Heller and Mr Green.
- 8.3.8 As well as providing flexibility to the 'product offer' of Tamar and thus the resilience of the business, the process of dewatering would lead to decreased levels of vehicle movements transporting digestate, with obvious resultant benefits.
- 8.3.9 The Tamar Note¹³⁶ references various discussions, with United Utilities (UU). The submissions confirmed that the intended point of connection to the public

¹³⁵ ID17.

¹³⁶ ID17

sewer network would be to an existing manhole¹³⁷, which would be accessed via a new connection. The latter would be formed via underground pipe between the site and the existing private sewer, which itself runs between the access road and the manhole.¹³⁸

- 8.3.10 The Tamar Note appended correspondence between H20K and UU, confirming that the available capacity of the existing sewer is 39l/s at full bore flow. The latter should be considered against a predicted peak flow rate, assuming dewatering of the entire digestate stock¹³⁹, of 4l/s, which would only make use of a small percentage of the available capacity, even in the very worst case. Mr Heller confirmed in evidence in chief that the effluent would be of a high quality.
- 8.3.11 In the 4 weeks the Inquiry has run, it has not been, and cannot now be credibly argued that any party has been prejudiced by the introduction of the revised plans such as would create a legitimate basis for excluding them. No case to the contrary was set out in the closing submissions of others. The Inspector indicated in opening the Inquiry that he hoped to determine the issue of acceptability of the revised plans early on but following the Secretary of State's decision to recover the appeal¹⁴⁰ this matter would be reported on and left to the Secretary of State to decide

8.4 Environmental Impact Assessment

- 8.4.1 The appellants sought a Screening Opinion from Bury Metropolitan Borough Council to determine whether an EIA would be required. By letter dated 7th September 2012 the Council confirmed that an EIA would be required for the development. The whole of the proposed AD plant and the majority of the proposed inert infilling are located within the administrative area of the Council, although parts of both application sites are also located within the administrative boundary of Lancashire County Council. The Council was the lead authority on both the Screening and Scoping Opinions although Lancashire County Council have been involved in the process.
- 8.4.2 A full Environmental Statement dated July 2013 (ES), updated by a January 2014 addendum (ESA1) was submitted with the application with a more recent addendum, dated December 2014 (ESA2) in respect of the proposed revisions now having been fully advertised as prescribed by the regulations. All of the evidence before the Inquiry comprises environmental information for the purpose of the EIA regulations¹⁴¹.
- 8.4.3 Although both the Council and RAWs clearly challenge the findings of the Environmental Statement there appears to be no remaining technical issue of adequacy of environmental information raised by any party as a separate procedural point.

¹³⁷ (known as 0901)

¹³⁸ This overall arrangement is illustrated on plan SLR Drawing 3 Sewer Plan, (located at Annex 1 of Tamar Inquiry Note 1, at 12th page of overall document).

¹³⁹ For the sake of robustness.

¹⁴⁰ See Secretary of State's letter dated 11th March 2015

¹⁴¹ Regulations 2 (1) The Town and Country Planning (Environmental Impact Assessment) Regulations 2011

8.5 The Council's decision

- 8.5.1 The matter was reported to members on the 18th March 2014. The officer's report to committee¹⁴² thoroughly explored the issues and provided an unequivocal recommendation that planning permission should be granted. The Committee were advised that the development would be acceptable from a waste policy perspective including a proper analysis of the impacts on the Green Belt. The EA did not object to the scheme and technical officers of the Council also confirmed that the odour impacts from the proposed plant would not have a significant adverse impact upon the amenity of neighbouring properties.
- 8.5.2 Despite the recommendation members refused planning permission. The notice of refusal is dated 19th March 2014 and cites two reasons. The first relates to a Green Belt policy with a second alleging that the proposed development is likely to result in a severely detrimental impact upon the residential amenity of nearby sensitive receptors.

8.6 The Main Issues

- 8.6.1 The SoCG sets out the parties' identification of the main issues as at the date it was submitted as follows:
- a) On the basis of the scheme comprising inappropriate development are there very special circumstances sufficient to overcome the harm to the Green Belt as required by paragraph 88 of the Framework?
 - b) To what degree would the development impact on the Green Belt purposes as set out in paragraph 80 of the Framework, in the context of the site's current contribution to them?
 - c) Will the proposed development result in unacceptable odour impacts upon nearby sensitive receptors?
- 8.6.2 The Inspector confirmed his identification of the main issues in accordance with Regulation 16(2) Town and Country Planning (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000 although now that the matter has been recovered by the Secretary of State different rules (albeit identical in this respect) apply¹⁴³. In light of the matter now being reported the Inspector produced a written note confirming the main issues as follows;¹⁴⁴
- a) Whether the proposal would constitute inappropriate development in the Green Belt;
 - b) The effect on the openness of the Green Belt and whether the scheme would conflict with the purposes of the Green Belt;
 - c) The effect on the living conditions of sensitive receptors in the local area, with particular reference to odour and noise;

¹⁴² CD25

¹⁴³ Regulation 15(2) Town and Country Planning (Inquiries Procedure) (England) Rules 2000

¹⁴⁴ Set out within the email from Peter Kozak at PINS dated 27 March 2015

- d) The effect on air quality in the locality;
 - e) The effect on the safety and convenience of highway users;
 - f) The effect on the character and appearance of the local area, which includes the Ramsbottom and Holcombe Conservation Areas;
 - g) The effect on the local economy;
 - h) and, if the scheme would constitute inappropriate development in the Green Belt, whether the harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations and if so, whether the very special circumstances necessary to justify the proposal would exist.
- 8.6.3 The appellants suggested that it may be prudent to add ecology to this list of issues given some local objection on the topic.
- 8.6.4 The Inspector confirmed that the main issues are the same whether the appeal is determined on the basis of the scheme considered by the Council, Proposal A, or the revised scheme promoted at appeal by the appellant, Proposal B.
- 8.7 The approach to determination**
- 8.7.1 Section 38(6) *Planning and Compulsory Purchase Act 2004* and Section 70(2) *Town and Country Planning Act 1990* require that applications for planning permission must be determined in accordance with the Development Plan unless material considerations indicate otherwise.
- 8.7.2 Paragraph 14 of the Framework confirms that at the heart of Government policy is a presumption in favour of sustainable development which, for decision taking, means approving development proposals that accord with the Development Plan without delay.
- 8.7.3 Given that some objectors have alleged an impact on two Conservation Areas, albeit at some considerable distance from the appeal site, it would be prudent to bear in mind the general duty in respect of conservation areas in the exercise of planning functions. Section 72(1) *Planning (Listed Buildings and Conservation Areas) Act 1990* prescribes that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of Conservation Areas when considering such potential impacts. The Courts have held that duty to be satisfied where no harm is found to be caused by development to the character and appearance of the Conservation Area¹⁴⁵.
- 8.7.4 A number of Court decisions assist in understanding the nature of the correct approach to decision making in Green Belt cases. The recent Court of Appeal decision in the Redhill Aerodrome case¹⁴⁶ confirms that as part of the balancing exercise, the Green Belt factors, together with all other planning

¹⁴⁵ See *South Lakeland DC v Secretary of State for the Environment* [1992] 2 AC 141 per Lord Bridge at P146

¹⁴⁶ *Redhill Aerodrome Ltd v Secretary of State for Communities and Local Government and Others* [2014] EWHC 2476 (P7 Appendix 7).

harm, needs to be weighed against any considerations in favour of the development. Also the Basildon case¹⁴⁷ confirms that there "is no reason why a number of factors ordinary in themselves cannot combine to make something very special". Whether any particular combination amounts to very special circumstances for the purposes of the Framework would be a matter of planning judgement for the decision maker.

8.8 The Development Plan

- 8.8.1 The Statement of Common Ground lists the relevant documents¹⁴⁸ of the Statutory Development Plan.
- 8.8.2 For the appellant, Mr Owen sets out his analysis of the key Development Plan policies in section 5 of his proof at paragraphs 5.64 to 5.88. Mr Martin for the Council does likewise in his section 6 at paragraphs 6.11/12 and 6.19/20.
- 8.8.3 Although the UDP was adopted as long ago as 1997 some of its key policies remain broadly consistent with the Framework.
- 8.8.4 In particular Policy EN4/1 provides support for the provision of renewable energy projects subject to criteria. One criterion is that proposals should 'not have an unacceptable adverse impact on areas of Green Belt, ...'. Other criteria relate to amenity, visual intrusion, noise, impact on conservation areas, special landscape areas, health or safety risk or nuisance to the public, and impact upon the natural environment.
- 8.8.5 Both Mr Martin and Councillor Bevan agreed in cross-examination that the support for renewable energy is consistent with the Framework and both specifically agreed that paragraph 91 of the Framework provides clear guidance that the wider environmental benefits associated with increased production of energy from renewable sources may constitute very special circumstances. Provided the phrase 'unacceptable adverse impact on areas of Green Belt' contained within Policy EN4/1 is read in a way which is consistent with paragraph 91 of the Framework there is no dispute that the Policy should be afforded substantial weight.
- 8.8.6 Policy 10 of the GMWP¹⁴⁹ adopts a permissive approach to applications for waste management facilities on unallocated sites, such as the appeal site, where: - "*(i) the proposal fits with the spatial strategy set out in the waste plan and contributes to the waste plan aim and objectives; and ii) the proposal meets the same assessment criteria as allocated sites*".
- 8.8.7 The aim, objectives and spatial strategy of the plan are set out in section 1 of CD14. The aim is to provide sufficient opportunities for new facilities to come forward in the right places and at the right time. Strategic objective 5¹⁵⁰ specifically prescribes a flexible approach for the delivery of required waste management facilities. It is not disputed that the appeal proposals would meet the crucial strategic objectives of promoting the movement of waste up the Waste Hierarchy (objective 2), assist in reducing greenhouse gas (GHG)

¹⁴⁷ Basildon v Secretary of State (2004) EWHC 2759 (Admin) (P7 Appendix 8)

¹⁴⁸ Section 6 CD24

¹⁴⁹ adopted April 2012 CD14

¹⁵⁰ Paragraph 1.26 page 17 CD14

emissions and assist in adaptation/mitigation of climate change (objective 3). The spatial strategy is set out at paragraph 1.29/30 of the Plan. Mr Martin confirmed in cross-examination the spatial strategy did not specifically proscribe development in the Green Belt.

- 8.8.8 The only point of contention in the interpretation of GMWP Policy 10 appeared to relate to the second criterion. Paragraph 4.24 of the reasoned justification for the plan simply prescribes a list of the assessment criteria which include 'Green Belt and strategic gaps'.
- 8.8.9 At paragraph 7.22 of his proof and in evidence in chief, Mr Martin appeared to indicate that the appeal site could not meet the criteria simply by reason of the fact it is in the Green Belt. This was based upon a misreading of the Policy. Mr Martin readily conceded in cross-examination that if any given proposal were found to pass the very special circumstances test then it would, of necessity, pass the Green Belt criterion in Policy 10¹⁵¹. The screening out of sites in the Green Belt as part of the plan preparation process comprised a broad brush approach designed to avoid protracted analysis of every potential site. The safeguard in this process for potentially good sites which may be in the Green Belt is the very existence of Policy 10 itself. It is to apply precisely where sites have not been allocated in the process. Otherwise, the sweeping away of sites with a broad brush without actually considering the merits of an individual case would run directly contrary to the key aim and strategic objective for the flexible delivery of waste management facilities. The Council makes much of the fact that the GMWP claims to have identified sufficient sites. When considering the need for a waste facility the appellants say that significant weight should only be ascribed to facilities already built and operating. As an aside, it is interesting to note that the appeal site was not taken forward as a specific allocation in the plan, not because it was in the Green Belt, but because it had already been identified for waste processing operations by reason of the existing planning permissions and which, therefore, formed part of the underlying evidence base of the plan itself¹⁵².
- 8.8.10 The correct approach to the interpretation of GMWP Policy 10 is straight forward. In order for a proposal to be granted planning permission in the Green Belt it would need to be demonstrated that very special circumstances exist to justify it. This is consistent with the approach in the Framework. This is also precisely the approach advocated by Mr Martin in his initial advice to the Council in his letter dated 12th September 2013¹⁵³. Under the heading of the Greater Manchester Waste Plan he rightly opines that 'the application falls within the Green Belt and the applicant refers to the Framework which states that for such Green Belt locations applicants will need to demonstrate very special circumstances...'. At that stage Mr Martin did not add the gloss which appears in paragraph 7.22 of his proof which, in effect, would mean the site would be doomed to fail the very special circumstances test simply because it had not been specifically identified in the plan.

¹⁵¹ ID 107 page 10 para 29.

¹⁵² Table 8, p28 of 'Outcomes Report on the Stage Two Issues and Options: Built Facilities Consultation' submitted on day 10 of the public inquiry

¹⁵³ Mr S Martin proof – Appendix A

- 8.8.11 Overall, Development Plan policies relating to Green Belt are simply a reflection of national policy. Therefore, the approach to interpretation of national policy is equally relevant to an understanding of the Development Plan. Mr Owen referred to the Redhill and Basildon cases in his evidence which provide guidance on the correct approach to carrying out a balancing exercise under Green Belt policy. Both Mr Martin and Councillor Bevan in cross-examination fully accepted the precepts derived from both cases.
- 8.8.12 Councillor Bevan further confirmed in cross-examination that his own approach, which implied that each circumstance must qualify in itself as 'very special', was incorrect¹⁵⁴. The same mistake is made in the closing submissions of RAWs¹⁵⁵, whereas the Council gives consideration to whether the factors identified would cumulatively amount to very special circumstances¹⁵⁶.
- 8.8.13 Finally, both Mr Martin and Councillor Bevan agreed in cross-examination that the first step in carrying out the Green Belt balancing exercise was to assess the harmful impacts on the fundamental aim of preserving openness, the essential characteristics of openness and permanence, and the five purposes set out at paragraph 80 of the Framework.
- 8.8.14 Councillor Bevan specifically confirmed in cross-examination that this was a missing question from the three separate sequential questions he suggested local planning authorities must ask themselves¹⁵⁷.
- 8.8.15 Thus, all the main parties agree that the lower the harm to the fundamental aim, essential characteristics and purposes of Green Belt the lower the threshold for circumstances to qualify, cumulatively, as 'very special'.
- 8.9 Green Belt harms**
- 8.9.1 Only Mr Keith Owen, for the appellants, sought to set out a proper analysis of the harm to Green Belt including the base line position. It was striking that neither Mr Martin nor Councillor Bevan even attempted a similar exercise. This is forensically instructive in itself, even without further analysis.
- 8.9.2 Both Mr Martin and Councillor Bevan confirmed in cross-examination that they had not addressed the issues in any detail in the way required by policy.
- 8.9.3 There were very few references to Green Belt harms in Mr Martin's proof and a total absence of analysis on the key points. Essentially, Mr Martin's case is to be found in a single short paragraph at 7.4 of his proof.

"Given the industrial nature of the AD Plant at the appeal site this will inevitably detract from the openness of the Green Belt and as such I consider the level of harm to be significant".

¹⁵⁴ Councillor Bevan suggests at paragraph 5.39 of his proof that 'very special circumstances' must not be merely "special" circumstances, in the sense of being unusual or exceptional, but "very special".

¹⁵⁵ ID106 paras 156-260.

¹⁵⁶ ID 107 para 63.

¹⁵⁷ Ref to para 5.37 of Councillor Bevan's proof

- 8.9.4 Likewise, Councillor Bevan provides little analysis. At paragraph 5.26 of his proof he aggregated the harms from the existing permanent factory and ongoing mineral extraction and landfill operations together with the addition of the AD Plant.... 'to prove that there will be significant harm to the Green Belt'. However, he accepted in cross-examination that this was the wrong approach. He agreed that what needed to be assessed was the net harm to the Green Belt arising from the appeal proposals judged against, not along with, the baseline.
- 8.9.5 Put simply, the case opposing development relies solely upon the definitional harm arising by reason of inappropriateness contained within paragraph 87 of the Framework. Whilst this may be a starting point for a balancing exercise it does not end there. Because paragraph 88 of the Framework affords 'substantial weight' to definitional harm, it may be superficially tempting to rely solely upon it. However, such complacency is fatally damaging to the analysis in the circumstances of the present case. In particular, the existing and likely future condition of the quarry; together with the active landfill operations; combined with the realistic fallback position as comprised in extant planning permissions; added to the presence of the existing concrete products factory and its likely future development, all serve to place the assessment of Green Belt harms in this case in a unique position.
- 8.9.6 Mr Keith Owen sets out a full analysis of the proposed restoration for the site and of the fall back permissions. The appeal site has been a subject of large scale quarrying operations which are highly likely to continue for the next 25 years or so. The existing approved final restoration levels are indicated in the restoration drawing FBQ6/1 Revision 1 October 05¹⁵⁸ for the quarry including the appeal site. This shows a restoration of the site at 200 metres AOD as part of a large overall potential 'development' platform. The restoration drawing does not propose any greening or treatment of the appeal site. Although a planning condition was inserted on the permission¹⁵⁹ requiring the submission of a restoration scheme there was nothing that expressly requires the restoration of the platform. Although Mr Martin in cross-examination did not agree to the use of the word 'development', he acknowledged that a substantial flat level platform had been intended by the restoration scheme. It would plainly appear as a large engineered plateau cut into the surrounding landscape when restored.
- 8.9.7 Shortly before the Inquiry opened the Council indicated that the composting and recycling permission Ref. 43048 had not been lawfully implemented. Inquiry Note 3¹⁶⁰ set out some detailed reasoning. The appellants responded on the third day of the Inquiry with its response to Inquiry Note 3. This was in turn further responded to by the Council on the seventh day of the Inquiry. The upshot of those lengthy submissions was an acceptance by the Council that the composting and recycling permission Ref. 43048 has been lawfully implemented and that there remains a realistic likely fallback position of recycling activity taking place on the appeal site for most of the proposed life of the temporary permission now being sought.

¹⁵⁸ Appendix 12 Keith Owen Proof

¹⁵⁹ 43048 Condition 26

¹⁶⁰ See paragraph 10 above and footnote 5

- 8.9.8 Although the recycling aspect has not been implemented so far, this is because Peel were pursuing municipal waste contracts for several years, which proved unsuccessful, and the current proposals have been in prospect for the last 2 or 3 years. If permission is refused, the appellants would look to establish a recycling operation on site.
- 8.9.9 Given the final agreed position it is not necessary now to recite the caselaw or its application to the facts as set out in the appellants' note, but its contents remain relied upon.
- 8.9.10 Even leaving aside the composting and recycling permission, Mr Martin confirmed in cross-examination that the appeal site would comprise a relatively modest area of "open" land surrounded by a sea of "unopen" uses. He accepted the metaphor of a doughnut ring in cross-examination. This was based upon his confirmation that the land filling operations were, in themselves, inappropriate development in the Green Belt. He agreed that when comparing the restoration proposals with the adjacent permanent concrete factory, the appeal site would be surrounded by 'unopen' and 'inappropriate' land uses.
- 8.9.11 Such site specific circumstances must indeed be very rare, if not unique. Mr Owen's thoughtful analysis led him to the cogent view that: -

"In summary it is considered that, if not previously-developed land, as a minimum the appeal site has all the characteristics of previously-developed land. Furthermore the land is likely to remain in this state for the majority of the life time of the appeal proposal. In its current state the appeal site does not make any positive contribution to the countryside or setting of Ramsbottom"¹⁶¹.

- 8.9.12 This opinion is based on the simple analysis of land use budgets between open and unopen uses, or appropriate and inappropriate development, but the lack of harm to the Green Belt is further aided by: -

"Another peculiar feature of the appeal site is the degree of enclosure resulting from its location within the quarry. In addition to the standard quarry plant and equipment, the quarry houses a large scale concrete products factory covering an area of 9 hectares. Few people would be aware of the scale of the facility as views of the facility are extremely limited due to the quarry faces and large landscape banks which surround the quarry. The earth banks have been constructed and landscaped over many decades and have now fully assimilated into the landscape. To the west of the appeal site the landscape bank is a minimum 12 metres high and would provide complete screening of the proposed AD plant from the closest residential properties which are at a lower elevation than the appeal site"¹⁶².

- 8.9.13 At paragraph 7.3 of his proof, Mr Martin confirms his understanding of 'openness' to be "an absence of visible development ...". A definition all

¹⁶¹ Reference Keith Owen Proof paragraph 6.6 page 35

¹⁶² Ref Keith Owen proof paragraph 6.7 page 35

parties appeared to agree, with reference to the 'Timmins case'¹⁶³. In the same paragraph he goes on to identify the relevant aspects to be taken into account including "scale, bulk and site coverage as well as the visual impact of the proposed development on its surrounds". Whether land which is already 'unopen' can become more so by increasing the scale of development upon it is an interesting point. Mr Martin accepted in cross-examination that the development of a two-storey house on the footprint of a bungalow, all other things remaining equal, would not render a site less 'unopen'. Whilst this presents an interesting intellectual conundrum, both Mr Owen and Mr Martin agree that scale is relevant to assessing impact on Green Belt purposes and should therefore be fully taken into account. It is in this context that the containment provided by the quarry bowl and the presence of lawful development within it, become even more relevant mitigating factors. Although Green Belt policy is not about protecting against visual impacts, it is nonetheless, difficult, if not impossible, to assess the effects of development on the Green Belt purposes without taking an organoleptic approach.

- 8.9.14 Overall, the harm to openness in this case is extremely low. Essentially the site is already developed land and benefits from planning permissions which comprise inappropriate uses. The site is due to be restored from 2038 onwards and there would be a short period before the expiry of the proposed temporary permission for the AD plant in which it would be seen more clearly as impacting the openness of the Green Belt. The scale is also greater than the fallback positions and arguably could carry some additional weight but importantly this must be 'seen' in the context of the site characteristics. Mineral sites subject to restoration conditions are excluded from the definition of previously-developed land in the Framework on the assumption that they would be restored to an undeveloped appearance at the end of extraction. However, where that would not happen and during extraction, sites continue to bear the characteristics of previously-developed land.
- 8.9.15 The other essential characteristic of Green Belts is their permanence. The appellants seek a temporary planning permission up to 2042 to allow the capital expenditure to be properly amortised. Both Mr Martin and Councillor Bevan are dismissive of the temporary nature of the consent being sought. Despite this, neither wanted to see a permanent permission if the Secretary of State finds that very special circumstances have been made out. There is nothing novel or radical about temporary buildings and uses taking place within active quarries with the ultimate restoration being programmed around the standard end date for quarrying activity at 2042. Given the context of the existing activity in and around the site, the planned temporary AD development would not have a material impact on the essential characteristic of permanence.
- 8.9.16 Mr Keith Owen sets out a full analysis of the potential impacts of the proposal on the five purposes of Green Belt.

¹⁶³ IDs 14 and 15.

- 8.9.17 Both Mr Martin and Councillor Bevan appeared to accept in cross-examination Mr Owen's position that the proposal would not have any harmful effect on the unrestricted sprawl of large built up areas.
- 8.9.18 Likewise, the proposal would not contribute towards neighbouring towns merging into one another.
- 8.9.19 The dispute about the purpose of safeguarding the countryside from encroachment was a simple corollary of the degree to which the scheme impacts on openness and does not require further elucidation.
- 8.9.20 Mr Owen confirmed the proposal would have no impact on the setting of the special character of historic towns and that there would be no material harm to this Green Belt purpose. The SoCG confirmed that there would be no adverse impact on heritage assets and Mr Martin agreed in cross-examination that there would be no adverse effect on the setting of the special character of Ramsbottom.
- 8.9.21 Mr Owen also confirmed his view that the scheme would not undermine the purpose of assisting in urban regeneration by encouraging the recycling of derelict and other urban land. He points to the fact that the site is already heavily disturbed by human activity over many decades and that the restoration of the site would take place in accordance with the existing proposed timescales and the current permissions. The proposed AD plant is intimately linked to the adjacent concrete products factory and the requirement for a direct wire connection and heat transfer dictates that the development has to be sited at Fletcher Bank Quarry. No other sites are therefore capable of meeting the requirements of this scheme. Absent planning permission in this case, the appellants would not transfer their financial investment to some other brownfield site. There would, therefore, be no material harm to this Green Belt purpose. Mr Martin and Councillor Bevan both accepted in cross-examination that this purpose would not be offended by a grant of permission to the scheme.
- 8.9.22 Overall, the appellants submit that the actual impact upon the Green Belt and its purposes is very limited due to the existing land uses on the site and surrounding area, the excellent screening afforded by the quarry, and the existing implemented permissions for quarrying and waste uses on the appeal site.
- 8.9.23 The Framework makes it clear that there is a balancing exercise to be carried out in this case starting with findings in respect of impacts on the fundamental aim, essential characteristics and five purposes of Green Belt. Whilst 'definitional' harm exists by reason of inappropriateness the unique circumstances of the site dictate that the actual harm to the Green Belt is limited.
- 8.9.24 Both Mr Martin and Councillor Bevan assumed very significant harm to the Green Belt arising out of the industrial scale of the appeal proposals but this was not based on any meaningful analysis of the key points. Paragraphs 87 and 88 of the Framework are the initiate point for the balancing journey not the terminus. Their assumption led them into error in their own balancing exercises and materially undermines the cogency of their evidence.

8.9.25 The Council's planning officers grappled with the issues thus¹⁶⁴:

"However, given the scale of the proposed development, siting, the extent of the proposed and completed restoration, the cumulative impacts with the existing buildings on site, how the site is overlooked, the availability of long range views, the fact that the trees could readily be removed therefore exposing the site to the surrounding area, it is considered that the approval of the development as a permanent plant at the site would undermine Green Belt objectives. In addition, the grant of a permanent planning permission would have significant implications for the ROMP applications (36288 and 36331) and subsequent restoration, which would impact upon the openness and character of the Green Belt.

However, given that the proposed development is located in a quarry where extraction and landfill are taking place and the quarrying activity and restoration is some distance from ceasing (2042), the proposed plant could reasonably sit with and in and amongst the ongoing operations. On this basis, which is agreed by the applicant, a temporary permission until 2042 would ensure that the Green Belt is returned to its natural open state by the removal of the plant in its entirety and its associated equipment".

8.9.26 The officers' conclusions follow a proper analysis on the impacts on Green Belt and clearly provides forensic support for Mr Keith Owen's views.

8.10 **Odour/Amenity**

8.10.1 There is a considerable volume of evidence from all parties on this topic and it occupied the largest part of the Inquiry timetable. The issue of potential odours from the proposed plant was certainly the primary focus of RAW'S' case and featured in a great many of the letters of objection from local residents. For the appellants, Mr Branchflower provided comprehensive evidence¹⁶⁵ which was met by that of Miss Gannon for the Council¹⁶⁶ and Dr Jackson for RAW'S¹⁶⁷. Mr Branchflower's evidence remained forensically cogent and persuasive throughout a period of over seven hours of cross-examination and Inspector's questions.

8.10.2 As with most planning issues it is useful to start with policy.

8.10.3 The fourth bullet point of paragraph 17 of the Framework prescribes the core principle 'always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings;'. Mr Branchflower accepted, in response to the Inspector's questions, that 'a good standard' of amenity referred to in this core principle set the relevant context.

¹⁶⁴ Page 13 of CD25

¹⁶⁵ PEMM/PB 01-05 (ID 6A + 6B), Inquiry Note Regulatory Control of Odour Emissions (ID79) together with the ES, letter from CERC (ID44) and PB's note submitted on day 11 of the public inquiry responding to Dr Jackson's further submission on modelling.

¹⁶⁶ BCLNG 1-3 (ID9), Inquiry Notes 5-6

¹⁶⁷ Proof and Appendices, his 3rd March additional evidence, Inquiry Note – Validation of Flowstar/ADMS Model and Appendices

However, in his main proof¹⁶⁸ he outlined the Framework's more bespoke advice on the topic. Paragraph 109 of the Framework confirms that existing development should not be 'put at unacceptable risk from, or being adversely affected by unacceptable levels of soil, air, water or noise pollution or land instability'. It should be noted that in this context, pollution is defined in the glossary at Annexe 2 as 'anything that affects the quality of land, air, water or soils, which might lead to an adverse impact on human health, the natural environment or general amenity. Pollution can arise from a range of emissions, including smoke, fumes, gases, dust, steam, odour, noise and light'. The word 'unacceptable' is not further defined.

- 8.10.4 The Council refers to UDP Policy EN7/1¹⁶⁹ in the second reason for refusal. The plan is now quite dated having been adopted in 1997 and Policy EN7/1 relates primarily to pollution control issues rather than residential amenity. Nonetheless, the policy can be read as broadly consistent with the Framework. EN7/1(a) seeks to proscribe development which 'would result in unacceptable levels of atmospheric pollution;'. However, again, no further definition of what constitutes 'unacceptable' is given.
- 8.10.5 What is clear from the consistent use of the adjective 'unacceptable' is that policy requires something more than 'any' impacts on amenity before a refusal of permission could be justified. This is accepted in the Council's presentation of their case. In the second reason for refusal the allegation is made that the proposal is likely "to result in a severely detrimental impact upon the residential amenity of nearby sensitive receptors ". Despite cross-examination of Miss Gannon and Dr Jackson, no one appeared able to help the Inquiry with the source of the "severely detrimental impact" approach. Certainly, Miss Gannon confirmed in cross-examination that the use of such wording was not as she would have advised. Indeed at paragraph 4.15 of her proof she confirms her approach is based upon 'unacceptable annoyance and loss of amenity to local residents for unpredictable quantities of time'. She also confirmed that the Council's case had expanded to cover all nearby sensitive receptors rather than limited to those with 'residential amenity'.
- 8.10.6 Fortunately, there is a considerable amount of policy and guidance from the Department for Environment, Food and Rural Affairs (Defra) and the EA on the topic. The relevant advice is set out in CD's 19, 19A, 20, 21, 22 and 23.
- 8.10.7 There are currently no statutory limit values for use in England for the assessment of modelled odour concentrations in ambient air. A range of odour impact criteria has been developed from guideline documents, (predominantly based on research from outside of the UK, and have been applied in the determination of planning applications. Although Miss Gannon did touch upon the topic in her sections 3 and 4, supplemented by Inquiry Note 6, it was only Mr Branchflower who provided a detailed, thorough and careful analysis of the advice. He sets out his assessment of the issues at paragraph 4.12 of his proof onwards. He points out that it is crucial to understand the terminology when assessing and describing odours, in

¹⁶⁸ Reference paragraph 3.3 page 11 PB proof

¹⁶⁹ CD12

particular the terms 'unpleasantness', 'offensiveness', 'annoyance' and 'nuisance'. The Guidance confirms that the simple perception of an odour which is by its nature unpleasant does not automatically mean it would be offensive or represent a nuisance or unacceptable impact on amenity. Mr Branchflower draws upon CD21 which considers the frequency, intensity, duration, offensiveness and location of the source and receptor (the FIDOL factors).

- 8.10.8 Mr Branchflower sets out his definition of the threshold for unacceptable odour impact at paragraph 4.27 to 4.38 of his proof. He opines that for a moderately unpleasant odour at a highly sensitive receptor the achievement of a $C_{98,1\text{-hour}} 30u_E/m^3$ criterion¹⁷⁰ would result in impacts that are not significant and would prevent unacceptable adverse impacts on amenity. This approach was not contradicted by Miss Gannon for the Council nor was it challenged by Dr Jackson either in his own lengthy evidence or in cross-examination of Mr Branchflower. The Inspector pursued the point in his own questioning. Mr Branchflower remained confident of his 'moderate' categorisation for all potential odours from the proposed AD plant save for the biogas contained within the tanks and downstream processes.
- 8.10.9 Miss Gannon's proof at paragraph 4.8 suggested that the relevant characterisation for the offensiveness of odour would be at "HIGH". She confirmed in evidence in chief and via Inquiry Note 6¹⁷¹ that she had used CD19 as a source for this characterisation. Page 33 of that document provides characterisations for 'most offensive', 'moderately offensive', and 'less offensive'. She confirmed that her 'high category' related to 'most offensive'. It was notable in cross-examination that her view of this had not been drawn from her experience visiting AD plants at Doncaster and Bredbury. It was also telling that following the site visit to Halstead when recalled to give further evidence in chief, her line on the point had softened. She confirmed in response to cross-examination that the odour in the reception hall would fall within the moderately offensive category 'moving towards' the higher category in the adjacent processing room. She did not express herself emphatically on the latter point.
- 8.10.10 Dr Jackson confirmed in cross-examination that he had not visited an AD plant. Despite this, his evidence was based upon a key assumption that because some of the potential waste types might fit into the most odoriferous category the overall potential should be based upon the 'most offensive' ranking. Mr Branchflower was rightly dismissive of that approach in his cross-examination by Dr Jackson.
- 8.10.11 Even Mr Abrahamsen, determined as he was to maintain his objection, let slip in cross-examination that it was "not too surprising the smell was not that overpowering". It was suggested that the plant at Halstead was not fully operational during the site visit and that the waste may have been particularly fresh. These points were justifiably rejected by Mr Branchflower in his evidence in chief. He confirmed his view that there was over 100

¹⁷⁰ The SOCG, CD24 paragraph 8.10 confirms Mr Branchflower's assessment should, nonetheless, be based on a standard of $1.5 u_E/m^3$

¹⁷¹ ID19

tonnes of waste in the storage bay at the back of the reception hall which represented a reasonable utilisation given the annual capacity of that facility at 45,000 tonnes per annum. Further, he confirmed that the reception bay would be cleared on a 24 hour cycle. This was not merely to comply with regulation but was also driven by a financial incentive for the operators of the plant. The essence of the AD process is the biodegradation of waste. It is economically vital for this process to take place, as far as possible, in the digestate tanks rather than in the reception hall. The whole point of the process is to capture, clean and then burn the gases to produce energy.

- 8.10.12 It was also noticeable that Miss Gannon's characterisation of these points was couched with circumspection. She thought the reception hall "may" not have been fully operational and that odours "could" be worse. No doubt the Inspector will have formed his own view on the site visit to Halstead.
- 8.10.13 Overall, the appellants invite a finding that the odour that could possibly emanate from the plant reception hall, the processing area and the gas holder venting system fall within the 'moderately offensive category' as advised by Mr Branchflower.
- 8.10.14 Having established these benchmarks it is necessary to go on to consider the FIDOL factors. Based on CD19 and CD23 there appears to be two main assessment tools. The first is the use of empirical observations and the second employs predictive models.
- 8.10.15 Paragraph 4.3 of the IAQM Guidance on the Assessment of Odour for Planning (IAQM guidelines)¹⁷² offers advice on the topic. As a starting point it is suggested that the scope and content of supporting information is best discussed and agreed between the local planning authority and the applicant before it is commissioned. Although there was some doubt about the scope of the assessment undertaken for the original withdrawn application, the same cannot be said for the current proposal. The reason the first application was withdrawn was precisely because there was a request for further information a few days before that application was due to be determined. The appellants requested that the matter be deferred to provide them with more time to supply the information but this was not granted which led directly to the withdrawal. The revised work for the resubmitted application was scoped with environmental health and pollution control officers of the Council. This was reflected in the Officers Report to Committee¹⁷³ and remains a matter agreed between the appellants and the local planning authority. The SoCG¹⁷⁴ confirms:

"The assessment of odour emissions used the ADMS, FLOWSTAR and AERMOD software packages to predict the potential impacts associated with odours generated by the development. It is agreed that the software packages are the appropriate software packages to use for the assessment".

- 8.10.16 It was further agreed:

¹⁷² CD23.

¹⁷³ CD25.

¹⁷⁴ CD24 paragraph 8.5 to 8.10

"That the receptors considered within the air quality assessment are the appropriate receptors to include within the air quality assessment.

It is agreed that the predicted topographical variations of the adjacent quarried area which is undergoing restoration are the appropriate variations to have used in the assessment.

There are no mandatory numerical standards for odours although some guidelines values are provided in the guidance for assessing potential odours impacts. The guidance proposes that an appropriate standard in respect of odour is that an agreed odour limit must be achieved for 98% of the time (ie the 98th percentile represents the level that will not be exceeded for more than 2% of the time or 175 hours per annum).

It is agreed that an assessment based on the use of 1.5 ou_E at each sensitive receptor is the appropriate standard to use in assessing the potential odour impact".

The appellants went through the right process of agreeing scope with the Council.

- 8.10.17 Miss Gannon did not seek to resile from the SoCG or any part of it during the giving of her evidence and she directly confirmed in response to cross-examination that those matters remained agreed. The Inspector asked Mr Branchflower if anyone, other than SLR, had separately checked the modelling. No-one had, apart from Dr Jackson. The key point is the Council had the opportunity to do so. This is particularly pertinent when it has a separate reason for refusal and the Council here had access to their own experts and external consultants.
- 8.10.18 Step one of the IAQM Guidance¹⁷⁵ confirms that for assessing the impact of future odorous development no empirical observations will be available and odour effects will need to be forecast using predictive tools. The caveat to that advice is that the empirical observations may be available if there is a site currently operating that may be regarded as a 'similar surrogate'
- 8.10.19 Miss Gannon in cross-examination confirmed that when looking at empirical observation it was important to validate, by objective assessment, current experience from surrogates. She was taken to the advice on quality assurance and quality control for sniff testing at page 37 of the guidance and accepted some form of validation was of "huge importance".
- 8.10.20 The *Government Review of Waste Policy in England 2011*¹⁷⁶ provides strong support for the development of AD facilities with paragraph 231 confirming that the public's 'perceptions are often shaped by outdated or incomplete information. These information gaps and the uncertainty they engender mean that there can be a very emotive negative responses to proposals for energy from waste infrastructure – particularly larger scale facilities – from the local community'. Miss Gannon confirmed that the advice at paragraph 232 was relevant in that overcoming these barriers is key to the development and growth of energy from waste which requires community

¹⁷⁵ Page 14 CD23

¹⁷⁶ CD2 Government review of Waste Policy in England 2011

engagement and a strong credible evidence base. Furthermore, she and Dr Jackson in cross-examination confirmed their support for the important advice in paragraph 233 that 'There are roles for Government, local authorities, waste management companies and developers in ensuring that clear, complete and trusted sources of information are available, and that the concerns of the community are addressed'. The Council, in closing, accepts that precept.

- 8.10.21 Against that readily accepted background it was surprising to see just how much of the Council's and RAWS' case was based upon press cuttings and websites of objectors to other schemes. Both Mr Branchflower and Miss Gannon confirmed that the EA and local environmental health officers would represent the most clear, complete and trusted sources of information available. Despite this, the Council's case did not include a single example of a properly researched similar surrogate. Paragraph 4.12 of Miss Gannon's proof suggested nine potential surrogates. The last four of which were dropped by her following a request from the Inspector to provide sourced material to support the claims. The information put forward to the Inquiry for the remaining sites at Rothwell, Cannington, Lincolnshire, Cumbernauld and Plymouth (USA) were all based on partial sources from press cuttings or websites. Miss Gannon confirmed that she had not spoken to the EA or local environmental health officers in respect of any of these sites.
- 8.10.22 In the end the only reliable information upon which the Council bases its case is that from Tamar's plant at Halstead.
- 8.10.23 Likewise, But perhaps more understandably, RAWS' evidence was substantially misinformed and misdirected by incomplete and unreliable data sources. Dr Jackson's claim that such facilities inevitably lead to complaints when situated within 600 metres of a residential property, did not stand up to even mild scrutiny. It is worth observing at this stage, before considering their evidence further, the original source of local concerns on odour.
- 8.10.24 Councillor Bevan confirmed in cross-examination that he had put out a negative press release about the proposals almost immediately after his initial private meeting within the appellants in May 2013. He confirmed that this led immediately to local headlines in the press about 'fears growing' in the local community over the potential for odour. He confirmed that he had not, at the time, seen any of the appellants evidence nor had he visited an AD site similar to the proposals or indeed at all. This approach from a local leader of the community is the absolute antithesis of his own Government's advice on the approach as set out above.
- 8.10.25 Furthermore, Councillor Bevan acknowledged that he had proposed the amendment to the CSe which sought to ban any future development at FBQ. He confirmed he had managed to persuade the Council to carry his amended policy proposal despite his egregious lack of knowledge of the legal requirements for such action. There were objections to that emerging Policy and the CSe has since been withdrawn by the Council. Under the circumstances, RAWS continued reliance on this CSe policy is shocking.
- 8.10.26 Dr Jackson's relatively short, but closely argued, evidence in section 1 of his proof drew largely on a web based search including press releases and

objector's websites. His annexe 1.1.4.a could not be validated from the photographic data supplied in annexe 1.1.4.b and is to be contrasted with the evidence in Mr Branchflower's rebuttal proof and appendices.

His Appendix 5–P contains a review of the locality of UK urban AD sites and GMWP allocated sites and confirm that many such facilities operate in close proximity to housing without odour or amenity issues arising.

Mr Branchflower added his own experience to this evidence both in Evidence in chief and in cross-examination. Also, Mr Branchflower's appendix 5–k contained a review by Fichtner Consulting Engineers Limited. That report confirmed¹⁷⁷ that due to the increasing number of serious and potentially serious pollution incidents between 2010 and 2013 the EA reviewed 14 containment failure incidents at permitted AD facilities and found that all incidents were preventable. The report goes on to specifically provide more detailed evidence in respect of the examples given in Miss Gannon's proof including information from the relevant local authorities.

- 8.10.27 The most cogent information relied upon by Miss Gannon and Dr Jackson was drawn from the EA's Bio-Waste Sector Performance Report¹⁷⁸. In the end, perhaps the most balanced overview on the AD industry performance is that contained in Defra's *Anaerobic Digestion Strategy and Action Plan Annual Report 2014 published in February 2015*¹⁷⁹. That document contains a Ministerial Forward written by Darren Rogerson, the Parliamentary Under Secretary of State for Water, Forestry, Rural Affairs and Resource Management. The advice in the Ministerial Foreword is based on a full understanding of the AD sector performance referred to later in the same document and confirms that:

"Anaerobic digestion offers a local, environmentally sound option for waste management which helps us divert waste from landfill, reduce greenhouse gas emissions and produce renewable energy. It is the best environmental option currently available to deal with unavoidable farm and inedible food waste."

- 8.10.28 The Foreword refers to the rapid growth in the AD market flowing from Government policy and confirms that over 130 plants have been developed. The advice strongly confirms national policy is to press on with the growth in AD even in the light of some unsatisfactory experience.
- 8.10.29 Page 9 of the report provides a section 'Where are we now?'. This identifies that a number of serious or potentially serious pollution incidents at AD plants remain a serious concern. EA data shows that the bio waste treatment sector, particularly AD, has proportionately more serious and significant pollution incidents than the other waste treatment sectors regulated by the EA. The report goes on to identify bio-waste treatment over the period 2010 to 2012 as the poorest in the waste sector which remained the case in 2013.

¹⁷⁷ Para 3.3.2 page 5

¹⁷⁸ Reference Dr Jackson at 1.1.1.a

¹⁷⁹ Mr Branchflower rebuttal proof PBMM/PB/05-J

- 8.10.30 Nonetheless, the advice confirms that 'These incidents and poor compliance issues are preventable. While they continue to occur, they undermine public and investor confidence in the AD industry and hinder its growth'.
- 8.10.31 Miss Gannon specifically accepted in cross-examination this advice, and furthermore, accepted that the issues experienced at the sites she had identified were all capable of resolution.
- 8.10.32 Importantly, the annual report confirms "In consultation with the bio waste treatment sector, the EA has produced draft guidance on environmental operating standards for both AD and composting to address these issues". The report goes on to acknowledge in its 'Forward look' that the AD industry is improving its environmental and operational performance and compliance.
- 8.10.33 The Inquiry has had the benefit of a site visit to an agreed 'similar surrogate' plant to be run by Tamar at Halstead. The Council submitted Inquiry Note 5¹⁸⁰ on March 10th which represents an agreed position statement save for the comment in paragraph 2.4. section 2. This section followed a telephone conversation with Mr Smith, an officer of the EA, and reports an email from him at Appendix 4. Paragraph 2.4 of the Note suggests 'that when the wind speed and direction change, the topography in the area resulted in the smells becoming trapped at the lower level'. This claim cannot be based on a proper comprehension of the email from Mr Smith, actually dated 12th March 2015 and timed at 16:33.
- 8.10.34 Nothing in the note was a surprise to the Inquiry as Mr Heller's evidence had already provided a full explanation of the issues arising as a result of the commissioning of the Halstead facility¹⁸¹. Earlier in the Inquiry Dr Jackson had congratulated Mr Heller on the company's "very positive and encouraging degree of openness". It is not clear upon what previous experience that comment was based, but for the avoidance of doubt the appellants maintain that Tamar have always been utterly transparent in their dealings with the appellants and public alike.
- 8.10.35 It was telling that Mr Redfern, in response to cross-examination, confirmed that a company of Marshalls' history and standing would not have brought forward the current proposals had they not satisfied themselves as to the openness and the integrity of their prospective partner and of the suitability of the site to accommodate the proposed plant without unacceptable harm to local amenity. As Mr Heller himself confirmed, Tamar would not want to put any community "in harm's way".
- 8.10.36 The evidence from Halstead does show that there have been problems with odour at some residential properties up to 350-400 metres distance. However, as both Mr Heller and Mr Branchflower confirmed these issues have arisen as part of the design and commissioning process and either have been or are being attended to. There is absolutely no reason to doubt that Tamar, in conjunction with the EA, will be able to provide a robust operating facility at Halstead that will not give rise to unacceptable impacts on amenity. Although Miss Gannon expressed doubts in her proof about the

¹⁸⁰ ID29

¹⁸¹ See William Heller proof section 13

reliability of filter systems and the enforceability of conditions, she did not demur in cross-examination from the fact that the problems could be overcome at AD plants. It is important to note Tamar's commitment, as expressed by Mr Heller, to address any complaint whether it was justified or not.

- 8.10.37 Helpfully, the Inspector proffered his own experiences from the site visit in his questioning of Mr Branchflower. It was interesting to note that there had been a difference in perception of odours on the day of the site visit. The Inspector confirmed he had spent some time down at the entrance to the builder's yard to the south of the facility and intermittently but regularly detected distinct, recognisable odours. Mr Branchflower who had been standing about 15 metres away from the Inspector confirmed his own impression that he had not 'picked up' the odour. Mr Branchflower confirmed that a recognisable odour would be about $10 \text{ ou}_E/\text{m}^3$. Mr Heller's earlier evidence to the Inquiry had suggested that sufficient remedial steps had already been undertaken at Halstead to satisfactorily address odour emissions¹⁸² and that the EA will tolerate some odour emissions¹⁸³. Mr Branchflower was not sure whether the detectable odours emanated from the de-odorising aerosols; Miss Gannon did mention that as a possibility. In re-examination, Mr Branchflower confirmed that if distinct odours were recognisable off site, he would expect the EA to pursue further remedial action.
- 8.10.38 The Inspector returned to the topic after re-examination and continued to press Mr Branchflower on whether there were any circumstances in which, with reference to the EA's guidance, some impact on amenity may have to be tolerated, if all reasonable mitigation steps had been taken. In an emphatic response, Mr Branchflower confirmed that for an enclosed facility such as the present AD plant, he would not expect that situation to arise. He confirmed that any recognisable odour offsite, if persistent would result in action. This was consistent with his earlier evidence referring to the Agency's Compliance Classification Scheme (CCS).¹⁸⁴ Page 54 of that document confirms a presumption of Category 2 impact for ongoing amenity non-compliance. It advises that "Most reasonable people will accept an occasional transient odour or noise from an activity. However, when this persists for any length of time it can have a significant impact on people's lives, businesses, and how they perceive their own environment"
- 8.10.39 Dr Jackson's aspirations for a day one 'turnkey' perfect operation of the plant, though laudable, does not constitute the appropriate standard for a complex but low risk technology.
- 8.10.40 Dr Jackson's concerns from standard operations centred on the potential failure of bio-filters and fugitive releases from door openings and lorries visiting the premises. These concerns were robustly addressed in Mr Branchflower's rebuttal and Evidence in chief. Dr Jackson's appendix

¹⁸² Inspector's note – Mr Branchflower confirmed, in response to Inspector's question, Tamar believe that the remedial work done amounts to appropriate measures required by the EA.

¹⁸³ In response to Inspector's question.

¹⁸⁴ PEMM/PB/05 - G

- 1.3.1.a of his evidence of bio-filter performance was based on an inappropriate comparison to IVC technology. Although not its purpose, this evidence does demonstrate the potential efficiency of bio-filters in achieving in excess of 90% removal of odours.
- 8.10.41 Dr Jackson's evidence of potential odour problems at appendix 3.1.2.a, as effectively superseded by appendix 3.1.2.b, was based on seriously erroneous assumptions in relation to odour input values and the inappropriate extrapolation of Mr Branchflower's modelling for stack emissions. Mr Branchflower rightly described that work as alarmist in nature and it was notable that Dr Jackson did not even attempt to put those appendices to Mr Branchflower in cross-examination.
- 8.10.42 The benefit of the site visit to Halstead means that the Inspector will be able to form his own sound judgements on both the nature of the odour and its potential impact off-site. Ironically, it has been useful for the Inspector to visit the plant at a time when some initial commissioning problems are still being managed. This provides a better opportunity to assess the effects of non standard operations and fugitive releases.
- 8.10.43 These important empirical observations need to be viewed in the context of the predictive modelling undertaken by Mr Branchflower. It is the latter which brings the local context at FBQ more into play. Although an intuitive impression of the likely containment of odours at the quarry may be obtained from a site visit, the detailed modelling provides very considerable support in the site specific context.
- 8.10.44 Mr Branchflower provided a comprehensive and reliable analysis, via predictive modelling, of the likely impacts on amenity from routine operations and in respect of an example of fugitive emissions and from a potential, disastrous failure, scenario.
- 8.10.45 Mr Branchflower sets out his work in the original ES, ESA1, the 27th February 2014 letter¹⁸⁵, his main proof of evidence and appendices together with his rebuttal evidence and appendices. He is, rightly, to be regarded as an expert in undertaking such an exercise and it is notable that the Council's own expert did not directly challenge any of the results of the modelling exercise. This latter position was understandable given the agreed SoCG and the fact that the Council's own environmental health and pollution control officers had initially raised concerns but which had been addressed by Mr Branchflower's further work. Likewise, the EA raised no objection. Although the Agency's Air Quality Modelling and Assessment Unit (AQMAU) were not directly involved, Mr Branchflower did speak to Mr Newton from the Unit about the efficacy of ADMS and AERMOD.¹⁸⁶
- 8.10.46 Mr Branchflower's additional work in his rebuttal evidence was promoted by Dr Jackson's substantial and impressive efforts to question and challenge every aspect of the modelling work. It should be noted that despite Dr Jackson's very considerable efforts, he did not hold himself out as an expert. Dr Jackson's relatively short, but again very closely argued, almost

¹⁸⁵ P6b Appendix N.

¹⁸⁶ See email PEMM/PB/03/06

exegetical analysis, deals with his concerns over atmospheric dispersion modelling at section 2 from pages 7 to 10. These related to the meteorological data itself, the gradient of the surrounding terrain, low wind speeds and overall modelling uncertainty.

- 8.10.47 Both Miss Gannon and Dr Jackson had concerns about the absence of 5 full years of data from a weather station which, they claimed, needed to have been located directly on site. None of the guidance on the matter specifically prescribes such a requirement. This is unsurprising given that the vast majority of such sites that might be suitable would not have on-site meteorological stations already in situ. This is not a criterion for the identification of sites in the GMWP. Such an approach, if applied more widely, would effectively prevent the timely development of an AD facility on any site including those identified in the GMWP.
- 8.10.48 Mr Branchflower confirmed that his assessment relied on: three different 5 year meteorological data sets, from Manchester Airport, Bingley and a site specific modelled set – NWP data; two locally monitored wind data sets from on site and Scout Moor; four different topographies, reflecting the progressive restoration of the adjacent site, as agreed in the SoCG; two different EA approved dispersion models, ADMS and AERMOD; and, two different alternative site layouts, Proposals A and B, with the highest predicted results supplied to assess the significant results of impacts. He confirmed that his considerable efforts represented the most comprehensive odour modelling exercise he had ever submitted for planning purposes.
- 8.10.49 Dr Jackson's criticisms of the modelling work in respect of gradients in excess of 1 in 3 are misplaced and based upon a selective assimilation of the supporting references to the user manual. Mr Branchflower relies upon the user manual itself and from the letter dated 16th March from Dr Carruthers at CERC¹⁸⁷. That letter confirms that FLOWSTAR models the flow well typically for slopes up to 1 in 2, upwind slopes and hill summits, and up to 1 in 3 locally in hill wakes. Appendix A to Dr Jackson's 3rd March additional evidence suggests the maximum gradient on the outward facing slope of 21 degrees with the inner face of the bund at 38 degrees. For the main external gradient Dr Carruthers' letter confirms the suitability of the model used. RAWs is wrong when it says Mr Branchflower accepted that the steep slopes on the quarry edge to the west of the site were not included in the modelling; they are.
- 8.10.50 Mr Branchflower confirmed in Evidence in chief¹⁸⁸ that the internal facing slopes which Dr Jackson identified as in excess of 1 in 3, had been taken account of by the 'surface roughness' aspect of the model, which can account for features up to 30 metres high¹⁸⁹. He confirmed that a 12 metre bund was assimilated in the model along with other features such as urban buildings and woodland up to a limit in excess of 12 metres. Dr Jackson

¹⁸⁷ ID44

¹⁸⁸ And in XX Jackson and response to IQ's.

¹⁸⁹ See also PB Inquiry Note submitted on 31 March 2015 – section entitled "Considerations of surface features as 'Surface Roughness'" and references to appended guidance.

confirmed in cross-examination that he had not interrogated this aspect of the modelling user manual. Mr Branchflower produced a copy of the relevant extract¹⁹⁰.

- 8.10.51 Likewise, Dr Jackson's comments about the invalidity of the model at low wind speeds are misdirected. Mr Branchflower maintained his convincing explanation from his proof and rebuttal proof in cross-examination to Dr Jackson. His proof of evidence at paragraph 5.44 to 5.46 deals with the issues of wind speed. He notes that most meteorological monitoring stations may not record wind speed below 0.5 metres per second. The NWP data simulates wind speed down to 0 metres per second. He confirmed, therefore, that the NWP data can be more accurate than site measured data in relation to lower wind speed conditions. He also indicated that AERMOD does not predict dispersion when the wind speed is less than 0.5 metres per second and ADMS does not predict dispersion when wind speeds are below 0.75 metres per second. Mr Branchflower confirmed that ADMS does incorporate a 'Calms' module which will predict dispersion at very low wind speeds.
- 8.10.52 Crucially, Mr Branchflower notes in his rebuttal proof¹⁹¹ that the worst case weather conditions from the modelled data set resulted in predicted exposure at a residential receptor (peak hourly) of less than 2 ou_E/m³, at receptor DR9, and less than 0.8 ou_E/m³ at Greenacre Close, receptor DR4¹⁹². The 27th February 2014 letter appeared to have been overlooked by Miss Gannon in her evidence as this did provide worst case scenarios rather than the 98th percentile. Miss Gannon confirmed in cross-examination that these peak events were very low and below the detection limit of 3 odour units. Even if these peak events occurred 365 days per year they could not result in higher average concentrations than the peak value of 1.85 ou_E/m³ predicted as the highest reading for the receptor on Bury Old Road, receptor DR9.
- 8.10.53 Dr Jackson's overall concern about modelling uncertainty was a reflection of his individual concerns about the suitability of the work undertaken. His 750% error bar was rightly dismissed by Mr Branchflower as totally unrealistic. Dr Jackson's approach was the arithmetically conceivable, but practicably impossible, aggregation of all possible risk factors added at the highest possible value. By contrast Mr Branchflower dealt with the overall model uncertainty in his main proof at paragraphs 5.54 to 5.57 and his rebuttal at paragraph 3.13 to 3.17. He was pressed on the point in cross-examination from Dr Jackson and in Inspector's questions. His error bar amounted to approximately 100% and provides a far more cogent basis upon which to base a decision in this case. RAWs is wrong in its claim that the appellants' evidence does not address model uncertainty.
- 8.10.54 Overall, despite genuine motivation, Dr Jackson's work often ended up more sophistry than substance.

¹⁹⁰ Inquiry Note – Clarifications Requested by Inspector in relation to evidence of Philip Branchflower

¹⁹¹ Paragraph 3.10 to 3.12

¹⁹² As reported to Bury in the letter of 27 February 2014 – Appendix PEM/PB/05-N

- 8.10.55 Mr Branchflower did not provide odour contour plans for all of his 40 plus modelled scenarios. However, the contours at figure 2-3¹⁹³ show the 1 odour unit and 1.5 odour unit contours in green and blue respectively. These contours are based on an emission at the stack of 2,500 ou_E/m³ as opposed to the 1,000 ou_E/m³ now proposed. Mr Branchflower confirmed in re-examination that the isopleth drawings can be used as surrogates to demonstrate a 0.4 ou_E/m³ contour (blue) and 0.6 ou_E/m³ contour (green), to reflect the lower stack emission level. These contours plainly show the containing effect of the quarry itself on odour dispersion and will resonate well with the direct and intuitive experience to be derived from a site visit. The simple fact is that a 12 metre high earth bund between source and receptor would have a screening effect. None of the other AD plants which have given rise to odour issues and referred to in the evidence have had the benefit of such a massive physical screen between the source and receptor.
- 8.10.56 It should be remembered that the purpose of modelling is not to attempt to undertake a perfect simulation of the complex atmospheric turbulence which determines dispersion, but to understand the potential significance of emissions and the resultant exposure within a regulatory framework.
- 8.10.57 Overall, Mr Branchflower's evidence is based on an objective, quantitative and extremely robust assessment utilising atmospheric dispersion modelling techniques undertaken in accordance with relevant guidance published by the EA entitled H4 Odour Management (EA's H4 guidance)¹⁹⁴ and the IAQM entitled Guidance on the assessment of odour for planning (IAQM guidance)¹⁹⁵, as well as the relevant user guidance for each of the models.
- 8.10.58 Mr Branchflower's evidence is supported by one of Miss Gannon's sources¹⁹⁶ which confirms that the models used tend to over predict rather than under-predict the likely effects.
- 8.10.59 Mr Branchflower also provided evidence in his rebuttal proof in respect of fugitive emissions and from a failure scenario. In paragraphs 4.7 to 4.13 of his rebuttal he provides a scenario of fugitive emissions associated with door opening. At paragraph 4.10 he offered his view that odour releases associated with routine door opening are unlikely to be detectable within a few tens of metres. He confirmed that this was consistent with his impression on his site visit to Halstead. The Inspector will have, no doubt, formed his own view.
- 8.10.60 However, in his rebuttal proof, he went on to consider the potential fugitive release associated with the door being left open and the negative ventilation system offering limited containment resulting effectively in a diffusive release of odour from the doorway. He predicted a maximum hourly average odour exposure at the 98th percentile of 1.2 ou_E/m³ and a peak hourly average exposure of 11.2 ou_E/m³ at the nearest sensitive receptor locations. Predicted exposure levels are above 10 ou_E/m³ for only one hour and above 5 ou_E/m³ for only 7 hours of the year.

¹⁹³ pages 6 and 7 of the ES Addendum (January 2014)

¹⁹⁴ CD19.

¹⁹⁵ CD23.

¹⁹⁶ P9 Appendix B . (Inspector's note-the appears not to support the point. However, refer to Appendix D page 733).

- 8.10.61 This indicates that under most weather conditions such a scenario would not lead to significantly elevated off-site odour exposure and it would only be the combination of an open door, and an ineffective ventilation system and meteorological conditions that are poor for dispersion that could potentially lead to 'faint' odours, around $5 \text{ ou}_E/\text{m}^3$, being perceived off-site for a limited number of hours per year. He rightly advises that this should not be regarded as a significant risk of adverse impact. Doors would not be left open anyway.
- 8.10.62 At paragraph 4.14 to 4.18 he assesses the impact of the worst thing that could happen from an odour point of view. This would be the total structural failure of a main digester tank. At paragraph 4.16 of his proof he confirms that this could result in the complete release of all the material within the tank which would be contained within the onsite bund. In his evidence in chief he confirmed that such a scenario would be extremely unlikely, above a 1 in 100,000 risk, due to the EA's design requirements and regulatory approach. Even then, he predicts that the impacts associated with the exposed material would be 98th percentile hourly exposures of $35 \text{ ou}_E/\text{m}^3$ and a peak hourly figure of $163 \text{ ou}_E/\text{m}^3$ at the nearest receptors. He goes on to advise that whilst these values are higher than the criterion typically applied, they would be broadly akin to that experienced by rural communities on a fairly routine basis from activities such as muck spreading.
- 8.10.63 Finally, three further points of context in relation to odour impacts are worth mentioning.
- 8.10.64 Firstly, the GMWP does not prescribe an exclusion zone or stand off distance for built facilities. In its site search selection criteria it did prescribe a 250 metre stand off for sites for open uses such as landfill and composting but did not do so for built facilities. Mr Martin confirmed the position in cross-examination and agreed that many of the sites allocated in the plan, including those within Bury, are located well within 250 metres of residential properties. This is unsurprising given that such facilities need to be located close to the source of arisings which are mainly urban areas. In the context of the urban area of Greater Manchester, a 250 metre exclusion zone around a built facility would effectively mean that such proposals would have to go into the open countryside. Given that Greater Manchester is surrounded by Green Belt it is likely that such facilities would need to have been placed on greenfield Green Belt sites, if such an approach had been taken.
- 8.10.65 It was interesting to note that although Mr Martin suggested in cross-examination a possible exclusion zone of 150 to 200 metres, this was not, unsurprisingly, an approach favoured by Miss Gannon. In this context it should be noted that whilst the nearest property is 165 metres from the process building, Drawing 1¹⁹⁷ demonstrates that the vast majority of residential properties are over 200 metres from the process building. The Eagle and Child restaurant is over 300 metres from the building and the school, referred to by many in the evidence, in particular during the evening

¹⁹⁷ ID 12.

session, is about 500 metres from the process building and over 400 metres from the nearest part of the yard area.

- 8.10.66 These stand off distances are aided considerably by the significant containment provided by the quarry itself. The quarry sits in an elevated position in respect of nearby receptors and the town of Ramsbottom itself which would assist dispersion, but is nonetheless contained in a bowl. This provides a large earth bank between the proposed site and the nearest residential properties of at least 12 metres in height rising to 15 metres in some places.
- 8.10.67 Secondly, it is agreed that the nature and character of the area is one of mixed industrial and residential uses. Apart from the quarry itself, the concrete products factory operated by Marshalls occupies 9 hectares. There are also other industrial buildings in Greenacre Close and further to the north on land just outside the quarry boundary and there is also a garage serving the busy A56 road which bisects the settlement of Shuttleworth.
- 8.10.68 Thirdly, and decisively in this case, based on all the evidence, the Framework requires that the decision maker should assume the pollution controls regime would operate effectively.¹⁹⁸
- 8.10.69 Overall, the evidence clearly leads to the conclusion that there would be no unacceptable impact on amenity from odours. Such a finding would then lead to the support of Development Plan policy¹⁹⁹. If it meets that test, then significant weight cannot be given to 'residual' harm. In such circumstances, no residual weight should attach to any 'residual' acceptable harm that might arise during commissioning or in the event of a serious accidental release.

8.11 Air Quality

- 8.11.1 The original application submissions did not include a separate assessment of the proposals' impact on air quality as distinct from odour assessment. RAWs and the Bury Green Party have concerns in respect of air quality issues.
- 8.11.2 Mr Branchflower does assess the impacts on air quality in section 6 of his proof. He explains at paragraph 6.1 that since the submission of the planning application, the IAQM and Environmental Protection UK have published a consultation guidance document on *Land Use Planning and Development Control: Planning for Air Quality*²⁰⁰. This is an update on the guidance previously applied²⁰¹ to help ensure that air quality is accounted for in the development control process. Mr Branchflower explains that the draft guidance introduces new criteria for requiring an assessment of vehicle exhaust emissions in particular for HGV's. As the development is in the

¹⁹⁸ Paragraph 122 of the Framework.

¹⁹⁹ EN 7/1 and EN4/1.

²⁰⁰ Appendix PEMM/PB/03-7

²⁰¹ EP UK Development Control Planning for Air Quality - 2010

vicinity of an air quality management area, Mr Branchflower, in order to be robust, presents a quantitative assessment of the potential impacts.

- 8.11.3 At paragraph 6.25 of his proof he explains that given the more stringent requirements of the new guidance, traffic exhaust emissions have been subject to a detailed assessment contained in appendix PB/3 using the ADMS – Roads Dispersion Model version 4.3 as produced by CERC. Mr Branchflower confirms the detailed dispersion modelling undertaken in support of the ES indicated that the predicted impacts of the CHP emissions were considered to be negligible at all except one receptor in relation to annual mean NO₂ which were classified as 'minor adverse'. The sensitivity of the predicted dispersion of CHP emissions has been investigated in relation to annual NO₂ concentration given the elevated background levels and 'marginal change' is reported²⁰².
- 8.11.4 The maximum predicted annual NO₂ exposure resulting from the CHP combustion emissions both in isolation and in combination with the traffic exhaust emissions is classified as 'negligible' at all except 5 receptors. At these 5 receptors impacts are classified as 'slight adverse'.
- 8.11.5 At paragraph 6.29 Mr Branchflower goes on to confirm that this level of exposure is based upon both CHP engines operating at 100% capacity, at the emission limit for the entire year, and is a peak predicted impact, rather than the average. The impacts are considered to be 'not significant' and do not represent an unacceptable impact on air quality. Importantly, these figures do not account for the decrease in emissions of combustion pollutants that would result if the concrete products factory made use of heat from the appeal site. Mr Stevens' evidence²⁰³ suggests that the savings in terms of fuel usage would be greater than the combustion of bio gas.
- 8.11.6 Although Dr Jackson maintained his concerns about air quality he did not pursue the point in cross-examination with Mr Branchflower.
- 8.11.7 Overall, there would be no material impact on air quality.

8.12 **Noise**

- 8.12.1 This issue did not constitute a reason for refusal. Hence, no evidence was adduced on behalf of the Council.
- 8.12.2 The planning application was supported by a noise assessment undertaken by SLR, which formed Chapter 8 of the ES. Following a design review, an additional noise assessment was submitted as part of ESA2.
- 8.12.3 The SoCG states as follows²⁰⁴;
- a) It is agreed that the proposed development would not have an adverse noise impact upon the amenity of the neighbouring properties and would

²⁰² As summarised in PEMM/PB/03-2

²⁰³ PEMM/PS/01 section 9

²⁰⁴ Paragraphs 7.9 to 7.12

be in accordance with Policy EN7/2 of the Bury Unitary Development Plan.

- b) It is agreed the sensitive receptors used for the assessment of noise impacts from the development are appropriate.
- c) It is agreed the predicted cumulative noise levels of the operations within the infilling area, the fixed plant at the Anaerobic Digestion facility and the HGV traffic range from 40 dB to 52 dB, which is below the limit of 55 dB. It is agreed the limit is the appropriate standard to assess the impact of noise against at the sensitive receptors for daytime activities.
- d) It is agreed the operations should not give rise to noise complaints during the night and during the day. Bury Council therefore has no objections to the development on noise grounds.

8.12.4 Mr Owen considers the issue of noise under the general heading of 'any other harm' at section 7 of his proof of evidence²⁰⁵. At paragraph 7.16 he also refers to the relevant reference within the Committee Report, which confirms that having been consulted, the Council's Pollution Control Section 'had no objections subject to the inclusion of condition 20 from the previous planning permission Ref. 43048', which imposed a limit on noise emitted from the site of 55 dB $L_{Aeq}(1 \text{ hour})(\text{free field})$.

8.12.5 Appendix 23 to Mr Owen's proof provides a response to issues raised by RAWs. Further, to the submission of RAWs' proofs of evidence, a 'Rebuttal for Noise'²⁰⁶ was submitted by SLR on behalf of the appellants. The latter document highlighted significant errors in RAWs' written submissions and concluded overall that:

- a) The assessments undertaken by SLR are adequate and follow the correct guidance.
- b) The results in SLR assessments meet the 40 dB $L_{\text{night, outside}}$ World Health Organisation (WHO) Night-time Noise Guidance (NNG) limit at all locations.

8.12.6 Further to discussions during the course of the Inquiry it was agreed that RAWs would not pursue its submissions on noise, on the basis of a suitable condition being agreed to reflect the SLR analysis.

8.12.7 Further to the Inspector's indication that he wished to raise questions with the Appellant's witness on noise, Mr Lafon Anthony appeared at the Inquiry on Day 11. A further note was then produced during the adjournment to address remaining questions. The noise assessment for Proposal B indicates that the sound power level associated with the loading/unloading of roll-on/roll-off skips used to transport digestate cake would be around 95 dB. Providing the skips are unloaded and loaded during the day-time and those operations take place with the process building, they would not cause

²⁰⁵ PEMM/KO/1

²⁰⁶ Dated February 2015 (ref 403.00304.00047)

the day-time and night-time noise limits referred to above to be breached. This could be ensured by condition.²⁰⁷

- 8.12.8 Given the overall evidential position, these submissions proceed on the understanding that there would be no material harm to amenity by reason of noise emanating from the scheme.

8.13 Highway Capacity and Safety

- 8.13.1 This issue did not constitute a reason for refusal. Hence, no evidence was adduced on behalf of the Council.

- 8.13.2 The Council's committee report²⁰⁸ states that 'the proposed development would not be detrimental to highway safety and would be in accordance with Policies EN1/2 and MW4/1 of the Bury Unitary Development Plan'.

- 8.13.3 Section 7.13 of the SoCG confirms the appellants' and the Council's position that;

'The proposed development would not be detrimental to highway safety, or the operation of the highway and would be in accordance with Policies EN1/2 and MW4/1 of the Bury Unitary Development Plan.'

- 8.13.4 On the basis of concerns raised by RAWs and third parties, the appellants took the view that it would be appropriate to provide evidence on highway capacity and safety.

- 8.13.5 Mr Green referred to the body of work that had been done as part of the planning application process on highway issues. The latter included a specific chapter within the ES, which considered the transport effects of the Appeal Scheme on the adjacent road network. The ES subsequently received the support of the relevant statutory consultees for highways and transport. A Transport Assessment was not required due to the relatively modest number of vehicles arising from the development.

- 8.13.6 In his evidence, Mr Green referred to the scheme's generation of HGV trips, being offset by similar trips which would have arisen through the development of a permitted waste recycling facility on the same site, which would not be developed if the appeal scheme was built. He noted in his proof of evidence that whilst the appeal scheme would generate a worst case of 41 HGV trips/day, this would be offset by 42 HGV trips per day, permitted by the existing permission Ref. 43048. He modified this in evidence in chief to 32 trips to allow for non-implementation of the composting scheme.

- 8.13.7 As part of his evidence, Mr Green reviewed the calculation of HGV trip generation as provided in the ES²⁰⁹ and concluded that the assessment is robust and worst case, and likely trip generation at the site would be lower than that used. Further, he considered the effect of the revised scheme as

²⁰⁷ ID110 and 112.

²⁰⁸ CD25

²⁰⁹ PEMM/TG/1 Section 2.2

assessed in the ESA2, and provided evidence to support the conclusion that it would not alter the conclusions of the worst case assessment of the original ES²¹⁰.

- 8.13.8 Mr Green was clear in his evidence in chief that the work he undertook in support of the appeal scheme and throughout the appeal process was appropriate and included the following;
- a) An updated assessment of the transport baseline²¹¹;
 - b) Considering policy, highway conditions, traffic data and accident data, within his proof of evidence;
 - c) A full inspection of the highway network and the access routes to the appeal scheme;
 - d) Additional consideration of the existing site access arrangement, culminating in the submission of an improvement scheme being offered by the appellants, to be conditioned, which would formalise the access and egress arrangements²¹²;
 - e) Collection of updated details of traffic flows on the surrounding road network²¹³. The latter exercise identified that when compared with previous traffic counts in the area, there had been a reduction in baseline traffic flows over the last decade, consistent with traffic trends over the recent economic downturn;
 - f) Measurements of traffic speed. This identified that the majority of traffic, represented by the 85th percentile, remains below the posted speed limit, with the exception of the A56 Whalley Road, where the posted speed limit of 30 mph is exceeded by just over 5 mph. In respect of traffic speeds on Whalley Road, Mr Green observed in evidence in chief that existing vehicles accessing FBQ were tracked for location and speed by the site operator, ensuring that these vehicles do not speed on the adjacent roads; and,
 - g) An updated assessment of road traffic accidents²¹⁴ over a study area which included Bury New Road and Peel Brow. Mr Green noted in evidence that the updated assessment confirmed the original ES assessment that there is no apparent adverse safety record associated with the existing geometry of the road network, and further there is no record of accidents related to the presence of HGVs.
- 8.13.9 Further to the submission of an 'enhanced' proof of evidence from Mr Butterworth during the course of the Inquiry, Mr Green submitted a Rebuttal Proof²¹⁵ of evidence by way of response. With due respect to Mr Butterworth's detailed observations, his further analysis led Mr Green to

²¹⁰ PEMM/TG/1 Section 2.3

²¹¹ PEMM/TG/1 Section 3

²¹² PEMM/TG/1 Section 4.2 as amended by TWG 03A

²¹³ PEMM/TG/1 Section 3.3

²¹⁴ P4a section 3.5.

²¹⁵ P4b.

identify the need to update distribution observations of existing traffic, particularly in relation to the usage of Peel Brow by existing users of FBQ. Mr Green also provided further evidence as follows;

- a) Evidence in relation to the capacity of the highway network within the vicinity of the site access and at the A56 Manchester Road / Bury New Road junction and the likely capacity impact of the appeal scheme; and,
- b) Evidence in relation to the existing and proposed usage of the site access junction.

8.13.10 The above detailed and fulsome analysis corroborated Mr Green's earlier conclusions. In particular, his conclusions can be summarised as follows;

- a) The baseline traffic data collected for the original assessments remains valid and further data evidence shows the highway network to be performing within its available capacity;
- b) The trip generation resulting from the appeal scheme would not be materially greater than that already permitted on the appeal site for waste recycling development;
- c) General HGV traffic uses Peel Brow, part of which is associated with the permitted operations at FBQ. The proportion of vehicles using this route is generally less than 2% of the Marshalls fleet²¹⁶. However, the existing presence of HGV traffic on Peel Brow does not lead to an adverse road safety issue;
- d) Having reviewed and rebutted evidence provided by Mr Butterworth in respect of the likely peak hour trip generation arising from the appeal scheme, Mr Green justifiably maintained that it would lead to an imperceptible effect on the capacity operation of the road network during peak hours. The maximum predicted increase in total traffic would be 1% on the A56 Manchester Road south of the site access, with an increase of 0.5% on Whalley Road north of the site access and 0.1% on Bury New Road. When considering HGV traffic alone, the increase on Whalley Road would be 5.7%. These predicted increases are below the thresholds whereby an assessment of environmental impact is required, as defined in the IEMA Guidelines²¹⁷. It follows that the appeal scheme therefore would not result in an adverse environmental effect in highways and transport terms;
- e) Having revisited the swept paths of vehicles accessing the site, Mr Green acknowledged that under the potential arrangement, some vehicles accessing the site would require to perform a reverse manoeuvre within the southern site access bellmouth. However, the operation would not affect the highway and is a continuation of the existing arrangement, where there is currently no adverse safety record. Further, Mr Green has also noted restricted visibility to the right for light vehicle drivers due to the presence of a wall, which he proposed be reduced in height in

²¹⁶ Paragraph 2.2.7 PEMM/TG/4

²¹⁷ CD 17, Guidelines for the Environmental Assessment of Road Traffic, para 3.15

order to ensure adequate visibility. He noted that any revised arrangement would require the approval of the local highway authority and be subject to the Road Safety Audit procedure prior to any implementation. A planning condition has been suggested to require that a scheme be submitted, approved and implemented;

- f) The traffic generated by the appeal scheme would not have an adverse effect on the operation of the transport network and its residual impacts could certainly not be considered to be 'severe';
- g) It should be noted that RAWs' position on highways evolved during the course of the Inquiry. Though referencing some frustration with the production of information throughout the process, Mr Butterworth usefully provided a written statement in response to Mr Green's rebuttal. The statement acknowledged that, in RAWs' view, adequate detailed information existed 'for an independent person to form a balanced opinion on the true traffic situation of the area'. Further, the statement concedes that 'the objection to traffic is not so much that the number of AD vehicles using the site or Peel Brow would be a significant problem in terms of their numbers, or that their appearance would cause traffic chaos. It is the fact that there would be an increase from the current situation.';
- h) The appellants acknowledge the extent of time and effort that Mr Butterworth expended in collating and representing RAWs' evidence on highways. Mr Butterworth will not be surprised to hear that the appellants refute the suggestion that they were not transparent and thorough in the presentation of its evidence. However, the appellants are grateful for RAWs' acknowledgement²¹⁸ that had further information, that which is now before the Inquiry, been provided "in the first place, then certainly in the case of traffic, things would have been considerably simpler";
- i) In his evidence in chief, Mr Green highlighted a potential saving in daily trips as a result of digestate being exported as a "cake" rather than in liquid form, thereby removing a proportion of volume to be transported by road: Mr Green stated that this would lead to a reduction from 9 trips per day to around 3 to 6 trips per day, dependant on the amount of digestate which were treated;
- j) To assist the Inspector in a question asked of Mr Redfern with regard to a potential saw mill development at FBQ, Mr Green advised that provision of such a facility would lead to a net increase in trips of 5 to 7 trips per day, which would amount to no more than 1 HGV trip in the peak hour and add about a second to the delay experienced at the A56 / Bury New Road junction; and,
- k) In response to a question from the Inspector, Mr Green stated that, whilst acknowledging that predicted traffic growth would lead to the practical reserve capacity (PRC) for the A56 / Manchester Road junction

²¹⁸ As per the written statement submitted by Mr Butterworth on behalf of RAWs during the course of the public inquiry.

exceeding 90%, this would not affect the validity of the LinSig model and the subsequent calculation of additional delay at the junction as a result of the appeal scheme. Mr Green also stated that he considered the test for residual cumulative impacts being severe, with reference to Framework paragraph 32, should not include background growth in traffic which would occur in any event. Notwithstanding this, Mr Green opined that if traffic growth should be taken into account, he did not consider that subsequent effects would be severe, on account of a lower traffic baseline generally when compared with 10 years ago, a relatively short peak hour and a relatively minor addition in traffic volume as a result of the appeal scheme.

8.14 Light Pollution

- 8.14.1 Whilst no substantive evidence was produced by RAWs, nor indeed the Council, the issue of light pollution was raised by it as matter of concern.
- 8.14.2 Consequently, the appellants submitted a position statement²¹⁹ on the issue (produced by Mr Stevens). The position can be summarised as follows;
- a) The appellants do not consider light pollution to be an issue of any material concern;
 - b) As noted in the minutes of community meeting held on 25/07/13 (PEMM/GCR/03/Appendix 5), it is recognised that light pollution is an existing issue for Marshalls' operations;
 - c) By way of response to the issue, improved lighting has been installed with an investment of £92,000 to replace both internal and external lighting at the Ramsbottom site. In the case of the external lighting 400W SON lights that produce a great deal of light pollution and over lit certain areas have been removed. These have been replaced by 65W and subsequently 90W LED lights which are much more efficient light output and much more directional lighting so it can be directed where it is needed rather than lighting a general area;
 - d) Marshalls has worked with their logistics and health and safety colleagues to reduce lighting levels to the minimum level that provides a safe level for working;
 - e) In the case of the AD plant two levels of external lighting would be required: lighting to allow vehicles to enter and exit the building; and, lighting to illuminate walkways around the buildings for staff;
 - f) Although the AD plant would operate 24 hours a day in terms of producing heat and power, the plant would only be accepting deliveries between the hours of: 07:30 to 18:30 hours Monday to Friday; and, 08:00 to 14:00 Saturdays; and,
 - g) Any external lights to provide higher levels of illumination would only be required during delivery times and when natural light levels are low.

²¹⁹ ID63

Outside the above hours no unloading or loading would occur and therefore only walkway lights would be required. These could be further controlled by timers and motion sensors to minimise wasted energy and any potential light pollution.

8.14.3 Overall, the Appellants are committed to ensure lighting is of high efficiency and effective in minimising light pollution.

8.15 Conservation Areas

8.15.1 RAWs made reference to the potential impact on the Ramsbottom Conservation Area²²⁰. This was extended to include Holcombe Conservation Area²²¹. Decision makers are required²²² to pay special attention to the desirability of preserving or enhancing the character or appearance of that area. Consequently, this determination should take such an approach, albeit in this case, it is submitted that RAWs' arguments on impact on the Conservation Area are tenuous at best.

8.15.2 By way of context, the ES and Addendum which accompanied the planning application considered such issues at Chapter 12 - Cultural Heritage.

8.15.3 In general terms, the proposed development would lie wholly within the worked limits of the quarry, therefore no direct impacts on heritage assets are anticipated. The indirect impacts of the development after landscape restoration has been undertaken are referenced within the ES. The ESA2 confirms²²³ that the amendments to the originally proposed development layout and building heights would not have any material impact on the visibility of the AD plant.

8.15.4 The issue was considered by the Council in the determination of the planning application and was not deemed an issue meriting a reason for refusal or material harm in the Green Belt balancing exercise. The officer's report to committee noted that;

- a) 'The proposed development would not have a significant adverse impact upon the listed buildings in the locality.'; and,
- b) 'The proposed development would preserve the character of the respective Conservation Areas, listed buildings and heritage assets and would be in accordance with Policy EN2 of the Bury Unitary Development Plan.'

8.15.5 Paragraph 7.8 of the SoCG states;

- a) Bury Council has no objection to the proposed AD plant in terms of the potential impact upon heritage assets.

8.15.6 Though Councillor Bevan's proof of evidence refers to the relatively close proximity of the Ramsbottom Conservation Area being 'just 500m from the

²²⁰ ID61

²²¹ ID64

²²² Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990

²²³ Paragraph 12.12

site boundary', he provides no analysis of the specific impacts the development would have upon it. His submission is that²²⁴ 'An industrial plant would be out of keeping with the neighbouring Conservation Area'. It is difficult to place any real weight on such a statement, which fails to define any specific impacts and appears to ignore the presence of the quarry, in which the appeal site is located.

8.15.7 In cross-examination Councillor Bevan confirmed that the quarry itself could not be seen from the Conservation Area. Reference was made by him to a view from Tanner Street. However, Councillor Bevan was unable to point to any reference within the Conservation Area Appraisal that referred to any key/important views existing from that location, nor any identifiable harms arising from the appeal scheme development. Councillor Bevan's allegations of harm were no more than unsubstantiated and ethereal, relating to concepts of the development being 'not in keeping' and conflicting with Ramsbottom's 'tourism offer' and having an 'impact on highways'. The latter issues were addressed in evidence and do not constitute factors which might properly be said to have an impact on the Conservation Area as a heritage asset. Councillor Bevan acknowledged as much in cross-examination, confirming that RAWs were not making a specific allegation of harm arising under the Conservation Act legislation. Similarly, in respect of Holcombe Conservation area, it was clear that whilst a relatively distant view of the appeal site may be visible from within it, any argument of a material harm to the Conservation Area was unsubstantiated and was not pursued by Councillor Bevan with any conviction.

8.16 **Landscape**

8.16.1 Mr Owen addresses landscape impacts within his proof of evidence²²⁵. The latter is based upon detailed analysis within Chapter 6 of the ES. This provides an assessment of the significance of residual visual effects of the proposed development upon specific viewpoints. Overall, the nature of the effects 'is generally considered to be neutral through the operational stages of the development, becoming positive after restoration of the infilling, due to the existing baseline conditions and planning consents and additional screening benefits offered for views to the north²²⁶'. Councillor Bevan did not dispute the ES's description of impacts in cross-examination.

8.16.2 Whilst the appeal site is subject to a Special Landscape Area designation in the UDP, no material weight, rightly, was placed upon this policy. Such local designations are no longer consistent with national policy and the whole quarry area does not presently, or for the life of the proposed permission, contribute towards any special character the landscape may possess.

²²⁴ Paragraph 5.15

²²⁵ Paragraphs 7.5 to 7.8

²²⁶ Para 6.114 ES July 2013

8.16.3 On day 10 of the Inquiry, reference was made²²⁷ to correspondence²²⁸ from Brandon Lewis MP²²⁹ to Simon Ridley, Chief Executive at the Planning Inspectorate, relating to landscape character and prematurity in planning decisions. The relevance of the letter's content to this appeal is very limited. It served to reiterate the importance of one of the twelve core principles at paragraph 17 of the Framework that plans and decisions should take into account the different roles and character of different areas, and recognise the intrinsic character and beauty of the countryside to ensure that development is suitable for the local context. As stated, the appeal site is within a quarry, which makes no positive contribution to the surrounding natural landscape.

8.17 Economic Impacts on Ramsbottom /Tourism

8.17.1 The appellants do not dispute Ramsbottom's significant contribution to tourism and culture. Councillor Bevan's proof references policies within the UDP that seek to safeguard and build on tourism assets such as the East Lancashire Railway and the West Pennine Moors, including the encouragement of tourism-support facilities. However, he failed to identify any substantive evidence that an AD plant within an existing quarry bowl, which would barely be visible to tourists, would be contrary to policy²³⁰. Mr Duckett's submissions described a committed and admirable business operation yielding considerable benefit to the community. However, his concerns are misplaced. References to 'health impacts' 'flies and vermin' and detrimental impact of odour arising from the development are unsubstantiated, to the degree that they could be said to have any material impact on local businesses. Despite the amount of evidence of amenity impacts from other AD plants, there was not any, even apocryphal, evidence of impacts on local business.

8.18 Public Health

8.18.1 A number of objectors have raised concerns about potential impacts on public health. In particular, Dr El-malek suggested that there may be potential for harm²³¹. However, he was unable to produce any evidence in support of such a link. That which may be asserted without evidence may be dismissed in the same way. The only source he reported was an extract related Dr Broomfield's work from AECOM. In fact, this simply commented on the relative paucity of work on the topic. It should be remembered that anaerobic digestion is a completely natural process, as is pointed out in Defra's *AD Strategy and Action Plan*²³². The advice confirms that AD is not a new technology, and has been widely applied in the UK for the treatment of sewage sludge for over 100 years. Given this history, public health risks

²²⁷ On behalf of the appellants

²²⁸ 27 March 2015

²²⁹ Minister of State for Housing and Planning

²³⁰ The bulk of concern on the topic was a projection of the concerns about potential odours from the plant which have already been dealt with above.

²³¹ ID43.

²³² Paragraph 19, p5 of CD3.

would surely have been identified before now. Such concerns do not find their expression across the full range of national policy advice.

8.18.2 There is no material risk to public health from the proposals.

8.19 Ecology

8.19.1 Though not constituting a reason for refusal, reference was made by third parties²³³ to the potential impact of the development on ecology. Section 7 of the ES, which includes reference to desk and 'field' based surveys, comprehensively addresses the issue. The overall conclusion is that 'there are no locally important ecological receptors that would be affected by the development proposals'. Habitats that do exist are of less than local value and are not considered to be critical to the maintenance of populations of locally occurring protected or UK BAP species. The ES notes²³⁴ that restoration and mitigation plans have been appropriately targeted in order that the ecological value of the area is maintained at a minimum of current levels in the area, with a view to increasing the biodiversity value of the application sites and surrounding in the medium to long term. The ES²³⁵ concludes that 'with the inclusion of mitigating measures... the residual effects to ecological receptors are not significant in the short or long-term'.

8.19.2 The Council's committee report²³⁶ refers to the fact that the appeal site is in an area which has been filled with inert waste, 'As such, there is a lack of ecological receptors within or adjacent to the application site'. Reference is made²³⁷ within the committee report to the Greater Manchester Ecological Unit 'has no objections to the proposed development. The impacts from the construction of the proposed AD plant would be negligible.' Consequently, it was concluded that 'the proposed development would not have an adverse impact upon protected species or the ecological value of the site and would be in accordance with Policies EN6, MW4/1 and MW4/4 of the Bury Unitary Development Plan.'²³⁸

8.20 Very Special Circumstances

Limited harm to the Green Belt

8.20.1 The first circumstance which may rightly be regarded as special is the limited harm the proposals would cause to the Green Belt aim, characteristics and purposes. These are described in section 7.9 above.

Renewable Energy

8.20.2 The overall benefits of the proposal are set out in section 8 of Mr Owen's proof. First amongst these is the need for renewable energy. As already

²³³ E.g. Mr Archer.

²³⁴ Paragraph 7.86.

²³⁵ Paragraph 7.87.

²³⁶ CD25.

²³⁷ Page 16 of CD25

²³⁸ UDP Policies MW4/1 and MW4/4 are no longer extant – ref. GMWP page 102.

stated above, all AD projects are a combination of both a renewable energy power station and a waste processing facility. Mr Redfern and Mr Stevens evidence was largely unchallenged in respect of their central claim that the primary purpose of bringing forward the proposals was to help meet Marshalls' aspirations in respect of its climate change obligations.

- 8.20.3 Mr Stevens sets out the background to the climate change agenda in section 3 of his proof and confirms that climate change is one of the greatest challenges facing the world today. This point was recently endorsed²³⁹ in a joint statement by the then Prime Minister, Deputy Prime Minister and Leader of the Opposition. Thus, whatever the outcome of the forthcoming election it appears that the weight the Government attaches to this topic will continue to be of the very highest order.
- 8.20.4 Decisively, core principle 6, paragraph 17 and paragraph 91 of the Framework confirm Government advice specifically in relation to renewable energy projects located in the Green Belt. The full weight of this national policy confirms that 'such very special circumstances may include the wider environmental benefits associated with increased production of energy from renewable sources'.
- 8.20.5 Further emphatic statements on the need for renewable energy are contained in the *Overarching National Policy Statement for Energy* EN-1 and *National Policy Statement for Renewable Energy Infrastructure* EN-3²⁴⁰. With respect to inappropriate development in the Green Belt EN-1 indicates that regard will be had to the extent to which its physical characteristics are such that it has limited or no impact on the fundamental purposes of the Green Belt designation. Mr Owen confirms by reference to these policies that although they are primarily aimed at nationally significant projects their terms make it clear that the general principles apply to proposals to be determined under the *Town and Country Planning Act 1990*²⁴¹. The urgency of the requirement is left in no doubt. These policies confirm the Government's commitment to sourcing 15% of energy from renewable sources by 2020. To hit this target, and to largely decarbonise the power sector by 2030, it is necessary to bring forward renewable electricity generating projects as soon as possible. Mr Stevens confirmed that the UK, currently, had only reached 5.2%.
- 8.20.6 Both Mr Martin and Councillor Bevan accepted in cross-examination the high priority which the Government attributes to the need for renewable energy projects. Both accepted that the prescriptions of paragraph 91 of the Framework were directly applicable to the present case. Contrary to the position set out by RAWs in closing, Councillor Bevan also accepted that paragraph 91 of the Framework was not amended by paragraph 6 of the National Planning Policy for Waste.
- 8.20.7 Mr Stevens' evidence was a very thorough assimilation of Marshalls' efforts to review all potential sources of renewable energy for its Ramsbottom

²³⁹ Press release 14 February 2015

²⁴⁰ CD1 – Overarching National Policy Statement for Energy (EN-1) and CD1A – National Policy Statement for Renewable Energy Infrastructure (EN-3)

²⁴¹ P7 page 19 and para 1.2.1 of EN-1 and paragraph 1.2.3 of EN-3.

works. His evidence remained entirely robust and convincing throughout cross-examination. Refreshingly, he made it clear that financial benefits were only one factor in the pursuit of the appeal, "If it were only about the money, we wouldn't be here".

- 8.20.8 At section 10 of his evidence he confirmed that the gross electrical output of the plant would be 2.5 MW with a parasitic load for the AD facility estimated at 0.7 MW. This produces a net output of 1.8 MW of electrical energy. He calculates that the plant would also produce about 2.5 MW of heat energy of which 0.75 MW would be parasitic and used by the plant²⁴². There would therefore be a net 1.75 MW of heat available for export or use on the site. The parasitic loads are not 'wasted' as they are used to process the waste which is required for wider environmental reasons.
- 8.20.9 RAWs suggests that based on Marshalls' current average demand for electricity, Marshalls would consume only 11.3% of the proposed plant's total electrical power. The appellants say that the appropriate figure would be 22.49% use at 85% of the plant output²⁴³. Furthermore, RAWs suggest that in the medium to long term average energy use might rise to 24% (electrical). Mr Stevens advises that the company's realistic estimation is that around 76% of the AD plant's projected electrical output would be required to meet the company's expected average demand, assuming the Company's plans for future development proceed,²⁴⁴ and he points out the importance of being able to cope with peak demand.
- 8.20.10 It is clear from Mr Redfern's evidence that Marshalls supplies some 45% of the overall national landscape products market with the Ramsbottom works contribution equating to approximately 5% of the total UK market. As would be clear from the site visit the concrete products plant is a major facility with a heavy demand for electricity and heat.
- 8.20.11 Mr Stevens job title as the 'Group Carbon and Energy Manager' by itself describes the importance with which Marshalls approach the issue of energy and carbon savings and climate change. Mr Stevens, at section 12, sets out a summary of the likely carbon reduction in the event that planning permission is granted. He predicts and confirmed in re-examination, that an annual emissions reduction in tonnes of CO₂ would be equivalent at 30,825. Over the 25 year life of the plant this proposal would reduce carbon emissions by over ¾ of a million tonnes. The fact that the company would only be able to 'report' part of these savings itself changes nothing. The underlying threat is more important than the target.
- 8.20.12 In section 12.5 of his proof Mr Stevens puts this degree of saving into some context. Marshalls' total operational footprint in 2013 was 54,027 tonnes of CO₂ equivalent including transport. Bury Council's operational GHG emissions for the same year was 24,109 tonnes CO₂ equivalent. The proposed reductions from a grant of planning permission would therefore comprise a saving of 57% of Marshalls' emissions for the entire group. It would also represent 128% of the Council's total operational footprint per

²⁴² P3 Appendix 9-heat plan.

²⁴³ P3 Appendix 8.

²⁴⁴ P3 Appendix 8.

annum. This is the same amount of carbon as emissions from 7,601 households.

- 8.20.13 Mr Stevens further advised the Inquiry that the Greater Manchester Climate Change Strategy sets even more rigorous targets than national standards by seeking a 48% reduction on 1990 levels by 2020. The appeal proposal could result in a reduction of 154,125 tonnes of CO₂e by the end of 2020. The Greater Manchester Climate Change Strategy states that emissions in Bury in 2012 are 1.182 million tonnes CO₂e. The plant's contribution to carbon reductions would therefore comprise 2.61% of the entire districts carbon footprint annually. Mr Stevens rightly regards this as a significant contribution for a single project.
- 8.20.14 In complete contrast to Mr Stevens, Mr Martin was dismissive of the point. At paragraph 7.12 of his proof he confirmed that given the Framework support for renewable energy the topic should be given 'substantial weight' in assessing an application of this type. However, this appeared to be moderated by his belief that the link between the AD plant and the concrete products factory was "tenuous"²⁴⁵. Mr Stevens' robust evidence set out quite clearly the locational connection between the AD plant and the factory. He explained the importance of a direct wire link between the source of renewable energy generation and the user and the need for close proximity to allow the transfer of heat. Mr Owen and Mr Stevens considered the potential for alternative sites in the vicinity to meet the requirements, in keeping with the aims of paragraph 6 of the National Planning Policy for Waste. No site was available that could meet Marshalls' needs or provide the benefits offered by the present proposal in terms of carbon savings.
- 8.20.15 There appears to be a consistent theme from those opposing the scheme in attempting to impose a form of illogical reductionism to the appellants' benefits case. Mr Martin claimed that the link between the facility and the concrete plant is tenuous and Dr Jackson suggested, throughout his evidence and his cross-examination of Mr Redfern, that many of the benefits could be obtained via locating an AD plant elsewhere. The fact that benefits may flow from other schemes in other locations does not stop the total benefits that would be produced by the appeal proposals from carrying very significant weight. The genesis of the entire project was to find a renewable energy source for the major concrete products factory. The need for close proximity for both the direct wire supply of electricity and for the physical transmission of heat are crucial factors in the physical nexus between the proposal and its host. These benefits cannot be met outside the Green Belt. Once this connection is established the remaining general benefits such as transferring surplus energy to the grid are not mysteriously to be discounted in the balancing exercise.
- 8.20.16 Likewise, Dr Jackson's cross-examination of Mr Stevens regarding the relative economic advantage of the scheme compared to total turnover/profit was ill conceived.
- 8.20.17 Aside from the illogical reductionism, the objectors approach also contains an unsettling complacency. Only if the UK, the region and the district were

²⁴⁵ Para 7.8 of his proof.

all comfortably exceeding their climate change targets, which they are not, could such a view be potentially justified. Given the scale of the climate change problem, even then, it would be a bad point. Government policy does not require applicants to prove a need for renewable energy the whole point of which is to protect schemes from such misdirected argument²⁴⁶.

- 8.20.18 A number of local residents, particularly in the evening session, found fault with the appeal proposals on the basis that there was "nothing in it" for Ramsbottom. Nothing could be further from the truth. Apart from local employment benefits which are described later in these submissions the fact is that the threats from climate change face all of us. Dr Jackson rightly accepted, in his evidence in chief and confirmed in cross-examination, that RAWs welcomed the benefits related to carbon savings and climate change.
- 8.20.19 Mr Martin supports his dismissive stance by pointing out that the overarching national policy on energy, EN-1, relates primarily to nationally significant infrastructure projects. These projects start at 50 MW outputs. He opines that by comparison the appeal proposals fall 'considerably below the threshold' and consequently he considers 'that little weight should be attached to the policy'²⁴⁷. In carrying out this assessment, however, he failed to balance a relative scale of the proposals against an NSIP scale project. The physical footprint of the appeal proposals is very small when compared with major energy from waste schemes that would meet the 50 MW threshold. Likewise, the scale of other power stations is proportionately greater. The total energy produced by the AD plant may only be 10% of a nationally significant project but its physical scale is also proportionately smaller.
- 8.20.20 Overall, the need for renewable energy and the scheme's contribution to climate change objectives is to be afforded very significant weight. When judged against the very limited harms to the Green Belt, and other harms, the appellants submit that this factor alone is a sufficient very special circumstance to tip the balance in favour of granting planning permission.

Waste Hierarchy

- 8.20.21 The appeal proposals would divert 45,000 tonnes of organic waste per annum from landfill in accordance with the aims of the Waste Hierarchy. The policies of the GMWP promote the need for such facilities. A key strategic objective of the plan is to provide for flexibility in the delivery of new schemes and the appeal proposal would meet the criteria set out in GMWP Policy 10. Mr Heller's evidence referred to a report by Eunomia Research & Consulting entitled *Feedstock Modelling for Potential Site at Fletcher Bank-Final Report, August 2014* (Eunomia FMR)²⁴⁸. This largely unchallenged assessment confirms that there is a sufficient feedstock for the facility within a 10-15 mile radius of its location. Dr Jackson put before the Inquiry a further report by Eunomia entitled *'Addressing the Feedstock*

²⁴⁶ Paragraph 98 Framework prescribes that applicants should not be required to demonstrate need for renewable energy and crucially attaches weight even to small scale projects which can make a valuable contribution.

²⁴⁷ Para 7.11 to his proof of evidence John Martin page 19.

²⁴⁸ Mr Heller – Appendix 1 describing potential feedstock for the plant

Famine June 2014' (Eunomia FFR). Mr Heller explained in response to cross-examination that this work did not effect Tamar's assessment of the need or the Eunomia report upon which it was partly based. Indeed, this market update from Eunomia simply identifies the importance of providing facilities in order to encourage the appropriate collection of feedstock. The market update confirms that the feedstock is present, it is just that it is not all being appropriately collected in a form suitable to go to an AD plant. As Mr Heller explained this is precisely why the area needs to have AD infrastructure in place in order to help create the market for appropriate segregation and collection.

- 8.20.22 Whilst it is true that the benefits to the Waste Hierarchy and meeting the objectives of local waste policy could be met by a similar facility on another site outside the Green Belt, it does not stop the fact that these benefits would also flow from the current proposal being weighed positively in the balance.
- 8.20.23 Both Mr Martin²⁴⁹ and Councillor Bevan²⁵⁰ project unwarranted meaning into the press release issued with the new National Planning Policy for Waste.²⁵¹ The words in the release²⁵² simply mean that councils are no longer obliged, in the sense of being directed by national policy, to afford very special weight to the locational needs and wider economic benefits but they are not proscribed from doing so. The wording of paragraph 6 does not advise what weight should be given to the benefits and simply suggests that decision makers should recognise the particular locational needs of some facilities.
- 8.20.24 The substantive prescription in paragraph 6²⁵³ that authorities should first look for sites outside the Green Belt has been fully addressed by the appellants. Mr Redfern and Mr Stevens' evidence demonstrates the need for a physical nexus between the plant and its host. Mr Owen's largely unchallenged appendix 19 demonstrates that there are no suitable alternative sites.
- 8.20.25 Overall, the need for the facility and meeting the objectives of waste policy should be afforded significant weight in the balancing exercise.

Economic Benefits

- 8.20.26 The proposals would deliver significant direct and indirect financial benefits. Mr Redfern gave evidence in respect of Marshalls' economic performance through the recession bringing the Inquiry up to date with current performance as the country moves towards growth. He readily acknowledged, in cross-examination, that the future of the current jobs on site was not contingent upon the grant of planning permission for the proposals. He made reference to the Regeneris Consulting report entitled *Socio-Economic Impacts of Existing Marshalls Operations & the Proposed AD*

²⁴⁹ Para 6.7 of his proof

²⁵⁰ Para 4.2 of his proof

²⁵¹ See Mr Martin Appendix D and CD5

²⁵² i.e. that councils "can no longer give special consideration to locational needs, or wider economic benefits the site could bring, over other considerations, as justification for building waste facilities on green belt land"

²⁵³ CD5

*Energy Facility (RCR)*²⁵⁴. He confirmed that since that report had been prepared Marshalls current total employment at the Ramsbottom works now exceeded 150 full-time equivalent (FTE) direct jobs. The potential socio economic impacts of the proposed AD facility itself identified by the RCR report are as follows.

- 8.20.27 It is expected that approximately 50 direct jobs, excluding employment associated with the commissioning of the AD facility would be generated during construction. Using Government derived methodologies to estimate the total on and off site construction related jobs produces 150 to 175 FTE jobs over the total 15 month construction period.
- 8.20.28 The AD facility would support 5 FTE jobs once fully operational. It is estimated that the total salaries paid to staff would be between £140,000 to £190,000 per annum. In addition the facility would require a range of technical based bought goods and services. Analysis on more localised expenditure shows that approximately 4 FTE jobs could be supported within the Bury area there are also likely to be induced employment impacts from direct and indirect employees resident within Bury which would support a further 1 FTE induced job. Overall, the scheme is likely to produce a total of direct and indirect jobs of 10 FTE with an estimated annual growth salary in excess of ¼ of a million pounds.
- 8.20.29 In addition, in order to encourage AD facilities the Council would be able to have a degree of business rate retention from the scheme. The Regeneris report estimates that the potential business rates would be in the region of £85,000 per annum or £1.4 million over the 25 year life of the plant. There would also be economic benefits to local farmers, who would have access to cheaper fertiliser, and Landfill tax savings. The proposal would divert 45,000 tonnes of waste from landfill producing a saving of around £60 per tonne or £2.7 million per year for Greater Manchester/Lancashire businesses. The total saving to the Bury and Greater Manchester/Lancashire business base over the operational lifetime and facility is likely to be in the order of £53 million.
- 8.20.30 In addition to the direct impacts, Mr Redfern explained how the provision of sustainable renewable power source for the concrete works would help deliver the company's overall vision for its future development. Again, he candidly responded to cross-examination, that not all of the potential growth in jobs associated with the factory and quarry would be contingent upon a grant of permission. Mr Redfern's case is that the provision of a sustainable power plant would make it more likely that there would be more jobs at the site in future.²⁵⁵ Although it is difficult to quantify this effect there is a clear link between the AD facility and the potential for growth. Although the economy has been improving of late, it is far too early to be complacent about the need for economic growth. As the Ministerial Forward to the

²⁵⁴ P2 Appendix 12.

²⁵⁵ Inspector's note – Mr Redfern confirmed in cross-examination that future development at the site and the associated jobs are not contingent on the grant of planning permission in this case. In re-examination he confirmed that potential financial benefits from the proposed scheme may increase the Company's ability to invest.

Framework points out 'The purpose of planning is to help achieve sustainable development Development means growth.'

- 8.20.31 In this context the direct, indirect and induced economic effects together with the support for the potential for further growth should be afforded significant weight in the balancing exercise.

Locational Benefits

- 8.20.32 Finally, the site has a number of key locational advantages. Given the market served by the AD plant, the site is relatively remote from residential properties. The closest residential property to the reception buildings would be about 165 metres distant. Only relatively few lie within 200 metres. The location in the existing quarry bowl provides particularly good screening from views from the local area and a 12 metre high bund between the plant and the nearest residential receptors provides an effective screen for both odour, noise and other effluvia.
- 8.20.33 The access to the site is good with direct access to the A56, which links in very close proximity to the regional motorway network.
- 8.20.34 The site benefits from an existing connection to the National Grid, which would help ensure the use of any spare electricity generated by the facility. The environmental impact of the proposed development would be very limited. Given the existing permissions in the quarry which continue to be worked there would be minimal ecological, archaeological, landscape and highways impacts. The construction of the AD facility on the appeal site would displace the existing lawful fallback position. Displacing this permission effectively means that the net effects of the proposal are limited.
- 8.20.35 The need for future onsite restoration provides a sustainable opportunity to utilise digestate from the plant in that process²⁵⁶.
- 8.20.36 Overall, the bespoke locational advantages of the site should be given material weight in the balancing exercise.

Overall Balance

- 8.20.37 Overall, the harms to the openness, essential characteristics and purposes of Green Belt are limited. There are no material 'other harms'. Although paragraph 87 and 88 of the Framework confirm that inappropriate development is by definition harmful and that substantial weight is given to 'any' harm to the Green Belt. These policy prescriptions cannot be divorced from an assessment of the actual harms.
- 8.20.38 Against these limited harms must be balanced the important renewable energy, Waste Hierarchy, economic and locational advantages of the proposal. These advantages are also supported by key national policy precepts. In the case of renewable energy paragraph 91 of the Framework specifically envisages the benefits of renewable energy as potentially constituting very special circumstances. Certainly, when added together the words 'very special' sit comfortably as a description of those advantages.

²⁵⁶ See Dr Jackson's note and Keith Owen's response.

8.20.39 The Council's planning officers described the balance thus²⁵⁷ 'While no single factor can be described as being so very special a circumstance as to clearly outweigh the harm to the Green Belt, it is considered that when these factors put forward by the applicant are considered cumulatively, they do amount to very special circumstances that outweigh the harm to the openness and character of the Green Belt'. That recommendation was made in the full knowledge of the range and scale of local objection and the strong resistance such a recommendation was likely to face from members, given the activities of some of them that the Inquiry has been informed about. This Inquiry has had the benefit of a much more detailed assimilation of both the harms and the advantages and in the appellants submission the balance is now even more clear cut.

8.20.40 The Council's Advocate put a sporting metaphor in his cross-examination of Mr K Owen. He suggested that in order to 'clearly outweigh' the harms the benefits would have to outweigh the disadvantages by some considerable distance (a large rugby score!). Whilst that is not strictly true, (the balance could tip finely one way or the other) the fact is, in this case, the margin of advantage is indeed significant and clear cut.

8.21 **Conclusion**

8.21.1 It is therefore concluded that a grant of planning permission²⁵⁸ would have;

- a) Limited material impact on the openness or purposes of the Green Belt in the context of the appeal site's existing contribution to it, within a quarry and with extant planning permissions including for recycling and composting operations;
- b) No material impact on the effect of the living conditions of residents and businesses²⁵⁹ in the local area, with particular reference to odour, noise and light pollution;
- c) No material impact on air quality in the locality;
- d) No material impact on the safety and convenience of highway users, certainly not as to constitute a 'severe' residual cumulative impact in the context of paragraph 32 of the Framework;
- e) No material impact on the character and appearance and landscape of the local area, which includes the Ramsbottom and Holcombe Conservation Areas;
- f) No material impact on the local economy;
- g) No material harm on biodiversity or ecology;
- h) No material harm to public health.

8.21.2 Whilst the definitional²⁶⁰ starting point is that the appeal scheme constitutes inappropriate development in the Green Belt, to the extent that it can be

²⁵⁷ CD25 page 13

²⁵⁸ For the appeal scheme as submitted and as revised.

²⁵⁹ Described in technical terms as 'sensitive receptors'.

demonstrated that any limited harms would arise from the development, these are clearly outweighed by other considerations including:

- a) Significant contribution to the generation of renewable energy and climate change benefits;
- b) Significant contribution to local and national objectives of waste policy and diverting waste from landfill;
- c) Significant direct and indirect economic benefits, helping to deliver Marshalls' overall vision for its future development via a renewable energy power station; a number of key additional benefits by way of location, including: being in an existing quarry bowl and thus a well screened location; relatively remote from residential properties; existing availability of a connection to the National Grid; potential use of the digestate product as part of quarry infilling²⁶¹; and good direct access to the regional motorway network.

8.21.3 It is submitted on behalf of the appellants that the above cumulatively constitute very special circumstances. Overall, the corollary of this is that allowing the appeal would be a determination in accordance with the Development Plan. As the proposal comprises, clearly 'sustainable' development, paragraph 14 of the Framework prescribes that it should be approved without delay.

8.21.4 Consequently, the Inspector is respectfully invited to recommend and the Secretary of State determine, that the appeal be allowed subject to conditions.

9. THE CASE FOR RAMSBOTTOM AGAINST THE WASTE SITE (RAWS)

9.1 Introduction

9.1.1 Ramsbottom Against the Waste Site (RAWS) is an unconstituted group comprised of residents from Ramsbottom and the surrounding area, many of whom live in the immediate vicinity of the FBQ site.

9.1.2 The proposal for an AD plant at FBQ is a substantial and complex application in a very sensitive location within land designated as Green Belt, adjacent to a significant number of dwelling houses and within a close vicinity to a significant number of other sensitive receptors. Indeed, there are 850 houses, a population of 2,200 people, 7 restaurants, 1 Primary school, 4 Sites of Scientific Biological Interest, the Haweswater Aqueduct, 1 reservoir, and countless watercourses all within 500 metres of the FBQ site boundaries. The nearest residential property is 115 metres from the appeal site boundary on Greenacre Close.

9.1.3 In response to the planning application itself, over 1,500 letters of objection were lodged with the Planning Officer, various petitions submitted and the application has received local, regional and national media coverage.

²⁶⁰ Paragraph 88 Framework.

²⁶¹ As per the Appellant's Note on Digestate for use in restoration of Fletcher Bank Quarry.

9.1.4 The issue in the current appeal is whether the appellant is able to show that the harm to the Green Belt at FBQ is clearly outweighed by other considerations that amount to very special circumstances.

9.2 **Planning Policy**

The Framework

9.2.1 Policy on protection for the Green Belt is contained in section 9 of the Framework, which sets out the fundamental aim of Green Belt policy at Paragraph 79.

9.2.2 At paragraph 87, the Framework makes it clear that inappropriate development is, by definition, harmful to the Green Belt, and should not be approved except in very special circumstances.

9.2.3 Paragraph 88 is clear that substantial weight must be given to any harm to the Green Belt. Very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.

9.2.4 In *Redhill Aerodrome Ltd v Secretary of State for Communities and Local Government [2014]* Lord Justice Sullivan, ruled that the words 'any other harm' in paragraph 88 of the Framework should be interpreted to include any other harm relevant for planning purposes, such as harm to landscape character, adverse visual impact or noise disturbance and are not limited to 'any other harm to the Green Belt'.

9.2.5 There is no doubt that this proposed development in the Green Belt is 'inappropriate development' as a matter of proper consideration of the meaning of paragraph 89 of the Framework. The appellants concede that fact.

9.2.6 Renewable energy projects are specifically mentioned as being 'inappropriate' for Green Belt development at Paragraph 91 of the Framework:

'91. When located in the Green Belt, elements of many renewable energy projects will comprise inappropriate development. In such cases developers will need to demonstrate very special circumstances if projects are to proceed. Such very special circumstances may include the wider environmental benefits associated with increased production of energy from renewable sources.'

9.2.7 However, in a statement to the House of Commons²⁶², Nick Boles, Local Government Minister, stated that 'as explained in the written statement of 29 July 2013, Official Report, House of Lords, column 162WS, we are proposing a further strengthening of Green Belt protection by deleting the current policy requirement to give special consideration to the need for waste management facilities in the Green Belt.' On 16 October 2014 the Secretary of State for Communities and Local Government announced the National Planning Policy for Waste (NPPW). The Secretary of State stated

²⁶² Hansard, 29 Aug 2013 : Column 1006W.

in the press release accompanying the NPPW that he had 'strengthened the policy on planning for waste facilities such as recycling plants making clear that companies and councils looking to build these should first look for suitable sites and areas on brownfield land.' The new wording means that councils can now no longer give special consideration to locational needs, or wider economic benefits the site could bring, over other considerations, as justification for building waste facilities on Green Belt land.

9.2.8 The revised guidance makes it clear that companies looking to build AD facilities, such as the appellants, should first look for suitable sites and areas at brownfield locations. Furthermore, Communities Secretary Eric Pickles and Housing and Planning Minister Brandon Lewis announced on 6 October 2014 that the use of thousands of brownfield sites for development should be prioritised. The Secretary of State when publishing Green Belt Guidance stated 'when planning for new buildings, protecting our precious Green Belt must be paramount'. He went on to say, 'Local people don't want to lose their countryside to urban sprawl, or see vital green lungs around their towns and cities [lost] to unnecessary development.'

9.2.9 This clearly shows the Government's ongoing commitment to protecting the Green Belt.

The Greater Manchester Joint Waste Development Plan (GMWP)

9.2.10 The GMWP, published in April 2012 after extensive investigations and assessment, is in place, adopted and valid, as recognized by the appellants.

9.2.11 The plan allocates two sites in nearby Bolton and four areas in Bury (Dumers Lane, Pilsworth, Fernhill and Pimhole) as being suitable for AD plants should further demand for such facilities be demonstrated. FBQ, the site of this application, is not an allocated site.

The Bury Unitary Development Plan (UDP)

9.2.12 The relevant strategies contained in the UDP for the Green Belt are:

Objective 1: To maintain and protect a Green Belt which will be sustainable during and beyond the Plan period.

Objective 6: To encourage and manage beneficial and harmonious open land uses, in order to promote a multi-functional countryside.

9.2.13 The relevant strategies contained in the Unitary Development Plan specifically for Ramsbottom are:

9.2.14 Chapter 13, Policy TC – 'In Ramsbottom, the emphasis will be on continuing recent initiatives associated with tourism and retailing provision, with special attention being directed towards preserving and enhancing the heritage value and environmental quality of the centre and its buildings.'²⁶³

9.2.15 The relevant sections of Bury Council's Unitary Development Plan are – OL1, OL1/2, OL1/5, EN1/1, EN2, EN7, EN7/2, EN7/3, EN7/5, EN9 and EN9/1.

²⁶³ CD12 page 174.

The Council's Second Publication Core Strategy (CSe)

9.2.16 The Council, following extensive consultation, attempted to update the UDP and issued a publication core strategy (and a second publication core strategy) in 2013 which outlined that there should be no further built development at FBO. A vote was taken of the full Council on 3 July 2013 to include this prohibition in the draft local plan that should be taken to represent clearly local opinion in Bury, even though the core strategy has since been withdrawn. It is clear that Bury Council did not choose to adjust or alter the Green Belt boundary in relation to FBO during its review of the Local Plan.

9.2.17 The relevant strategies contained in the CSe for Ramsbottom were:

'GREEN BELT: Retain Green Belt designations in the Irwell Valley and to the east of Ramsbottom through Shuttleworth and Nangreaves. Restrict development within the village settlements of Shuttleworth ... to limited infilling which is consistent with the village's character and surroundings.

TOURISM AND CULTURE: Safeguard and build on tourism assets such as the East Lancashire Railway and the West Pennine Moors, particularly in the Ramsbottom area, including the encouragement of tourism-support facilities such as overnight accommodation and strengthening the town's evening economy.'

9.3 Harm to the Green Belt

9.3.1 The proposed development of this Green Belt land amounts to inappropriate development as a matter of policy, pursuant to paragraph 89 of the Framework. Pursuant to paragraph 88 'substantial weight' must be given to any harm to the Green Belt. Accordingly the present application for inappropriate development in the Green Belt starts from that position. It is acknowledged that the words of the Framework require the decision maker to assess harm to the Green Belt in relation to the appeal site.

9.3.2 It is clearly the case that the appeal site plays an important role in assisting in safeguarding the countryside from encroachment and that its loss to development would significantly harm this purpose. The assessment of harm to a Green Belt site is an exercise in the assessment of harm to the individual site.

9.4 Openness

9.4.1 For the purposes of the proper application of Green Belt policy, openness should be understood as meaning an absence of physical development. The proposed and revised schemes entirely change an open site, albeit a quarry undergoing restoration, to one which has substantial built development in the form of buildings, digester tanks, CHP buildings, exhaust stacks etc. The effect on openness is, in RAWS' opinion, accordingly profound and is clear harm to the Green Belt.

9.5 Permanence

9.5.1 The site is in Green Belt. The site has been designated as Green Belt for a long time and with permanence in mind.

9.6 Other harm – Odour

9.6.1 Submitted with the planning application was a detailed technical report on the potential impact of the proposed development from odour. This was supplemented verbally at the Inquiry. In addition to evidence from Miss Gannon for the Council, the main third-party concern on this was provided in detail by Dr Jackson for and on behalf of RAWs.

9.6.2 Planning decisions should take into account whether introducing a source of odour is 'any other harm' and is commensurate with existing uses, as highlighted in the recent appeal decision Ref. APP/X1355/A/12/2188741,²⁶⁴ where the Inspector commented:

'Crucially, odour control forms a part of the EA's regulatory responsibility. It is not something that is a material planning consideration unless the extent of regulation the EA can impose would not deliver a level of odour commensurate with the other surrounding land uses.'

The case in question was in a remote rural location on a farm with existing significant odour sources present. The Inspector commented:

'The area is also subject to the usual agricultural smells from muck spreading and similar.'

'Thirdly, as farmyard manure, slurry and grass silage are currently produced and stored on site, they [odours from the AD plant] would not constitute additional odour sources.'

9.6.3 Contrast that with the current appeal site. It has been confirmed by Mr Redfern in cross examination that there are no existing odour sources on site at FBQ, and it is clear that the proposed plant would introduce a new and significant risk of odour pollution for local residents and other sensitive receptors that therefore need to be addressed at the planning stage.

9.6.4 The AD sector has a poor track record of pollution due to odour, as evidenced through multiple examples presented to the Inquiry by RAWs and Bury Council, evidence reported in Environment Agency pollution reports and in evidence provided by the appellants themselves. In 2012, there were 8.8 serious pollution incidents caused by AD plants for every 100 AD waste permits.²⁶⁵ If this occurred at FBQ, it would amount to significant harm.

9.6.5 Jeremy Jacobs, Technical Director of the Organics Recycling Group of the Renewable Energy Association: stated *'Clearly this level of performance is not one that either the EA or the industry wish to continue with. We need to*

²⁶⁴ CD27.

²⁶⁵ P10 para 1.1.3.

*be asking questions as to how realistic are the expectations of the regulator in respect of odour emissions. It is clear that the general public are much less tolerant than they were and that with increased pressure on space, finding suitable spaces to carry out biological treatment is becoming more challenging.*²⁶⁶

- 9.6.6 Where AD plants are co-located with residential neighbours and other sensitive receptors, there is a significantly increased likelihood of nuisance.²⁶⁷ The proposed AD plant at FBQ would have more nearby residential neighbours than other AD plants in the UK, as well as businesses and a Primary School that would be impacted by odour pollution from the plant.
- 9.6.7 The Secretary of State should give considerable weight to this 'real world' evidence of poor sector performance in judging the likelihood of loss of amenity due to odour.
- 9.6.8 In the short time that Tamar have been constructing and operating AD plants, they have a poor track record of causing nuisance to nearby residents as evidenced in EA reports presented to the inquiry.²⁶⁸ Much evidence has been presented to the Inquiry relating to noise and odour nuisance at Tamar's Halstead plant, where around 150 complaints about odour have been received over a six month period.²⁶⁹ It should be noted that at Halstead there are only a small number of residents located approximately 400 metres away, to the North-East, from the site boundary.²⁷⁰ At FBQ there are hundreds of residents, several businesses and a school local to the site.
- 9.6.9 In his evidence Mr Heller appeared to treat residents' continuing complaints about odour lightly. He commented that in his view they had no need to complain more than once, as Tamar were already addressing their concerns in conjunction with the EA.
- 9.6.10 Evidence presented by the appellants shows why residents are fully justified in continuing to complain: Tamar have repeatedly failed to meet EA deadlines as evidenced by the compliance assessment report (CAR) by the EA for a site visit on 9 January 2015²⁷¹:

"Permit breach for failing to take appropriate measures."

"This is the second consecutive monthly breach for odour."

"You have failed to do this [redirect the gas chamber outlet] therefore you have failed to take appropriate measures."

"We consider this [use of deodorising sprays] to be unsatisfactory as it is unlikely to address the ongoing odour derived from the gas chamber outlet and is not regarded as a permanent appropriate measure."

²⁶⁶ P10 Annex 1.1.1.b.

²⁶⁷ P10 Annex 1.1.4.a.

²⁶⁸ P1, P10 and ID75.

²⁶⁹ Evidence in chief of Mr Heller.

²⁷⁰ P1.

²⁷¹ ID75.

- 9.6.11 It should be noted that these comments relate to a visit on 9 January 2015. During the Inquiry's site visit to Halstead on 19 March 2015, some ten weeks later, strong odour was apparent outside of the plant, de-odorising sprays were still in use and the gas chamber outlet was still leaking. In our view, residents are fully justified in continuing to complain. Tamar appear not to be taking their concerns seriously or with the appropriate degree of urgency. It appears that Tamar have said one thing to residents and the EA and then failed to deliver on the promises made.
- 9.6.12 The Inquiry has to an extent concentrated on data relating to Tamar's Halstead facility. It is our view that their performance at other plants may be of equal concern, but there are no residents living downwind to complain. Indeed, the EA have recorded seven permit breaches for Tamar's Holbeach plant over the first nine months of 2014.²⁷²
- 9.6.13 In our view, Mr Heller also incorrectly interpreted the EA's incident scoring system²⁷³ and failed to acknowledge the significance of the impact of an odour pollution event on loss of amenity, namely:
- Category 1 - Odour causing a major adverse effect on an important recreation activity or a large public event.
 - Category 2 - Odour resulting in a significant adverse effect on an amenity or recreation area, such as a park.
 - Category 3 - Odour resulting in a minor or transitory effect on local amenities and leisure areas.
 - Category 4 - Substantiated incident with no impact.
- 9.6.14 It is clear from this that the likelihood of more severe impacts are where there are more residents: the same incident could result in a Category 4 impact in a remote rural location or a Category 1 impact across a housing estate, school fete or wedding party at a local restaurant.
- 9.6.15 Across the UK, residents living adjacent to AD plants have suffered years of odour nuisance.²⁷⁴ To date, residents in Westwood Cottages, 400m away from the Halstead plant, have suffered for six months.²⁷⁵
- 9.6.16 There is a clear risk of the same thing happening in Shuttleworth: several hundred residents and a school could be impacted, and over a period of six months, children's education would be affected and the carefully-earned reputation of a local restaurant and significant employer could be irreparably damaged by odour from Tamar's plant.
- 9.6.17 Odour levels associated with the various operations in the proposed plant at FBQ have not been quantified by the appellant. No 'real-world' evidence has been provided by the appellants for odour levels relating to the 23 specific odour generation sources and potential emission sources identified by

²⁷² P10 Annex 1.2.1.a.

²⁷³ P6b Appendix H p25-26.

²⁷⁴ P6, P9 and P10.

²⁷⁵ ID29.

Mr Branchflower in his proofs of evidence. No evidence has been presented by the appellants based on actual measurement of odour from locations within or outside any of Tamar's existing operational plants. No evidence has been presented to the Inquiry by the appellants relating to the different odour levels measured from different feedstock types, in particular between the different categories of waste expected to be used at FBQ as reported by Mr Heller:

'Category 3 animal waste products; Fish and seafood waste; Waste from meat products; Pet food waste; Animal feed waste; Waste from baking and cereals'

No evidence has been provided by the appellants for the additional impact on odour due to ageing and decomposition of feedstock before collection or in transit, prior to delivery.

- 9.6.18 Mr Branchflower's description²⁷⁶ of the plant atmosphere being 'not particularly odorous' at multiple points in the process is not credible, and as above, no evidence has been provided to back up these statements. Furthermore, there are significant discrepancies between the description of the plant odour sources presented by Mr Branchflower for FBQ and Mr Heller for Halstead. In the Halstead Odour Management Plan (OMP), agreed with the EA, presented by Mr Heller²⁷⁷, odour potential at multiple points around the plant is described as medium or high, whereas Mr Branchflower reports 'not particularly odorous'. Additionally, in the same table, Mr Branchflower reports odour from the CHP stack as 'not significant' whereas this is described as a medium odour potential at Halstead, the same odour risk rating as the odour control plant stack.²⁷⁸
- 9.6.19 Dr Jackson on behalf of RAWs provided evidence from an extensive study in Denmark²⁷⁹ which showed burning biogas produced by Anaerobic Digestion in CHP engines gave rise to significantly raised odour levels due to residual unburned hydrogen sulphide in the exhaust. Again, no evidence is provided by the appellants for quantification of CHP stack odour emissions.
- 9.6.20 In the amended design for the plant submitted to the Inquiry, Proposal B, the appellants propose to dispose of 63,000 tonnes of process effluent to drain, connecting to an atmospherically aspirated manhole in the middle of a residential street in Shuttleworth.²⁸⁰ The appellants provide no evidence for the quantification of the odour potential for this industrial effluent under normal or abnormal operational conditions. Mr Heller's description of this as being 'pure as drinking water' during his evidence is not credible.
- 9.6.21 We have seen from the real-world performance of Tamar's plant at Halstead that understanding and quantifying the potential odour sources and being able to properly assess the risk of impact at local residents is essential.

²⁷⁶ P6a table 2.

²⁷⁷ P1 Appendix 3.

²⁷⁸ P1 Appendix 3 page 14 and Appendix B, P6a pages 28/29.

²⁷⁹ ID81.

²⁸⁰ ID17.

9.6.22 As detailed in the expert guidance provided by the EA²⁸¹:

'Estimates of releases should be used for new installations and options considered beside the base case. Where possible, estimates of releases should be backed up by information from pilot trials or similar operations elsewhere.'

9.6.23 It is RAWs' conclusion that the appellants have not sufficiently identified or quantified the odour sources relating to the proposed plant sufficient for the Secretary of State to be satisfied that no harm would be caused to local residents.

9.6.24 Once odour sources are properly identified, dispersion modelling may be used to assess the transport of odour from the plant to the receptors and estimate the potential odour impact.

9.6.25 Expert guidance is provided by EA's H4 guidance:

'The Agency does not favour or prescribe the use of any particular dispersion model.'

'It is left to operators/applicants to justify their choice of model (including the version). However the chosen model (and specific version) has to be fit for purpose and based on established scientific principles.'

'There are two types of dispersion models that meet these requirements and can currently be used to predict a map of the odour concentration frequency caused by odour emissions:

'1. Steady state Gaussian models (e.g. Aermot, ADMS). These general-purpose models are well established and routinely applied for odour assessments, and of odour plume behaviour when the odour source is located in relatively simple terrain; where the winds are relatively evenly distributed; and where the frequency of low wind speeds (< approx 1.5 m/s) is below 2% for each compass direction.'

'2. Non-steady state Lagrangian models (e.g. Calpuff and the German regulatory model Austal). Also known as 'puff' models. These models are increasingly being used for odour assessments purposes and are capable of simulating a wider range of dispersal conditions than steady state models (e.g. valley channelling, cold drainage, coastal effects, stagnation, high percentage of low wind speeds or calms). They are therefore useful for odour assessments at sites which are characterised by such complex air flow/dispersion conditions.'

'Non-steady state modelling continues to develop and where an operator wishes to use such models they should seek the advice of the Environment Agency for the latest position.'

'Irrespective of the model applied, sufficient information should be supplied to enable the model to be audited.'

²⁸¹ ID22 page 7.

'A sensitivity analysis, to enable the overall uncertainties to be understood, should also be provided including:

- likely uncertainties in the source term, including a consideration of fugitive emissions;*
- the degree to which the emissions are likely to be steady or fluctuating and the impact of this on the model chosen;*
- likely uncertainties associated with the meteorological data;*
- plausible worst case scenarios;*

These uncertainties should be acknowledged in consideration of the isopleths.'

Once built, the model should be run for different design/what if options in order to show that BAT/appropriate measures are being proposed and to test the uncertainties.'

'To represent conditions for an average year hourly meteorological data for a period of at least three, preferably five years should be used. Data can be sourced from the following sources.'

- 'A representative meteorological station;*
- If such a station is not available or the site has specific local features that are likely to influence dispersion significantly, consideration should be given to the use of site specific predictive meteorological datasets derived from analysis of synoptic data. Data of sufficient quality for use in steady state and non steady state models is available commercially from a number of sources (e.g. TAPM data from the Air Pollution Model; MM5 data derived from the fifth generation Mesoscale Model);*
- Your own weather station if you have one on the site. You should demonstrate that the siting of this will give a true representation of the conditions of the site.'*

9.6.26 The appellants have chosen to use the Gaussian models AERMOD and ADMS to undertake dispersion modelling for the FBQ proposal. Whilst the scientific principles behind these models are well established, there are equally well understood 'boundary conditions' that limit the applicability of such models in certain cases.

9.6.27 The user documentation presented to the Inquiry clearly states that there are limits to the 'fitness for purpose' of such models,²⁸² for example for ADMS:

- Terrain slope – slope of hills are small, typically less than 1 in 3;
- Terrain roughness - changes in 'roughness length' are no more than one order of magnitude; and,

²⁸² P10, Annex 2.1.1.b p13, 2.1.1.a p135.

- Wind speed – calm conditions with wind speeds <0.75m/s are not modelled.
- 9.6.28 Such conditions are based on the underpinning scientific understanding and boundary conditions used in the mathematical models that underpin the software, which would otherwise lead to increasing and unacceptable errors in the predicted results. Indeed evidence presented to the Inquiry by the appellants and Dr Jackson demonstrates that airflow is not modelled well in the lee of even moderate slopes and significant errors in predictions occur.²⁸³ It is this understanding of the limitations of such Gaussian models that have informed the EA guidance above.
- 9.6.29 The terrain surrounding FBQ is highly complex, comprising a quarry ‘bowl’ at Shuttleworth set within the eastern side of the steeply sloping Irwell valley above Ramsbottom. Map and photographic evidence presented to the Inquiry clearly demonstrates that there are vertical cliffs to the NE, E and SE of the site, rising to 60 metres in places, as well as steep slopes to the quarry edge to the S, W and N of the site. Evidence presented by RAWs²⁸⁴ shows that in each case, slopes in excess of 1 in 3, and many vertical cliffs, are present between the AD plant site and nearby sensitive receptors. This is also clearly apparent to any observer from the footpaths around the site, and would have been seen on the site visit. In cross examination, Mr Branchflower accepted that the steep slopes on the quarry edge to the west of the site between the plant and residential properties were not even included in his modelling.²⁸⁵ At the same time, Mr Branchflower confirmed that the area modelled covers the development along the A56, housing estates on Peel Brow, wooded steep banks to the west of the FBQ site, farmland to the north and south of the site and grass moorland to the east of the site, as well as the rocky surfaces of the quarry and Marshalls’ industrial facility in the south of the quarry bowl.
- 9.6.30 The ADMS/FLOWSTAR user guide advises that variations in surface roughness should be modelled,²⁸⁶ and ascribes ‘surface roughness’ values to different types of land use. In particular open grassland has a value of 0.02, whereas woodland and towns would have a value of 1.0, confirmed by Mr Branchflower in cross-examination. The difference between these values is more than one order of magnitude.
- 9.6.31 The appellants have at various times, presented meteorological data from a variety of sources, namely Manchester Airport, Leeds-Bradford Airport, Scout Moor windfarm, synthetic data from the Numerical Weather Prediction (NWP) dataset and from an on-site met station. The applicability of using Manchester Airport met data has been a concern of the Council and other statutory consultees, as well as RAWs and local residents, and the provision of an on-site meteorological (met) station was a condition of the earlier waste recycling and open windrow composting planning permission Ref. 43048, granted in 2006.

²⁸³ ID44, ID77 and subsequent correspondence.

²⁸⁴ P10 Additional documents.

²⁸⁵ Inspector’s note- Mr Branchflower clarified in re-examination that they were included in the model.

²⁸⁶ P10 Annex 2.1.1.b page 2.

- 9.6.32 Inspection of the respective 'windroses' clearly shows large differences between all the other data sets and that from the site met station, and confirms local knowledge that this is a sheltered site in the Lancashire hills with a different wind pattern to an airport 30 km away on the flat Cheshire plain or a moor-top wind farm. The on-site station shows that wind speeds below 1.5 m/s are present for 50% of the time at FBQ compared with only 7% of the time with the NWP data. NWP data also has wind speeds above 5.0 m/s for 30% of the time, compared with only 2% for the on-site station. The predominant wind directions suggested by NWP are south, southwest and west, with only 15% of wind from the easterly quarter, whereas the site data shows negligible southerly airflow, and over 30% of wind from the east.
- 9.6.33 It is clear that the data from Manchester Airport, Leeds-Bradford and Scout Moor and from the synthetic NWP data set are in no way representative, and that the FBQ site is characterized by low wind speeds expected in such a sheltered location.
- 9.6.34 The Gaussian models used do not consider periods when the wind speed is below 1.0m/s for AERMOD and 0.75m/s for ADMS.²⁸⁷ Based on the appellants' on-site met data, it is estimated that such conditions may exist for approximately 25% of the time. Mr Branchflower described in evidence that in such conditions, ADMS has a simple radially-symmetric Gaussian plume model which may be used to fill in the gaps that would otherwise be left blank, the Calms module. According to the ADMS documentation presented to the Inquiry, the ADMS Calms module assumes terrain with slopes less than 1 in 10²⁸⁸, so may significantly underestimate concentrations in a quarry bowl setting. It was confirmed in cross-examination by Mr Branchflower that the Calms module assumes the emission source is on a flat plain. Mr Branchflower also confirmed that the Calms module does not accumulate pollutant concentrations for more than one hour as part of the software's 'ensemble averaging' methodology. He was also unable to confirm the longest calm period measured on site.
- 9.6.35 During Mr Branchflower's cross-examination we heard that, using a simple 'box model' for the quarry bowl, in calm conditions the discharge from the odour control plant would result in an odour concentration of 5 ou_E/m³ within a one-hour period. This would of course be significantly higher with accumulation for extended periods. This simple example shows that the impact of terrain and accumulation under calm conditions is significant, and has not been adequately modelled.
- 9.6.36 The appellants have not considered adverse variations in the odour control plant operational performance which is highly likely based on evidence presented at the inquiry.²⁸⁹ The appellants have not considered fugitive emissions from the plant in any of their planning submissions, for example from leaking pressure valves or from door opening and closing. They have not considered emissions from the plant due to foreseeable adverse

²⁸⁷ P10 Appendix 2.2.1. a/b/c.

²⁸⁸ P10, Annex 2.1.1.a page 135.

²⁸⁹ P10, P9, P6b Appendix I.

operating conditions in any of their planning submissions, such as failure of or maintenance outage on the odour control plant or effluent treatment facility. Just one week before the start of the Inquiry, Mr Branchflower reported a cursory evaluation of a 'plant failure' case, which indicated that such an occurrence would lead to significant adverse impacts at nearby receptors which, if happened, would last for 'a few weeks'. No modelling details or case parameters were included.²⁹⁰ Mr Branchflower also reported significantly increased odour impacts at nearby receptors in the event that one of the facility doors were to be left open permanently.²⁹¹

9.6.37 In cross-examination, Mr Branchflower indicated that in his view the error bars associated with his modelling results were +/- 100%, that is the results could vary by a factor of 2. The EA's expert group AQMAU have commissioned and published a 'Review of Dispersion Modelling for Odour Prediction', presented in evidence by Dr Jackson.²⁹² This has an extensive section on dispersion modelling uncertainties. At page 49 it states:

'A 'factor of 2' difference in predicted concentration is commonly quoted as a tolerable limit of accuracy for model inter-comparisons or model validation. It is based mainly on practical experience but has limited theoretical justification.'

9.6.38 At table 5.2, it presents the range of reporting uncertainties for some model parameters in one example of an odour modelling study:

- Terrain Panorama 180%
- Terrain profile 210%
- Met data 66%
- Surface roughness 10%
- Building effects 300%
- Receptor heights 50%

9.6.39 The report is also clear on how these uncertainty estimates should be interpreted, for example:

'The presence of terrain means that the predicted 98th percentile of hourly average concentrations could be a factor of 2 higher or lower than the actual prediction at a chosen receptor location.'

'The presence of buildings meant that predicted concentrations could be about a factor of 3 higher or lower than the actual exposure.'

9.6.40 RAWs considers all these parameters to be important in the FBQ setting, and as such the error bars associated with modelling results would be cumulative and large, in excess of those indicated by Mr Branchflower.

²⁹⁰ P6b paras 4.14-4.18.

²⁹¹ P6b paras 4.9-4.12.

²⁹² P10 Annex 2.4.1.a.

- 9.6.41 At table 5.4 in the same document, results are presented from a further study (with flat terrain) that show error bars associated with predictions of the maximum hourly concentration of between 0.1 and 10 x the actual concentration measured, that is errors of up to 1,000%. The same report also refers to a risk based review summarized in Table 5.3. That approach results in a high risk rating of 8, accepted by Mr Branchflower, and advises that further work should be done, beyond the usual required sensitivity analyses, implying the use of alternative models in such circumstances. Further evidence demonstrates that the predicted airflow predictions using FLOWSTAR/ADMS can be overestimated in the lee of moderate and steep slopes by up to 900%.²⁹³
- 9.6.42 The appellants have:
- a) chosen to use simple Gaussian models ADMS and AERMOD for a location with steep and vertical terrain, with an uneven wind direction distribution and with a very high percentage of 'calms', contrary to the clear advice from experts at the EA.
 - b) chosen to use the ADMS program in a location with steep and vertical terrain, and where surface roughness parameters vary by more than one order of magnitude, contrary to the boundary conditions reported in the software user guides.
 - c) chosen to use a 'Calms' module that does not take into account the complex terrain at FBQ.
 - d) used ensemble average models that do not take into account accumulation of pollutants for more than one hour periods, particularly during calm periods.
 - e) not reviewed model prediction uncertainty nor attempted to quantify or present any 'error bars' with the dispersion modelling results submitted for planning until this Inquiry.
 - f) used unrepresentative met data in all of their planning submissions, and only revealed the existence of on-site met data at this Inquiry, despite starting to collect this in early 2013.
- 9.6.43 In cross-examination Mr Branchflower also revealed that he has only ADMS and AERMOD available to him, and that he didn't visit the site prior to commencing work on the modelling for the original planning permission submission in 2013. At the same time, he said that, despite undertaking a large number of dispersion modelling studies, he had never validated any of his predictions by taking on-site measurements of odour.
- 9.6.44 Both Dr Jackson and Mr Branchflower reported the work of Dr Fraser '*Dispersion modelling from a Hole in the Ground*'. As Dr Fraser appears to be the only person in the UK who has measured actual versus predicted airflow in a quarry setting, RAWS consulted Dr Fraser for advice on the applicability of ADMS in the FBQ setting. His advice was clear²⁹⁴:

²⁹³ ID44, ID77 and subsequent correspondence.

²⁹⁴ ID77.

'there may be potential issues using ADMS or relying exclusively on ADMS for the situation in the quarry';

'The ADMS user manual is clear that where slopes are above 1 in 3 the model isn't really fit for purpose';

'with steep terrain, you get results that are really quite different from what you'd expect and the observed conditions in the real world are radically different from what the model is predicting';

'This is not surprising because you get recirculating flow which ADMS doesn't consider';

'smoke tests [were done] in the quarry initially to see what was going on, and the wind flow was blowing one way outside the quarry and completely different direction within the quarry'; and,

'You can't rely on dispersion models like AERMOD and ADMS in those kind of situations because there's a risk they will be giving you entirely misleading information.'

- 9.6.45 In the face of all the above expert advice, RAWs strongly believes that the dispersion modelling performed by the appellants in the FBQ setting is deeply flawed and the results presented do not properly reflect the uncertainties associated with atmospheric dispersion modelling. The real risks of odour pollution and adverse impacts to local residents in Shuttleworth and Ramsbottom have therefore not been adequately addressed by the appellants.
- 9.6.46 It is perhaps worth reflecting that the poor performance of the AD sector to date may be due, in some part, to reported dispersion modelling results setting a false expectation of low odour impacts, that are not reflective of the true uncertainties and therefore do not turn out to be true in reality. It has been suggested during the Inquiry by the appellants that the analyses of pollution risks and predicted odour impacts prepared by RAWs²⁹⁵ for submissions presented against the original planning processes have been 'scaremongering' and based on flawed assumptions. RAWs would make two comments in relation to this.
- 9.6.47 Firstly, the results presented by RAWs, using an admittedly crude modelling process based on the appellants' own modelling outputs, and for which the basis was clearly stated at the time, gave reasonable indications of the likely impact at similar levels to those reported in his rebuttal evidence by Mr Branchflower for example²⁹⁶:

²⁹⁵ P10, Annex 3.1.2.a, 3.1.2.b.

²⁹⁶ P6b 4.12, 4.18.

	RAWS	appellants
Door open fugitive emissions case	0.3-0.75 ou _E /m ³	1.2 ou _E /m ³ average
		11.2 ou _E /m ³ peak
Plant containment failure case	4-65 ou _E /m ³	35 ou _E /m ³ average
		163 ou _E /m ³ peak

9.6.48 Secondly, the performance of the AD industry itself justifies strong concern from residents faced with a planning application for a large waste processing facility and AD plant on their doorstep. As reported²⁹⁷ :

'It is clear that the general public are much less tolerant than they were and that with increased pressure on space, finding suitable spaces to carry out biological treatment is becoming more challenging.'

9.6.49 In other words, RAWS did not need to 'scaremonger': the industry has done a good job itself, by its woeful track record leading to widespread fears amongst residents.

9.6.50 The proposal for the site to be operating 7 days per week and 24 hours a day, but left unmanned for 50% of the time gives no confidence to the residents of Shuttleworth that any adverse events would be properly identified and immediately managed.

9.6.51 RAWS is also deeply concerned by the proposed condition on odour control plant performance should the appeal be upheld. We have heard in cross examination from Mr Heller, Mr Branchflower and Miss Gannon that technology to monitor odour in real time from the odour control plant stack or at sensitive receptors does not exist. Setting an odour output limit of 1,000 ou_E/m³ makes no sense scientifically, as there is no direct evidence that this level would deliver impacts at nearby receptors below the C_{98,1-hour} 1.5 ou_E/m³ standard. Furthermore, setting this as a qualification condition makes no sense, since it is the ongoing standard of operational performance and maintenance that would determine the actual odour control plant output. The proposal to monitor performance by sniff testing by plant operators at the site boundary makes no sense as an operator on the ground would be below the height of the odour plume from the odour control plant in the immediate vicinity of the plant. The likely first indication of a problem would be complaints received from residents, and it is difficult to see how such a condition would be enforceable. Based on the evidence from Halstead, RAWS has little confidence in Tamar's ability to self-police compliance with odour control performance measures and to correct problems promptly when they arise.

²⁹⁷ P10, Annex 1.1.1.b.

9.7 Other harm-Air quality

9.7.1 RAWs has concentrated primarily on the impact of odour pollution on local residents. Air quality is equally important, and the levels of pollutants such as SO_x, NO_x and particulates is controlled by the EA, and air quality standards are set by the regulators to protect the environment, residents and local workers alike. The conclusions above regarding odour are equally applicable to air quality, and as such the results presented by the appellants are the result of using modelling that cannot be relied upon in the FBQ setting.

9.7.2 No representative data from the CHP engines at existing facilities has been provided by the appellants. The uncertainties associated with the model are not assessed and no error bars are reported. Applying the uncertainties identified above would mean that there is a significant risk of air quality standards being exceeded. RAWs strongly believes that the dispersion modelling performed by the appellants in the FBQ setting is deeply flawed and the results presented for air quality do not properly reflect the uncertainties associated with atmospheric dispersion modelling. The real risks of pollution and adverse impacts to local residents in Shuttleworth and Ramsbottom have therefore not been adequately addressed by the appellants.

9.8 Other harm - Noise

9.8.1 The effect on the living conditions of sensitive receptors in the local area from noise is an important consideration. This facility would operate 24 hours a day, 7 days a week. The site operations are acknowledged to be significant noise generators.²⁹⁸

9.8.2 RAWs expressed strong concerns on behalf of residents over the inadequate detail on the likely noise impact of the proposed operation, in particular at night, under conditions when the prevailing wind would come down from the site into the village, carrying the noise to their houses in Shuttleworth. The European Union (EU) and World Health Organisation (WHO) have determined that night noise guidelines are necessary to protect the public, including vulnerable groups such as children, the chronically ill and the elderly, from the adverse health effects of night noise. Based on extensive epidemiological studies identifying clear exposure-effects evidence, the WHO has produced the *Night Noise Guidelines for Europe* (NNG),²⁹⁹ under the umbrella of the Environmental Noise Directive (2002/49/EC). A NNG value of 40 dB L_{night, outside} during the part of the night when most people are in bed is recommended by WHO for the prevention of adverse health effects related to night noise in the population.

9.8.3 In the ESA2 submitted by the appellants, reference is made to the requirement of Condition 20 of the previous planning permission Ref. 43048, which has a noise limit of 55 dB for permitted operations between the hours of 07:30 and 18:30 only. This Condition was set prior to the publication of

²⁹⁸ p5.

²⁹⁹ ID23.

the WHO guidelines, and was also clearly only intended to control noise during daytime operations. The appellants have provided additional data for the current background noise levels and the predicted cumulative noise levels, as modelled for the planned 24-hour operations on site. This data shows that the current WHO NNG limit of 40 dB $L_{\text{night, outside}}$ is being achieved at all modelled sensitive receptors prior to this development.³⁰⁰ Further information provided by the appellants clarified the likely noise impacts of the facility at night time, and confirmed that impacts above the 40dB NNG level would not be caused by the development. The appellants have indicated that they would be willing to accept a lower night-time noise limit of 40 dB $L_{\text{night, outside}}$ in line with WHO night noise guidelines, which would be agreed as a planning condition with Bury Council. This is welcomed by RAWS.

9.8.4 However, evidence has been presented to the Inquiry³⁰¹ to show that Tamar's Halstead plant had caused a large number of complaints about noise, and is subject to EA investigation. Furthermore, under cross examination, Mr Lafon-Antony revealed that the input noise estimates for his work on this case were not based on actual measurements from other Tamar facilities. Evidence of poor performance on noise presented at the Inquiry for Tamar's facility in Halstead gives cause for concern that the facility design may not be fit for purpose or capable of delivering on noise limits, and that strong regulatory action may be required to protect residents from unacceptable noise impacts.

9.9 Other harm - Traffic

9.9.1 RAWS has concerns about the validity and accuracy of the traffic assumptions used by the appellants and that both the data and the modelled conclusions do not agree with the everyday reality of traffic in Shuttleworth.³⁰² The appellants' case also relies on the projected AD vehicle movements replacing the already permitted movements associated with the existing recycling and composting permission.

9.9.2 In the case of traffic, it has been established from Mr Green's evidence and cross-examination that:

- The A56 (Wood Lane to Junction 1 M66) is a very busy road, and that the traffic light junction with Bury New Road is considered to be at capacity (94% versus 90% capacity threshold);
- AD traffic would be an increase in HGV's from the current situation;
- RAWS' experience is that there are substantial traffic queues on Whalley Road and Bury New Road extending regularly to over 1 km at peak times. They are not predicted by the modelling;
- Whalley Road (Shuttleworth), Bury New Road and Peel Brow are 'sensitive' areas;

³⁰⁰ p5.

³⁰¹ p1, ID29.

³⁰² ID11 and 39.

- FBQ traffic currently uses Peel Brow and narrow roads in the centre of Ramsbottom and new AD traffic would also use this route to access the wider Bolton area; and,
 - There would be one vehicle movement on average every 90 seconds.
- 9.9.3 The site entrance is not capable of accepting rigid vehicles approaching from the north without them performing dangerous or, at least, ill-advised manoeuvres across the opposing carriageway.³⁰³
- 9.9.4 The LinSig modelling used to calculate existing junction capacity and queue lengths has modified the traffic light timings and does not match reality, predicting only 137 metre queues when residents routinely experience queues of over 1 km at peak times.
- 9.9.5 RAWs strongly believes that the modelling undertaken by the appellants does not match the reality of traffic queues and long delays for residents at peak times. The addition of a large number of new HGV movements, particularly at peak times would further add to delays and loss of amenity for residents travelling along the A56, which is already at capacity, and through Ramsbottom town centre.
- 9.10 **Other harm – Character and appearance of the local area, which includes Ramsbottom and Holcombe Conservation Areas**
- 9.10.1 The Ramsbottom Conservation Area is just 500 metres from the site boundary.³⁰⁴ This Conservation Area was designated in 2004. It is centred on substantial late Georgian and Victorian stone dwellings which were built along Bury New Road in the middle of the 19 century. The dwellings sit in large landscaped gardens and they dominate the road out of Ramsbottom to the east. An industrial plant would be out of keeping with the Conservation Area.
- 9.10.2 The AD plant would be visible for many miles, damaging views for locals and valued tourists alike. In essence, an industrial scale factory-like building would be imposed right in the middle of the countryside in Shuttleworth.
- 9.11 **Other harm – Economic**
- 9.11.1 Ramsbottom Business Group and Bury Council have been working hard over the last few years, with partners such as East Lancashire Heritage Railway, to promote Ramsbottom as a premier tourist destination. Indeed, the town recently won runner up in a national High Street of the Year competition due to its wealth of independent retailers. The town hosts a number of festivals, including the annual Ramsbottom Chocolate Festival, held this year on 28-29 March 2015, which regularly attracts over 30,000 visitors to the town.
- 9.11.2 AD Plant vehicles would travel along one of only two visitor access routes to Ramsbottom with the risk of unpleasant smells trailing in their wake. A significant amount of money has been invested in Ramsbottom and the surrounding area, there is genuine concern this investment is going to be

³⁰³ P4b, ID 39

³⁰⁴ ID60 and 61.

undone by this development. The Irwell Sculpture Trail is 400 metres from the applicant's site and the Rossendale Way is 700 metres from the site. A successful and award winning restaurant is less than 200 metres from the proposed site, where 20 local residents are employed. It would take only a few days of bad odours to irreparably damage the reputation of the restaurant with guests, with the subsequent loss of 20 local jobs.³⁰⁵ By comparison, the proposed plant would only employ 5 full time people who, due to the specialist skill set required, would probably be sourced outside the local area. The direct economic benefits for the town from the proposals would be minimal.

9.12 Other harm - Health

9.12.1 Residents are very worried about the health impact the proposed plant would have on their families, elderly people and children, in particular chronic effects that might only become apparent after many years of exposure.³⁰⁶ AD plants can emit a variety of toxic substances, such as NOx, SOx, fine particulates and bioaerosols, which would increase the levels of toxic substances present in the environment and have well documented negative health impacts for people and animals. No evidence has been provided by the appellants relating to the potential health impacts of the proposed plant. The Inquiry heard from Dr El-malek, Consultant at Fairfield General Hospital, Bury in relation to the potential health risks to residents. It should also be remembered that the FBQ site boundary is only 400m away from Peel Brow Primary School and its playing fields and playground. The Headteacher and parents of pupils have already objected to this application at the planning stage and the Deputy Chair of Governors and parents made verbal representations to the Inspector.

9.13 Very special circumstances

9.13.1 The appellants rely on a number of purported very special circumstances which they say outweigh the in-principle harm by reason of inappropriateness.

The generation of renewable energy and the wider environmental benefits associated with increased production of energy from renewable sources

9.13.2 It has been widely accepted during the Inquiry that combating climate change and developing green energy alternatives is important at a national and global level. However, Mr Owen agreed under cross examination that the general supporting statements presented to the Inquiry by Mr Owen³⁰⁷ do not directly support development at the FBQ site, and would be true for any other appropriate site in the region or area. In particular, the reported GHG reduction benefits at local, regional and national level would be achieved equally by the development of a similar AD plant at any alternative location. Consequently, the arguments presented by the appellant do not

³⁰⁵ ID24.

³⁰⁶ ID43.

³⁰⁷ P7 9.6-9.21.

demonstrate a very special circumstance for this development to occur at FBQ.

The need for new infrastructure to treat waste as a resource and divert from landfill and proximity of the site to a major source of arisings to fuel the plant

- 9.13.3 There are no potential feedstock materials arising from the current operations at FBQ, in contrast to other potential locations for such a facility, for example adjacent to a food production factory or on a farm.
- 9.13.4 GMWP confirms that there is already sufficient demand and supply of anaerobic digestion and in-vessel composting facilities in Greater Manchester without additional facilities at FBQ. Greater Manchester municipal waste is serviced by four existing AD plants, for example the nearest ones to Ramsbottom at Newton Heath, Manchester and Bredbury, Stockport, as well as five in-vessel composting (IVC) facilities which take green and kitchen waste.³⁰⁸ There is also a large AD plant in Leyland to cater for Lancashire County Council's waste demand. Greater Manchester and Lancashire district councils also offer waste collection services for local businesses and private enterprise.
- 9.13.5 The proposed facility is not required to meet Greater Manchester's requirements, and would depend on commercial and industrial food waste being brought in at distance and not locally-sourced municipal food waste. Paragraph 2.32 of the GMWP states that there is sufficient treatment capacity in Greater Manchester for enclosed waste management facilities, including anaerobic digestion plants. Paragraph 4.20 of the GMWP states that enough sites are identified to meet predicted future need for new waste management facilities. Fletcher Bank is not one of these. The GMWP states that Bury has the highest concentration of existing waste management facilities. This facility is not being built to meet need in Greater Manchester, but would require transport of waste from much further afield which should be opposed.
- 9.13.6 The appellants presented an expert report by Eunomia³⁰⁹ on the availability of feedstock and the competitive capacity in the area. This report confirms that Greater Manchester and Lancashire municipal waste is not available to the FBQ facility, and that the plant would need to attract waste from the commercial and industrial sector. The Eunomia FMR also confirms that there is not enough feedstock within 30 miles of the proposed AD plant to require this new AD capacity at FBQ:

'At present the level of separate collection from this [industrial and commercial] sector is relatively low, and so only a proportion of arisings are actually available for AD.'

and

³⁰⁸ P10 Additional documents.

³⁰⁹ P1, Appendix 1 page i.

'in the short and likely medium term [to 2023/24] food waste may have to be sourced from further afield [than 30 miles] to ensure the plant operates at full capacity.'

- 9.13.7 RAWs also introduced a second expert report to the inquiry, also from Eunomia Research & Consulting entitled *Anaerobic Digestion Market Update- Addressing the Feedstock Famine, June 2014* (Eunomia FFR)³¹⁰. In this report, the authors state:

'This capacity forecast suggests that there is already an excess of supply of AD capacity (over and above available food waste) of around 0.1 million tonnes, and that this may increase to excess supply of 0.8 million tonnes in 2016/17, before falling back to 0.2 million tonnes by 2023/24';

and

'It therefore appears that the market has recently reached a 'tipping point' beyond which there is not currently sufficient feedstock being collected (from the food processing/manufacturing, household and commercial sectors) to support operation of new facilities coming to market.'

- 9.13.8 In cross examination Mr Heller confirmed that feedstock availability was the main risk to his company's business plan, but disagreed with the conclusion of his own feedstock report and of the 'tipping point' report Eunomia FFR, stating that the company's business plan at FBQ could be described as "if we build it the demand will follow". It is clear from Mr Heller's comments that there is a substantial degree of speculation associated with the proposal to build this AD plant at FBQ, and this is the opposite of a 'demand led' development strategy. The evidence from two expert reports and from the regional waste authorities points to the overwhelming conclusion that there is a sufficient existing capacity in the region and insufficient feedstock supply for this development until beyond 2024. The proposed facility is in the wrong place at the wrong time, and as such does not contribute a very special circumstance for this development.

The proximity of the development to a significant end user

- 9.13.9 The appellants state that the AD plant would be able to supply 100% of Marshalls' projected energy needs. In demonstrating very special circumstances this is not the important measure. Surely it is the proportion of the plant energy output that would be used by Marshalls that should be used to make judgements on the appropriateness of scale of the development and of the significance of energy usage?
- 9.13.10 Under cross-examination, Mr Redfern confirmed that Marshalls' energy strategy was based on ever increasing fuel costs but acknowledged that according to Department for Energy and Climate Change (DECC) statistics, certain energy costs have actually fallen materially during 2014 and early 2015. Mr Redfern also confirmed that Marshalls has not reviewed the strategy in the light of this changed economic backdrop.

³¹⁰ P10 Additional documents page 6.

- 9.13.11 Mr Redfern accepted that the 'aggregated' supply from the national grid is more reliable than a direct wire from the proposed AD plant, and that Marshalls does not "expect the lights to go out". Consequently, there should be no 'security of supply' contribution to very special circumstances.
- 9.13.12 Under cross-examination, Mr Redfern confirmed that any future expansion on the FBQ site would be business driven and is not contingent on AD plant. Furthermore, he confirmed that future expansion on site is dependent on the following factors:
- growing market demand for Marshalls' products (the projections assume strong growth but could be significantly impacted by a future economic downturn);
 - capital availability and economic feasibility (capital would only be available if there was a strong economic case generating a positive return);
 - planning consent being obtained (high risk given development would be in the Green Belt); and,
 - degree of competition (from other Marshalls' sites in the UK and from external competitors).
- 9.13.13 Consequently, future plans for the site can only give rise to aspirational levels of energy demand, as all are not certain to happen during the lifetime of the AD plant.
- 9.13.14 As confirmed under cross-examination by Mr Stevens, Marshalls' FBQ operation is a 'medium' sized electricity user and a 'small' gas and gas oil user, according to DECC energy statistics reporting. The two proposed CHP engines are reported by Mr Stevens to have a total energy output capacity of 5 MW (2.5 MWe electricity and 2.5 MWt thermal). The AD plant itself is reported to consume 750 kWe and 750 kWt, 30% of the total biogas energy capacity of the plant. Current average electricity demand from Marshalls' FBQ operation is reported by Mr Stevens as 283.41 kWe.³¹¹ Marshalls can currently therefore consume only 11.3% of the AD plant's total electrical power: in fact the AD plant itself would use 2.5 times more electrical power than the total of Marshalls' FBQ current operations.
- 9.13.15 With realistic levels of expansion in the medium to long term, subject to the execution risks highlighted, Marshalls' average consumption of electrical power might rise to just over 600 kWe³¹², or 24% of the AD plant electrical capability, excluding fossil fuel replacement. It should be noted that even with this level of development, the Marshalls operations at FBQ would still consume significantly less electrical power than that required to run the AD plant itself.
- 9.13.16 Marshalls also plans to use heat energy in the form of hot water from the AD plant CHP engines to provide space heating and hot water to its operations

³¹¹ p3.

³¹² P3 table 9.9 current facilities with predicted uplift 0.3845 MW and planned additional developments 0.2273 MW. Para 9.12 - technology not yet available for fossil fuel replacement..

at FBQ. In order to exploit potential heat energy capacity of the plant, a new heat network would be required, as described in the Fichtner report provided as part of Mr Stevens' evidence³¹³, which would require significant capital expenditure to retrofit all the current operations on site. The Fichtner report also includes reference to a planned 30,000 m² business park to be developed on site on land to the east of the current Marshalls works in FBQ, though Mr Redfern remarkably denied all knowledge of this under cross-examination. RAWs believes that this illustrates a clear strategy of planned 'creeping industrialization' for the FBQ site. The report also highlights the technical difficulty associated with providing heat to off-site users, eliminating the only opportunity for providing some community benefit from this plant for the residents of Shuttleworth and Ramsbottom. The Fichtner report states that :

"There is a need somewhere in the heat distribution system, to provide a back-up source of heat to meet the demand during plant outages. The stand-by plant would likely comprise oil- or gas-fired boilers with a separate dedicated chimney stack."

- 9.13.17 In other words to make use of the heat from the AD plant would require retention of the current heating systems and new systems installed for the planned expansion with equivalent capacity to the AD plant, in order to cover intermittent supply from the AD plant. It is difficult to see how this could be justified economically. Without such capital expenditure, Marshalls would be unable to use any of the heat output from the AD plant, and therefore, as of now, can consume 0% of the available heat energy from the AD plant.
- 9.13.18 In the event of a heat network actually being installed, Marshalls current heat demand for space and water heating is reported as 351kW_t, which is only 14% of the AD plant's total heat power capacity.³¹⁴ As reported by Fichtner, the medium-term expansion of the shot blasting facility and the stone sawing and finishing works could result in an additional 119 kW_t heat demand, resulting in a total medium-term heat demand for the expanded Marshalls operations at FBQ of 470 kW_t, or 19% of the AD plant total heat power capacity. It should be noted that this represents only 62% of the heat energy required by the AD plant itself. Heat demand is also highly seasonal and does not meet the CHP ready guideline of 4,500 hours of constant heat demand.³¹⁵
- 9.13.19 Also important to the assessment of 'significance' of an energy user is the materiality of the benefits arising from the proximity of the AD plant to Marshalls' operations at FBQ. According to Mr Stevens, the principal economic benefit of proximity is driven by the electricity distribution savings, due to the direct wire between the AD plant CHP engines and Marshalls. Using average electricity prices for a medium-sized user from the most recent DECC industrial energy cost tables (9.0p per kWh) combined

³¹³ P3 Appendix 9.

³¹⁴ P3 Appendix 9.

³¹⁵ Para 9.13.22.

with the data provided by Mr Stevens, current electrical energy cost estimates for Marshalls FBQ operations are calculated to be:

'Annual electricity cost (average 283.41kWe @ 9p/kWh) is £223,400'

- 9.13.20 In cross-examination, Mr Stevens has agreed that a direct wire connection can save transmission and grid costs of up to 26% of the electricity bill. Mr Heller and Mr Stevens have confirmed in their proofs of evidence that this 'direct wire' cost saving would be shared between Tamar and Marshalls. Based on current electricity usage, this benefit equates to an annual saving to Marshalls of only £29,000. This represents only 0.1% of the sales value exported from the site, so can hardly be considered material or indeed provide a very special circumstance for development in the Green Belt.
- 9.13.21 Marshalls' current operations are capable of using only 11.3% of the total electrical power capacity and 0% of the heat power capacity of the AD plant. This is only 5.7% of the total biogas energy available from the AD plant. In the medium-to-long-term, Marshalls average energy usage might rise to 24% (electrical) and, more unlikely, 19% (heat), which equates to 21.5% of the total energy capacity of the AD plant overall. In any event, the likely heat and electrical consumption by Marshalls would be less than that required to power the AD plant itself. Furthermore, the economic benefit to Marshalls of the direct wire is not material. Consequently, Marshalls would only consume a small fraction of the energy produced by burning the AD plant's biogas in the proposed CHP engines, and the minor economic value of the direct wire savings should not be considered very special circumstances to overcome harm to the Green Belt.

Climate change benefits to Marshalls

- 9.13.22 The climate change benefits to Marshalls, as measured by GHG reduction, are a key element in the appellants' case. The company has identified AD as the preferred GHG reduction option for the site after ruling out other options. An earlier report from consultants Energi rejected a gas-fired CHP engine because the lack of constant heat demand, as recommended by the Carbon Trust ("Introducing Combined Heat and Power") and reported by Mr Stevens³¹⁶:

"Typically a CHP engine will require 4,500 hours of high constant heat load to be viable".

- 9.13.23 It is astonishing, given this conclusion, that the current preferred option requires two CHP engines burning biogas from the AD plant.
- 9.13.24 Under cross-examination Mr Stevens clarified that the economic and GHG accounting boundary is set in between the AD plant (Tamar) and the FBQ operations (Marshalls). As already discussed, the climate change benefits arising from food waste diversion from landfill accrue to Tamar for the AD plant wherever it is built, are recognized by the Government by payment of subsidies such as Feed In Tariffs (FITs), and are clearly not dependent on the development taking place on this specific site at FBQ. Claiming subsidies such as FITs means that the 'waste diversion' GHG savings

³¹⁶ p3.

accrued to Tamar are aggregated into the UK grid average CO₂e (carbon dioxide equivalent) factors to ensure that arising GHG benefits are not double counted, in line with the GHG Protocol reporting standards. As a result of this, for GHG calculations, energy supplied to Marshalls via the direct wire has to be accounted in the same way as energy supplied via the national grid, using the standard UK-wide emission factors published by the Government and reported by Mr Stevens in his evidence. Consequently, no net Scope 2 CO₂e benefits would accrue to Marshalls, other than minor benefits under the CRC scheme, which Mr Stevens calculated in cross examination at approximately 100 tonnes per annum. This is not material versus the 2013 site target of 1,943 tonnes³¹⁷ CO₂e.

- 9.13.25 Reduction in Scope 1 GHG emissions may accrue from replacement of gas and gas oil by heat supplied from the AD plant CHP engines, though we consider this highly unlikely to be implemented for economic reasons and because technology has yet to be developed. Further reduction in scope 1 emissions by replacement of fossil fuels for Marshalls' vehicles is extremely unlikely as the required technology has yet to be developed. Mr Redfern confirmed that fork lift truck batteries only last a couple of hours and electric HGVs do not exist. Scope 3 emissions may be accrued due to the direct wire connection realizing savings versus transmission costs. Mr Stevens reports these as 43 tonnes per year. This is not material versus the 2013 site target of 1,943 tonnes CO₂e. This proposed development would not result in a material change to the CO₂e emissions reported by Marshalls under the GHG Protocol in line with UK government guidance. Consequently there are limited climate change benefits accruing to Marshalls, which do not contribute a very special circumstance for this development.

Existence of a Suitable Grid Connection

- 9.13.26 The cost of a grid substation, if one is not present, is reported by Mr Stevens at £65,000.³¹⁸ This is not a material cost versus the reported capital cost of a new AD plant at £15m, representing only 0.4% of the project costs and well within typical capital cost estimate variances. The cost of a connecting cable to the grid is reported at £150-250 per metre, is not a material consideration for the alternative sites allocated in GMWP plans, none of which are in remote locations. The existence of an on-site substation and connection to the network is not a material consideration and therefore, does not constitute a very special circumstance.

Means of access to the national highway network

- 9.13.27 Existing vehicle flows into and out of the site involve dangerous manoeuvres across traffic on the A56.³¹⁹ Existing traffic levels are above capacity for the main junction.³²⁰ Additional AD plant traffic would create cumulative

³¹⁷ P3 para 7.1.

³¹⁸ p3.

³¹⁹ P4, ID11, ID39.

³²⁰ P4 a and B, cross-examination of Mr Green.

additional impacts to local amenity and traffic congestion.³²¹ Other brown-field locations in the region would have similar connectivity to the road network and consequently this cannot be considered a very special circumstance.

Existing Site is Disturbed Land

9.13.28 It was accepted by Mr K. Owen under cross-examination that Green Belt is Green Belt and the land does not need to be in pristine condition, and that this development would cause harm. The current permitted recycling and composting activities would not constitute built development on the site. The site is due to be restored by 2038 and the AD plant would delay restoration by a further four years. The site is not 'previously-developed land' and the development would adversely impact the openness of the Green Belt and, as such, no very special circumstance exists in relation to the site.

Well Screened Location

9.13.29 The Anaerobic Digestion plant and ancillary facilities would be a very large industrial complex with parts rising to a height of 18.5 metres. The site is visible from large swathes of Lancashire and Ramsbottom, in particular from the western slopes of the Irwell valley in Ramsbottom, from Turn village and Edenfield in Lancashire, from Holcombe village, as well as being clearly visible from the prime tourist location of Peel Tower on Holcombe Hill. The appellants have presented no evidence for visibility or otherwise of vapour plumes from the CHP engine stacks or from the odour control plant. Brown plumes were visible from the stack during the visit to Tamar's facility at Halstead. As the plant would be visible for distances of many miles, this should not be considered to be a very special circumstance.

Economic Benefit

9.13.30 Mr Redfern confirmed during cross-examination that current operations and future expansions, and the jobs that rely on these, are not contingent on the plan for the AD plant being approved. Furthermore, he acknowledged that any references to 'safeguarding' in relation to current employment levels are wrong and misleading to the public and Marshalls' employees alike. It is notable that Mr Redfern distanced himself from such statements attributable to Peel Holdings. Consequently, the benefits, direct and indirect, listed in the report by Regeneris presented by Mr Redfern³²² relating to Marshalls current and future operations cannot be considered material in support of the AD plant at this location.

9.13.31 The estimated construction jobs related to the AD plant would accrue at any alternative location in the area, and these highly technical jobs are unlikely to be filled by local residents in any event during construction and commissioning. Only five permanent staff would be employed operating the AD plant, and these jobs would accrue at an alternative site in the area.

³²¹ ID11, 39.

³²² P2 Appendix 12.

- 9.13.32 Only 7% of the current Marshalls' workforce, 11 staff members, live in Ramsbottom, so it is highly unlikely that any local residents would be employed amongst the five staff planned to run the AD plant. It is perhaps also noteworthy that only one letter of support for the AD plant has been received from local residents, who clearly do not value these jobs over and above the potential harm to their amenity. Furthermore, the potential negative amenity impacts of the development are likely to result in adverse employment impacts in the immediate locality, as discussed further below.
- 9.13.33 It should be noted that since 2010, employers in the Bury North parliamentary constituency have created 1,100 new full time jobs, so the five new jobs created by this proposal are not significant against this backdrop of a thriving local economy.
- 9.13.34 As the small number of direct and indirect jobs impact associated with the AD plant for Ramsbottom, Bury, Greater Manchester and Lancashire would be achieved at alternative allocated sites, the economic impacts should not be considered material to this application, and do not support very special circumstances.

Temporary Nature of the Development

- 9.13.35 The site is due to be restored by 2038 and the AD plant would delay restoration by a further four years.

Existing Planning Permission for Open Composting

- 9.13.36 It is accepted that planning permission exists for an open windrow composting use on the site, though we understand that a number of planning conditions are yet to be fulfilled, and there was some debate with the Council at the Inquiry about the current status of this permission.³²³ We understand that this permission was sought in advance of the awarding the 25-year Greater Manchester was contract to Viridor, to support alternative bids for that contract. As such it is highly unlikely that this development would take place in isolation, and sufficient alternative facilities are in place throughout Greater Manchester and Lancashire. Furthermore, any such use would require permitting by the EA which would also consider odour pollution at nearby sensitive receptors. As far as we are aware, no such permit has been granted. Under cross-examination, Mr Owen agreed that such composting activities would be significantly more odorous than the proposed AD facility. As such is it highly unlikely that the EA would grant such a permit with a large number of local residents businesses and a school within a few hundred yards of the site boundary. Given that there is little economic incentive to progress this development, and that an environmental permit is unlikely to be issued, this factor should not be considered to be very special in any way in determining this appeal.

The potential to use digestate in the restoration of the quarry

- 9.13.37 The appellants proposed to spread the entire 40,000 tonnes of digestate output of the AD plant at 1,000 m³ per hectare across the FBQ site.³²⁴

³²³ ID4C.

³²⁴ P7 para 9.52.

Following the provision by RAWs of additional information relating to restrictions by Defra on digestate spreading,³²⁵ Mr Owen produced a further document to clarify the appellants' position.³²⁶ Mr Owen conceded that the quantities of digestate that might be consumed are less than originally claimed, potentially around 8,000 tonnes across an area of 40 hectares. RAWs understands that this amount is not a recurring demand, and would be used to provide the top surface of the restored land form, and would be likely to be consumed over a period of approximately 20 years. As the total amount of digestate produced by the plant over this period would be in the region of 800,000 tonnes, only 1% of the plant's digestate output could be consumed at FBQ. Furthermore, using the digestate in this manner would require a further EA permit which would also limit the quantities of digestate to be applied to prevent pollution and odour.

9.13.38 The appellants have conceded that the use of digestate was not fundamental to demonstrating very special circumstances,³²⁷ a conclusion with which RAWs is in full agreement.

9.14 **Conclusion**

9.14.1 The substantial harm by reason of inappropriateness is supplemented by the significant actual harm by reason of loss of openness. To this significant harm must be added considerable harm to the purpose of safeguarding the countryside from encroachment. Under other harm there is the high harm (not minor) to the landscape and visual quality of the area, impacts of odour, noise, traffic, health and economic benefits which again is a point of considerable harm to weigh.

9.14.2 It is not accepted that the matters relied upon by the appellant come close to amounting to very special circumstances that clearly outweigh the harm previously identified.

9.14.3 The proper application of the Framework and the NPPW in relation to the appeal proposals should clearly result in a recommendation to the Secretary of State to dismiss this appeal and a decision by the Secretary of State to refuse planning permission.

10. **THE CASES OF OTHER INTERESTED PARTIES WHO APPEARED AT THE INQUIRY**

10.1 **The case for Mr R Abrahamsen**

10.1.1 As a resident of Ramsbottom I have attended every day of this Inquiry, and at times I have contributed to it. This reflects my deep concerns about the proposed AD plant development in the town where I live.

10.1.2 I have been struck by the acknowledged, unchallenged poor track record of AD plant facilities to date that has been evidenced during the Inquiry.

³²⁵ ID76.

³²⁶ ID85.

³²⁷ ID85.

I agree with the appellants' advice that decisions and judgements should be based on evidence. The evidence I have seen from independent bodies such as Defra and the EA regarding this demonstrably inadequate record tells me that the risks and potential for harm to local residents, amenities and school entailed by building an AD plant at such close proximity to them are very significant.

- 10.1.3 This view has been further strengthened by my visit to the Halstead AD plant where odour was clearly detected and is still an issue for the EA as evidenced by their report citing permit breaches with respect to this problem not being rectified. Although not overpowering within the waste reception building, I found the odour there to be strong and offensive, notwithstanding the air changes provided by the extraction system feeding the odour control plant. I also noticed distinct and very unpleasant odours intermittently outside the buildings.³²⁸ It is also further evidence of Tamar's lack of proactive action in managing such issues.
- 10.1.4 While still on the subject of evidence it has also become clear to me during the Inquiry that the vast majority of evidence from the appellants has come in the shape of theoretical assumptions often using computer modelling, rather than what might be seen as 'real world' actual, empirical information. Although some of these models may well be used widely, the Inquiry has heard evidence to show that such models are not always fit for purpose in specific situations and all of them come with differing margins of error. Furthermore the Inquiry has heard evidence that various assumptions that the appellants have made are based on flawed modelling, and in the case of noise, for example, the modelling was not even based on any AD plants at all. It is clear to me that the past and ongoing problems at AD plants clearly show that any reliance on many of these theoretical assumptions comes with a high risk. This risk is magnified significantly when a plant is located very close to so called 'sensitive receptors' as in this case.
- 10.1.5 The issue of odour is a real concern to me and other residents. It is acknowledged by everyone that the process at an AD plant is inherently odorous. My concerns remain despite the proposals around odour control put forward. Once again theoretical modelling, which has been challenged at the Inquiry, is relied upon to support assurances that have already been shown to be inadequate predictors in practice.
- 10.1.6 I was dismayed, as would any reasonable person, to hear an appellants witness state that, with regard to odour, under certain circumstances local residents "*may have to shut their windows occasionally*". Perhaps this example of complacency was at least an example of the real world breaking through the theoretical obscurator, as was the same witness's evidence statement regarding a failure of the odour control plant, commenting that although "*such a failure is considered unlikely and would only last for a period of perhaps a few weeks before remedial measures take effect*". I find such complacency and disregard for the well being of local residents and amenities quite breathtaking.

³²⁸ ID71 and evidence in chief.

- 10.1.7 I was also very disappointed and concerned to learn that, despite an understanding given during the Inquiry that only one door at a time would be open in the reception building, late in the Inquiry the appellants have stated that two doors could be open at the same time. This clearly carries an additional risk of odour from this building, despite it being acknowledged that odour is a chief concern of residents and amenities locally. The Halstead visit clearly confirmed that open doors to the reception building were sources of odour emission despite air changing mechanisms.
- 10.1.8 Regarding the choice by the appellants of the AD process over alternative ways of reducing GHG emissions, they have produced no evidence to the Inquiry that their considerations took any account at all of the respective likely harms and impacts to residents and amenities. The cost benefit analysis carried out that is shown in their evidence focuses exclusively on the appellants' optimum business case for any alternative option. In other words the evidence as presented points to the exercise as one of money over people.
- 10.1.9 The evidence I have heard also shows that insufficient regard has been given by the appellants to serious consideration of alternative suitable sites together with a lack of any demonstrable evidence that the proposed plant is needed. In fact evidence has been presented to show that there are existing adequate facilities within the wider area to cope with demand.
- 10.1.10 The Inquiry has heard evidence regarding the high regard in which Ramsbottom is held in terms of its general amenities including tourist attractions. Not least of these is its high street, Bridge Street, which has won a national accolade. I was concerned and once again dismayed to hear that the appellants' witness for transport issues has no familiarity with this street, having merely driven down it. Again I return to the kind of evidence put forward by the appellants. In considering the extra trips of heavy vehicles up and down Bridge Street resulting from the AD plant development no account was taken of the impact on pedestrians in this very busy high street. Although the pavement on one side of the street is very narrow (just over 3 feet) the witness did not have any idea of how wide the pavements were. Once again 'real world' evidence and facts are ignored and the risks to families and small children walking and shopping in this bustling high street are disregarded.
- 10.1.11 The possible impact the AD plant proposal may have on local business cannot be brushed away and I would highlight the detrimental effects that these risk may have on the nearby pub/restaurant, which in addition to employing many local people also has a track record of training and assisting disadvantaged young people into jobs and training. In my view, any failure in the management of odour, which cannot ever be ruled out, at the proposed plant would put this enterprise at serious risk.
- 10.1.12 I am not against realistic, sensible and appropriate measures to reduce GHG emissions and I believe this view is shared by local residents of Ramsbottom. Targets for reducing such emissions are important drivers for all of us to ensure our 'carbon footprint' is reduced. It seems to me that AD processes, alongside other measures, may well have a significant contribution to make in this respect. However, I believe the key issue in

this case is about its *appropriateness*. Everything I have heard in this Inquiry points clearly to the fact that this AD plant proposal is not an appropriate measure in this specific location. The Inquiry has heard compelling evidence that its closeness to local residents, amenities and businesses in this town brings with it unacceptable and demonstrable risks of significant harms to those who live in this town and the surrounding landscape.

10.1.13 In conclusion, as I have stated elsewhere in the Inquiry, objective and independent evidence demonstrates that AD plants are 'work in progress' in that they have clearly not overcome many of the associated risks inherent in their operation. It is this acknowledged fact, when combined with its very close proximity to the various 'receptors' already identified that makes this AD plant proposal inappropriate. Any advantages, or special considerations put forward by the appellants are in my view clearly outweighed by the "harms" identified in this Inquiry and the unsafe assumptions put forward by the appellants.

10.1.14 I therefore respectfully urge the Inspector to recommend to the Secretary of State that this appeal should be dismissed.

10.2 **The case for Councillor L Fitzwalter**

10.2.1 1514 people formally objected to the scheme and only 2 wrote in favour. Thousands signed 4 petitions and many contacted RAWs and me personally as one of 3 Ramsbottom Councillors. My evidence represents the strongly held views of my constituents.

10.2.2 Ramsbottom is a thriving town that depends on its heritage. 30 years ago it was a former mill town, suffering from lack of employment and business. In the last 25-30 years local residents have successfully turned this around and as a result the town now attracts many entrepreneurs and families. Its position, surrounded by Green Belt, is an important part of this regeneration. It is a well preserved nineteenth century town built of stone, protected by a Conservation Area and surrounded by beautiful countryside.

10.2.3 It is now recognised as a major tourist destination, with iconic festivals like the Chocolate Festival alone attracting 30,000 people a year to the town, which has around 11,700 residents, and other festivals like the Music Festival, the Black Pudding Contest and the Pie Festival, all well known with a huge following throughout the North West. Its economy is now built on a myriad of successful small businesses exploiting the heritage of the town and providing employment locally. Several of these are award winning restaurants and eating places, like the Eagle and Child, with outdoor patios and gardens taking advantage of local views.

10.2.4 Ramsbottom has won awards as the second best High Street in the UK, and as one of the most popular places for families to live. A combination of hard work and the exploitation of our heritage has transformed the town.

10.2.5 We have to protect the Green Belt which surrounds the town and gives us access to such wonderful countryside because this is part of our now vibrant economy. We depend on the clean air, the historic character and the

beautiful surroundings to attract families as visitors and residents, and to attract business.

- 10.2.6 This application threatens all of this. The Planning Committee which rejected the application cited paragraphs 89-91 of the Framework and the need to demonstrate very special circumstances when developing in the Green Belt. The only very special circumstance the appellants have provided is proximity to the end user. Ramsbottom residents do not see how this is a very special circumstance. Whilst it may benefit the appellants, it would not provide energy or jobs for Ramsbottom and the plant should be sited outside of the Green Belt. While residents are in favour of renewable energy, the appeal proposal would be hostile to the immediate environment.
- 10.2.7 The appeal site is not an allocated site under the GMWP. It is therefore hard to see how the waste would be sourced from the surrounding area, since Greater Manchester's municipal waste is already dealt with by Viridor. 45,000 tonnes of waste with 41 vehicle movements a day would be brought in from outside, which means increased traffic and carbon emissions, dirt and noise.
- 10.2.8 The problem of odour from AD plants has been highlighted in many other similar developments. Wherever these plants are sited near residents there are complaints about odour. Examples cited by the Council include: Cannock; Rothwell in Northamptonshire; Cannington in Somerset; Plymouth; and, in Europe. Residents are making complaints about disgusting smells and taking legal action. At the Biffa plant near Cannock, residents complain that they cannot allow children to play outside and of the 'stomach wrenching smell'. These plants should not be sited near towns. The proposed plant would be within 100 metres of 250 residents. Based on previous evidence of similar plants, it appears that the EA is powerless to sort the odour problems out after the event.
- 10.2.9 Odour is very hard to assess. Smell depends on wind direction and changes from day to day. It is exceptionally difficult for the EA to monitor. A bad smell like the one complained of in other areas would not only affect our lives; it could also gravely damage our economy by offending visitors to the town.

10.3 **The case for Councillor R Hodkinson**

- 10.3.1 I have lived in Ramsbottom for 27 years, I run a retail business in the town centre and I am a member of Bury Metropolitan Borough Council, representing Ramsbottom, Shuttleworth and Holcombe Village. Since being elected in March 2014, I have spoken to many hundreds of residents and business owners within the town and the number one issue of concern is the appeal proposal.
- 10.3.2 Whilst turning organic waste into renewable power and biofertiliser is considered good for the environment, the proximity of the proposal to housing and business is causing serious concern among residents and business owners that it would have a negative impact on their lives and livelihoods.

- 10.3.3 There is a real concern about the high potential for odours associated with the materials to be handled, which have been described by residents living near to existing AD plants using terms such as repugnant and foul stench. Biffa's AD plant at Cannock has struggled to control odours since it opened in 2011 and despite numerous complaints from residents the plant continues to operate. Although Biffa put in place additional odour control measures, there are still odour problems. An AD plant at Farrington applied to extend its exhaust stacks from around 12 metres to 25 metres to try and improve the air quality for local residents. The EA recognises that odours from AD plants cannot be controlled. It has said 'the treatment of biodegradable waste has an inherently high potential for offensive odour and in our experience it is difficult to prevent odour emissions at all times even when the operator has taken all the appropriate measures'.
- 10.3.4 Ramsbottom town centre is a thriving tourist destination attracting tens of thousands of visitors from around the Country and indeed the world. The East Lancashire heritage railway brings railway enthusiasts and day trippers into the heart of the town on a daily basis. As treasurer of Ramsbottom Business Group, I can confirm the hard work that members do to promote Ramsbottom as a tourist destination and bring visitors to the town through many events organised throughout the year. These events have given Ramsbottom a positive reputation and helped to boost the local economy, which has gone from strength to strength over the years. The town recently came second in the Telegraph's 'Best High Street in the Country' and was placed 7th in the BBC's 'Best Food Town' in the Country. Furthermore, Ramsbottom came within the top 10 of the Sunday Times' list of 'desirable places to live'. How many people would think twice about visiting the town if its reputation is tarnished by odour pollution associated with the proposed plant?
- 10.3.5 Residents are also worried about the impact of additional HGVs carrying waste both to and from the proposed plant on busy main roads, which are already in poor condition, causing vibration, noise and damage to properties along the routes that the vehicles would be likely to take.
- 10.3.6 With the overwhelming number of objections, I hope that the Secretary of State will dismiss the appeal.

10.4 **The case for Councillor I Bevan**

- 10.4.1 I live on Whalley Road, a few hundred metres from the appeal site boundary, and I am a Councillor representing Shuttleworth and wider Ramsbottom Ward, having been re-elected last year.
- 10.4.2 Following the announcement by the appellants of their intention to apply for planning permission for an AD plant, I set out contacting residents in the Ramsbottom area to find out their views. To say that I was inundated with residents concerns regarding potential problems which would arise is an understatement. Residents are wholly opposed to the construction and operation of an AD plant in the location proposed.
- 10.4.3 Our concerns have not been about AD technology in general. Ramsbottom residents accept the need to look at renewable energy sources. You only have to look along the entire boundary of Ramsbottom to see the large wind

farms operated by Peel. Wind farms that do not benefit local residents, as the electricity goes straight into the national grid and does not lower local energy bills. Our concerns are about siting an AD plant at the proposed location in the Green Belt and so close to residential homes, schools and businesses. There are many grounds of opposition to the proposal, which have been set out by RAWs, our Ward Councillors and Member of Parliament.

- 10.4.4 The residents of Ramsbottom and Shuttleworth are quite rightly protective of their Green Belt land, living in an area of such outstanding beauty in the south eastern Pennines.
- 10.4.5 Ramsbottom is known as a 'thriving market town in spectacular surroundings'. Its Victorian architecture, Pennine landscape and the East Lancashire Heritage Railway contribute to heritage tourism in the town. In recent years, the town has become a tourist destination of choice, with a host of independent traders and a popular heritage steam railway. Its annual chocolate festival attracts over 30,000 visitors each year from far and wide. In 2014, the town was runner up in a national 'high street of the year' competition.
- 10.4.6 Contrary to what the appellants may believe, Ramsbottom is not averse to industry. With a readily available source of water power, Sir Robert Peel commenced manufacturing in Ramsbottom in the late 18th century. The industrial revolution contributed to it becoming an important and populous mill town with calico-printing, cotton spinning, machine-making, rope-making as well as iron and brass founding being the main sources of industry in and around the town centre. Although much of that industry is now gone, Ramsbottom is proud of its industrial heritage and for many years its townsfolk have been quite rightly protective of its surrounding hillsides, farmland and Green Belt land and do not want industrial development in that Green Belt land.
- 10.4.7 In terms of the planning application itself, over 1,500 letters of objection were lodged with the planning officer; an unprecedented number in recent years. The Head Teacher and parents of pupils at Peel Brow Primary School have objected to the planning application. Various petitions were received and the application has received local, regional and national media coverage. This shows the weight of local opposition against the scheme. Several hundred people attended the planning committee meeting to show their feelings in a peaceful protest.
- 10.4.8 Residents of Shuttleworth and Ramsbottom believe that the proposed development would be 'inappropriate' in this location, as it would cause harm to the existing landscape character of the area. The proposal would potentially be visible over a vast area, up to at least 5 Km from the site. The AD plant would be very large, with parts rising to a height of 18.5 metres. The proposed exhaust stacks have the potential to give rise to highly visible vapour plumes, which can extend significantly in excess of the stack height and would have a visual impact above the screening in place along the site boundary. The proposed industrial plant would be out of keeping with the neighbouring Conservation Area.

- 10.4.9 The appeal site is within the Green Belt, were development is inappropriate unless the appellants can clearly demonstrate that very special circumstances exist to allow it to proceed. The Greater Manchester Waste Unit accepts that only 1 substantial circumstance exist in this case; namely the proximity of the proposal to an energy user.³²⁹ There is no justification for the plant to be built in the Green Belt. There would be no economic benefits for our area and the scheme would be a substantial departure from Bury's Local Plan. The GMWP confirms that enough sites have already been identified to meet predicted future needs. Indeed, there are 4 such allocated sites in and around Bury at present that are suitable for an AD plant. Fletcher Bank Quarry is not one of them.
- 10.4.10 Despite assurances from the appellants, there is overwhelming evidence that existing AD plants cannot control air pollution. Indeed they are responsible for more breaches of EA permits than all other waste sites put together. Let me give you an example of how bad things can get and while I do bear in mind that here in Ramsbottom, some residents live just 150 metres away from the proposed buildings and yard. Peel Brow Primary School would be around 400 metres away and there are around 2,200 people living within around 500 metres of the site.
- 10.4.11 Residents living near the AD plant in Leyland have made hundreds of complaints about bad odours coming from the site since it opened 4 years ago. Most of those complaints come from residents living around 600 metres way. Descriptions of the smell include like a "bad dustbin", "sickly" and "putrid". One resident said "it's been a nightmare. Our lives have been taken away from us. If there are plans to put one near you, do not allow it and fight it with everything. Don't believe a word of any assurances given to you." Another who had been keeping a diary said that, when the smell was bad, she could not go into the garden, could not open windows and could not hang out washing. A café owner, based over a mile from the plant, told the EA that the smell had been appalling, and there had been plagues of flies. The company operating the site was prosecuted and fined due to complaints about odour and for failing to report system malfunctions which led to air pollution, in the form of noxious gases and smells being released into the atmosphere. The EA admit that air quality issues have blighted that community for a long period of time. Bosses at the site have now spent £1.2 million trying to fix the problems so far without success. They have installed new filters and raised chimney stack to 25 metres to increase the height at which odours are released.
- 10.4.12 The appeal proposal would operate 7 days a week and 24 hours a day. This gives no consideration to the residents of Shuttleworth. The delivery, loading and movement of feedstuffs around the site would create a constant nuisance in terms of both odours and noise. HGVs could stand idle and CHP engines, pumps and generators would be noisy. It is expected that there would be up to 80 vehicle movements per day for the AD site. That is, one vehicle movement every 4 minutes. Indeed, every month there would be some 4,500 vehicle movements. At peak hours, there are regular traffic queues of over half a mile along the A56 close to the entrance of the FBQ

³²⁹ P7 Appendix 18 page 3.

site, a situation likely to be exacerbated by the additional heavy goods vehicles required to service the proposed plant. Vehicles would cut through Ramsbottom town centre to go towards the west of Greater Manchester, or through Shuttleworth towards the north.

10.4.13 It is no wonder that the planning application gave rise to an unprecedented level of objections from local residents and businesses. It would have an unacceptable impact on residents in our town, as a result of noise, dust, extra traffic, air pollution, smells and nuisances. I ask that the Secretary of State dismisses the appeal.

10.5 **The case for Mr D Nuttall MP**

10.5.1 I speak not as an expert in any of the matters at issue, but as the member of Parliament elected to represent the area affected by this proposed development and I want to put on record the concerns that so many local residents have made known to me.

10.5.2 Firstly, the development would be located in the Green Belt and within a Special Landscape Area. Residents are concerned that the proposed development would be inappropriate in the proposed location and would cause harm to the landscape of the area. It would be visible over a very considerable distance, for example, beyond Holcombe Village, 3 miles or so to the west. The site is of local ecological interest too with peregrine falcons known to breed on site. It is also a habitat for bats, badgers, Canada geese, lapwings, hares and lizards.

10.5.3 The site boundary is little more than a quarter of a mile from the Bury New Road Conservation Area, which is incorporated in the Ramsbottom Conservation Area designated by Bury Council. This Conservation Area was established in September 2004. It is centred on substantial late Georgian and Victorian stone built dwellings, which were constructed along Bury New Road in the middle of the 19th century. The dwellings sit in large landscaped grounds with stone boundary walls and gate piers, and they dominate the road out of Ramsbottom to the east. An industrial plant would be out of keeping with this Conservation Area.

10.5.4 The proposal is for the site to operate on a continuous 24 hours a day 7 days a week basis. Residents of nearby Shuttleworth would be permanently and constantly affected. HGVs would cause constant noise as they deliver material to the site.

10.6 **The case for Mr R McClellan**

10.6.1 I am a local resident and I am very concerned about traffic congestion, as it already takes me 5-10 minutes to leave my house in the mornings. Furthermore, I have worked in a waste plant in Leyland and know that type of process can be very odorous. I discussed the appeal proposal with one of the engineers at that site, who could not believe that a site on a hill above Ramsbottom was being considered.

10.7 **The case for Mr M Purdy**

10.7.1 I live around 500 metres from the appeal site and have been a local resident for around 20 years. Over that period the town has improved, such that it

is now thriving and a destination for tourists. Whilst this has resulted in some increased pressure on the local highways, with traffic rattling the windows in my home, I live with it as a price worth paying for the improvements that have taken place.

10.7.2 However, unlike past developments, the appeal scheme offers nothing to the community. Traffic approaching from the west would be likely to increase use of Peel Brow and Bury New Road. The traffic would be a hazard, for example for children going to school, and would be detrimental to our life styles. Furthermore, the proposal would not be odour free, notwithstanding the claims of the appellants to the contrary. They withdrew their first planning application in order to improve the odour control process. That this was prompted by local opposition to the scheme indicates that they are not a good neighbour. Planning permission was granted for a waste installation at the bottom of Peel Brow some years ago and despite similar assurances, it has caused odour problems.

10.8 **The case for Mr R Archer**

10.8.1 I have been a local resident for around 17 years and agree with the views put by Mr Purdy.

10.8.2 I am a member of the British Trust for Ornithology and I regard Fletcher Bank Quarry as a haven for wildlife. Species such as Peregrine Falcon and Little Ring Plover have been known to nest there and others that frequent the quarry include Black Red Star, Raven, Barn Owl, Little Owl, Roe Deer and Red Deer. Whilst I acknowledge that the quarry void is gradually being filled, I consider that the proposed buildings would reduce the value of the quarry as a wildlife haven.

10.9 **The case for Dr F Binns**³³⁰

10.9.1 I have been a resident of Ramsbottom for over 50 years. I am the Chairperson of the *Bury Rural Inequalities Forum* (BRIF), which represents 6 local villages and seeks to ensure that they benefit from a fair share of Council funds. BRIF has established walking routes between our villages and I draw particular attention to the Holcombe, Ramsbottom to Park Farm route, which passes close to Fletcher Bank Quarry. The characteristics of that route include peace and tranquillity and its use promotes health and well being in the community. I do not want the value of the route to be harmed by odours from the proposed development. I have worked as a research chemist in industry and consider that there is a risk of fugitive emissions from any chemical works. Furthermore, as odour molecules are heavier than air, discharges from the proposed plant would tend to fall down hill towards Ramsbottom.

10.10 **The case for Miss P Smart**

10.10.1 I am part of a group that grows food for distribution to locals at no cost. We visited the TEG composting facility³³¹ up on the moors at Todmorden, to

³³⁰ ID41.

³³¹ Inspector's note: ID45- confirms that the site is an in-vessel composting facility, rather than an anaerobic digestion facility.

see whether we could make use of the compost produced. I consider that whilst it appeared to be a positive solution for dealing with waste, the process was odorous and I found some difficulty breathing on the site. An operator advised me that as the compost is odorous, it is likely that Ramsbottom residents would not welcome its use. Following the visit I found that I could still smell the odour on my clothes. Based on this experience, I consider that Ramsbottom is not a suitable location for the proposed facility.

10.11 The case for Mr J Frith³³²

- 10.11.1 I am a local resident and the Labour Parliamentary candidate for Bury North. My daughter attends a local school as will my son in September.
- 10.11.2 My evidence represents my strongly held views and those of fellow Ramsbottom residents, my own family members, neighbours and friends who have requested such a submission of evidence from me. I am also championing local democracy and the will of the people who rejected the original planning application, the re-submitted application and who oppose this appeal.
- 10.11.3 1514 people formally objected to the planning application. Thousands more signed petitions with many joining or supporting the residents' campaign group or local active business groups, forums and social media pages, as well as seeking out Bury Councillors and me personally. Ramsbottom came together against this application. The Council's planning committee rejected the application on 2 main grounds: inappropriate development in the Green Belt; and, the likelihood of a severely detrimental impact on residential amenity as a result of odours. We still reject it.
- 10.11.4 Whilst I support renewable energy and don't object to AD in principle, the issue in this case is the location. Even with the newness of AD technology, we have the benefit of cases where AD plants have caused the havoc that we fear for Ramsbottom. The proposed plant would be within 100 metres of 250 residents and within 500 metres of Peel Brow Primary School.
- 10.11.5 In recent decades local residents, small businesses and market stall holders, of which my wife is one, have successfully turned Ramsbottom into an attractive and welcoming place to live and work. Furthermore, it is recognised as a major tourist destination with iconic festivals attracting thousands of people each year. The town's Green Belt surroundings play an important part in its regeneration. Ramsbottom is a brilliant and thriving town, building its success with more than a nod to its heritage. It is on a journey to fulfilling its potential. Some of that fulfilment has been interrupted by bogus or misjudged planning applications, such as that the subject of this appeal. We rely on the clean air for the historic character and the beautiful surroundings, not just to sustain our way of life, but to develop and grow it as well as to share it with more people, not less. Whilst the appellant's will cite their own plans for economic growth as a factor to waive the scheme through, it would not create jobs for local

³³² ID42.

people. We cite the economic growth and cultural heart of our town as another reason to reject the scheme.

10.11.6 I urge the Secretary of State to dismiss the appeal.

10.12 **The case for Dr E El-malek**³³³

10.12.1 I am an Accident and Emergency Consultant. As a member of the medical profession my primary concern is the health issues related to AD and any adverse effects on the health of the population living in close proximity to the proposed AD plant.

10.12.2 AD plants produce biogases: methane, carbon dioxide; carbon monoxide; nitrogen dioxide; sulphur dioxide; and, hydrogen sulphide. The last 2 are the main source of offensive odours. Methane is potentially explosive. The main concern with odour is its ability to cause an effect that could be considered 'offensive' resulting in annoyance, nuisance or actual harm. Odorous compounds can be offensive even when present in very low concentrations that would not harm physical health.

10.12.3 A wide range of symptoms are experienced by people exposed to offensive odours, including: nausea; vomiting; respiratory problems; drowsiness; fatigue; eye complaints; nose and throat irritation; headache; diarrhoea; chest tightness; palpitations; and, shortness of breath. More susceptible sub-populations include: the elderly; asthma and respiratory illness sufferers; children; and, pregnant women who are particularly susceptible to the effects of odour, with exposure being associated with increased risk of nausea and vomiting. It is clear that these symptoms can arise at olfactory detectable levels well below those concentrations associated with toxic effects or thresholds for mucous membrane irritation. The long term affects of such symptoms are not known.

10.12.4 The human response to odour can be affected by pre-disposed psychological and social factors. The severity of symptoms is also related to a person's level of concern about potential harm of odour to their health. Anxiety is an obvious manifestation of such concern.

10.12.5 Defra's *AD Strategy and Action Plan Annual Report 2014*³³⁴ indicates that 'the number of serious or potentially serious pollution incidents at AD plants remains a serious concern'. I have found very little information concerning studies of the health effects of AD plants and no evidence to show that significant health risks are associated with AD. Nonetheless, as observed in the study by Dr Broomfield, AEA Technology plc, published in June 2011, studying the proposed Lee Moor AD facility in Devon, '*limited research in this area does not necessarily mean that there are no adverse effects on health due to AD facilities*'.

³³³ ID43.

³³⁴ Appendix J Rebuttal evidence of Mr Branchflower page 9.

10.13 The case for Mr S Berrisford

10.13.1 I am the Deputy Chairperson of the Peel Brow Primary School Governors. I am concerned that odours from the proposed plant could have an impact on the health and safety of our pupils. The appeal site is opposite the school's playing fields. Odours may mean that the children can not be let out to play. Furthermore, some children have health issues, such as asthma, which might be triggered by odours.

10.14 The case for Mr C Flint

- 10.14.1 I have been a local resident for around 16 years and have 3 children in a Ramsbottom school, St Andrews. Streets within Ramsbottom, such as Bolton Road, are narrow and busy past the school. An increase in heavy vehicles, resulting from the proposal, would be a concern.
- 10.14.2 I have some professional experience as a chartered structural engineer involved in the design of an anaerobic digestion plant. The project I was involved in came to an abrupt end when it was realised that the waste liquors from the process are noxious and difficult to dispose of. In that case onsite treatment would have made the scheme unviable and the local water company could not take the liquors.

10.15 The case for Mr G Fletcher

10.15.1 I am the chairperson of the Ramsbottom Business Group, the aim of which is to make Ramsbottom a thriving town. Local residents support our initiatives to keep commercial units occupied, which include events such as the Chocolate Festival, which attracts around 40,000 visitors. In recent years the town as received a number of awards. The proposed anaerobic digestion plant could adversely affect tourism and defeat our efforts to promote the town.

10.16 The case for Mr S Murphy (& Mr J MacDonald)

- 10.16.1 I live on Whalley Road and my children go to Peel Brow Primary School. The proposed plant would be 'in my back yard' and if odours arise as I fear, they would be in my house. I am not convinced that the smells could be controlled. Furthermore, Marshall's quarry traffic already causes a problem. It takes me 5-10 minutes to get out into the traffic in the morning. In addition, I am concerned about the safety of my children when crossing the road to go to school.
- 10.16.2 The sale of a neighbouring house fell through recently due to the planning application for the proposal.

10.17 The case for Mr C West³³⁵

10.17.1 I live with my wife and 2 young children on Whalley Road, in the row of terraced houses closest to the appeal site. Having previously lived in South Manchester with all the attractions that it has for younger people, my partner and I moved to Ramsbottom 11 years ago because it was our

³³⁵ ID65.

intention to get married and to have children. We believed that Ramsbottom, set as it is in beautiful countryside and with a great local community, good schools and good amenities, yet still within a short distance of Manchester was an ideal place to relocate to. Our house, although modest, has immediate access to beautiful countryside and walks and stunning views across Ramsbottom to Holcombe Hill and Peel Tower.

- 10.17.2 The one thing that any parent wants is the very best for their children. We thought that we were doing our best to provide just that. However, the prospect of an AD plant only metres away from our back door would completely wreck what we, as responsible parents, planned for our children. We already have to contend with noise and light pollution from the quarry. What we were unprepared for was the level of dust that we get in the house, including the children's bedrooms. This is particularly the case in the summer. This would only get worse if construction takes place and then large lorries flow into the complex. If the AD plant is approved, I am very concerned about the health effects on my children from the dust and odours that would be generated and at the same time helpless to do anything about it as my house would effectively be unsalable as would those of my neighbours some of whom were brought up in their houses.
- 10.17.3 The effects of the scheme are already being felt, as the whole community is anxious about what the future holds and this is bound to have an effect on people's mental and physical wellbeing. With huge reluctance we have removed our children from Peel Brow Primary School, where they were very happy and settled. A considerable number of other parents have done the same and this trend may affect the future of the school.
- 10.17.4 My wife works as an Occupational Therapist in a community mental health team, working with elderly patients, and I work as a teacher. We both spend our lives trying to improve the lives of others. I find it hard to understand those who support the proposal, which would blight the lives of hundreds of people.
- 10.17.5 I read with interest a the appellants' opening statement which indicated that 'the driver and primary purpose of bringing forward the proposal was to help meet the company's aspirations in respect of its climate change obligations'. At the open exhibition arranged by the appellants to publicise the scheme, I asked how many wind turbines would be required to generate the same amount of power as the proposed scheme and I was told 3. There are already 26 wind turbines on the moors above my house and as an enthusiastic supporter of renewable energy, I am happy to see them there. Would a further 3 not be infinitely preferable to an AD plant with all its associated problems, not least of which is the fact that it relies on large numbers of lorries travelling some distance to the plant, burning diesel as they go. How is that contributing to 'climate change obligations'.
- 10.17.6 To quote Sir John Betjeman 'childhood is measured out by sounds and smells and sights'. Please reject this appeal and do not subject my children to the sounds of rumbling lorries, the smells of putrid waste and the sight of our beautiful Green Belt decimated

10.18 **The case for Mr J Ferrier**

10.18.1 I am a Director of Pearson Ferrier Estate Agents in Ramsbottom. No residents are keen on the proposed AD plant, which has already caused some sales issues. A prospective buyer of a property on Heatherslade Close has put the purchase on hold pending the outcome of the appeal. Local residents have posters in their windows publicising their objection to the scheme. In my view, people buying will not gamble on the potential blight to property and values would be likely to go down. Whilst historically some houses in the town have been situated close to industry, there are very few factories in the town now and those that remain appear not to impact on property values.

10.19 **The case for Mr S Willetts³³⁶**

- 10.19.1 I have been a local resident for around 57 years and live with my wife on Whalley Road, in one of the nearest properties to Fletcher Bank Quarry.
- 10.19.2 Quarry traffic already uses the A56, passing in front of our house all day long. If the proposal goes ahead then lorries feeding the plant would pass in front of our home all day and night. Not only that, the access road to the quarry passes the back of our home. Therefore, if the noxious fumes from the AD plant don't affect us, then the dust stirred up by the lorries, the diesel particulates from their exhausts and the smell from their loads would.
- 10.19.3 At present it is quiet at the back of our home and so we sleep in the back bedroom. It is away from most of the road noise, dust and traffic pollution. During the spring, summer and autumn we like to have our bedroom window open at night for some fresh air and sometimes in the summer for relief from the heat. We wouldn't be able to do this if noise and pollution is coming to the back of our home as a result of the proposal. If we do survive, we would be kept awake at night by regular deliveries to the plant. Then there would be the stress from being annoyed by all of this.
- 10.19.4 My mother-in-law lives in Ramsbottom and she has many health problems, including Chronic Obstructive Pulmonary Disease, which results in the oxygen she breathes in not getting into her system very effectively. She has 3 inhalers. Pollution from the proposed AD plant would be likely to irritate her respiratory tract, she would need her inhalers and could quite easily end up in hospital. We protect the vulnerable people in our society and placing an AD plant in such close proximity to people flies in the face of that instinct. It is the vulnerable who would suffer the most.
- 10.19.5 We want what other residents want; quality of life, the quiet undisturbed enjoyment of our own homes where we should be able to relax away from the hustle and bustle of modern life.

³³⁶ ID67.

11. WRITTEN REPRESENTATIONS

- 11.1 This section relates to the correspondence received by the Planning Inspectorate in response to the appeal notifications and the consultation responses received by the Council in response to the application for planning permission. The submissions reflect many of the matters raised by the main parties, which I do not repeat in detail here. I summarise the many points raised.
- 11.2 **Bury Green Party**³³⁷
- 11.2.1 The air quality assessments submitted in support of the proposal uses onsite diffusion tube data for assessing NO₂ background levels from March to May 2013. The data is then extrapolated to give an annual average background level for the site. It makes no reference to the much higher levels that occur throughout the Autumn and Winter, a pattern which is confirmed by data obtained from each of the Council's monitoring sites. Furthermore, the data shows that there are significant NO₂ level spikes on specific days in the summer months, which result from inversion conditions experienced in hot, windless summer days. This omission clearly and significantly under-estimates the actual background pollution level and therefore, leads to a misrepresentation of the report's results and a biased conclusion. Not until site specific monitoring of background NO₂ levels has been undertaken for a period of 12 consecutive months can the results be accepted with confidence.
- 11.2.2 Furthermore, for the site specific monitoring of NO₂ background levels there is no reference to any ratification process. The quality, calibration and maintenance of equipment, or the assessment of precision of the monitoring was not presented. Without such a quality system, little or no confidence can be placed on the resulting assessment.
- 11.2.3 The appellants have indicated that the use of Manchester Airport meteorological data has been confirmed as appropriate by carrying out modelling using a number of other data sets, including local ones, which gave similar results. This is a reference to the Scout Moor data set. However, the appellants have acknowledged that, given the more exposed and elevated location of the Scout Moor wind monitoring equipment, the data indicates a much greater proportion of higher wind speeds. This reinforces BGP's view that Manchester Airport data would over-estimate wind speeds in FBQ and would therefore over-estimate the dispersion rate of emissions within the models. The resolution of the NWP system is currently at 12.5 Km. This is far too low a resolution for any meaningful prediction of the wind field deviations within the void at FBQ. As with the Manchester Airport and Scout Moor data sets, modelling based on NWP data would also over-estimate wind speeds and therefore over-estimate the dispersion rate of emissions.
- 11.2.4 FBQ is a work place for over 100 people. A 15 metre high flue-stack, situated within the lea of the quarry escarpments, would emit combustion

³³⁷ BGP Statement of Case.

products, such as NO, which are heavier-than-air toxins that could have consequences for the morbidity and indeed mortality of the employees.

11.3 **The Environment Agency³³⁸ (EA)**

11.3.1 The EA has no objection in principle to the appeal scheme as originally proposed, but would wish to make the following comments. The proposed activity would require a bespoke Environmental Permit from the EA before it can operate. The Permit would require the operator of the installation to minimise any potential impact on the environment and human health through the use of appropriate abatement measures and management procedures. This does not mean there would be no impact from the proposed activities.

11.3.2 A condition would need to be imposed to ensure that the site is appropriately drained, in the interests of controlling flood risk and another would be necessary to establish ground water monitoring points, in order to allow any impact of the proposal on ground water quality to be identified.

11.3.3 The EA makes no further comment in relation to the scheme modifications set out in the ESA2.

11.4 **Natural England³³⁹ (NE)**

11.4.1 NE does not object to the appeal scheme as originally proposed or the modified form set out in the ES Addendum. NE confirms that it has not assessed the application for impacts on protected species and draws attention to its associated Standing Advice.

11.5 **The Greater Manchester Ecology Unit³⁴⁰ (GMEU)**

11.5.1 The ecological interest of the land set aside for the AD plant is of negligible to low interest. As indicated by the aerial and other photographs of the site the land is primarily bare ground. Any ecological interest is located on the face of the quarry, which is not directly affected by the appeal scheme.

11.5.2 The GMEU considers that the modifications set out in the ESA2 do not alter its view as regards the negligible ecological impact of what is proposed.

11.6 **The Manchester Raptor Group (MRG)³⁴¹**

11.6.1 Peregrine Falcon is a Schedule 1 listed species in the Wildlife and Countryside Act 1981. A pair of Peregrine Falcons nest annually in the cliffs which form the back of the quarry. It would be an offence to undertake any work that might disturb their breeding cycle, which is from 1st March to the end of July. Outside this period, construction work may take place. Once operational, assuming the works activity does not take place close to the nest site, the birds should be able to tolerate the plant operation.

³³⁸ Appeal questionnaire-consultation response, dated 26 February 2014.

³³⁹ Appeal questionnaire-consultation response, dated 29 January 2014 and ID2 letter dated 15 January 2015.

³⁴⁰ Appeal questionnaire-consultation response, dated 27 January 2014 and ID2 email dated 13 January 2015.

³⁴¹ Appeal questionnaire-consultation response, dated 9 February 2014.

11.7 **Others**

11.7.1 The remaining respondents, of which there are a large number, are either private companies or individuals and the matters set out in this section are not attributed to particular parties. These representations comprise almost entirely of objections to the scheme and include individual emails/letters of objection as well as a number of petitions. Common concerns raised include the impact on: amenity and health, as a result of odours and air pollution; traffic congestion and highway safety; impact on the Green Belt and the landscape; business and tourism; and, property values.

11.7.2 Other concerns include that:

- The proposed plant would cause light pollution;
- Bats use the site. The surveys of wildlife within the site have been inadequate;
- Ground water pathways in the area are not clearly defined. Water-borne pollution resulting from the proposal must be a possibility and that this could have an impact on properties sited at lower level to the west. It may also affect the Haweswater Aqueduct, which supplies Manchester.
- The storage of food waste would be likely to increase the levels of vermin, such as rats and flies, in the area.

12. CONDITIONS

- 12.1 The SoCG, which was submitted prior to the Inquiry, contained a list of conditions which the Council considered should be imposed in the event of the appeal being allowed. All but one had been agreed by the appellants. However, this position was superseded by new lists submitted by both the Council and appellants during the Inquiry, which were the subject of discussion.³⁴² I have amended the suggested conditions where I consider necessary in light of the discussions and the advice set out in the PPG. The amended list is set out in Appendix D to this report; Appendix D1 relates to Proposal A and Appendix D2 to Proposal B. I recommend that the relevant list of conditions in that Appendix be imposed if the Secretary of State decides to allow the appeal and grant planning permission for the proposed development.
- 12.2 In addition to the normal commencement condition, a condition would be necessary to ensure that the proposed development would be removed from the site and the land restored in a timely manner at the end of the identified temporary period, in 2042. This is necessary to limit the impact on the Green Belt and in the interests of visual amenity. A condition would also be necessary for the avoidance of doubt and in the interests of proper planning, to ensure that the development would be carried out in accordance with the approved plans. These would not include plans showing indicative details, relating to matters such as external materials, which would be controlled by other conditions.
- 12.3 In order to limit the impact of noise associated with the scheme on the living conditions of local sensitive receptors, conditions would be required to: limit the hours within which material can be imported to and exported from the site by vehicles [10.19.2]; ensure that the loading/unloading of skips would take place within the process building; limit noise levels arising from the facility itself, including through control of reversing alarms; limit the number of HGV movements; and, secure the implementation of a construction method statement, which would include dust suppression measures amongst other things [10.17.2]. The last of these conditions would also be necessary in the interests of the safety and convenience of highway users, ensuring for example, that the risk of mud being carried onto the highway is minimised. For the same reason conditions would be necessary to secure improvements to the FBQ entrance off the A56, as previously referred to, and to ensure that debris/surface water is not carried from internal site accessways onto the highway.
- 12.4 RAWs has suggested that HGV movements associated with the proposals should be prohibited from using the local highway network during peak hours. However, during my site visit I saw a significant number of HGVs on the local highway network as well as entering and leaving FBQ during the AM peak hour and I have no reason to believe that this was unusual. I consider therefore, that such a restriction would be difficult to monitor and require an intolerable level of supervision; it would be impractical to enforce.

³⁴² ID93 and 94.

- 12.5 Conditions would be required, in the interests of visual amenity: to retain the vegetation along the western boundary of FBQ; control the materials used in the external surfaces of the proposed structures and external plant/machinery; ensure the site would be appropriately landscaped at the end of the temporary period; control the use of artificial lights; and, control the finished floor level of all buildings and structures. For the same reason, as well as in the interests of clarity, a condition would be required to confirm that the heights of the buildings and structures shown on drawing nos. FBA 3/3 and FBA 3/ 4 as well as FBA 3/3A and FBA 3/4A are heights above 200 metres AOD. For example, the stack height of +15.000 is 215 metres AOD.
- 12.6 As the appeal site comprises made ground, a condition would be required to control risks associated with potential contamination, in the interests of safeguarding the living conditions of local residents and the wider environment. For the latter reason, conditions would also be necessary to ensure that the site is appropriately drained. A condition would be required, as identified by the EA³⁴³, to ensure the installation of sampling points to facilitate monitoring of any impact of the proposals on ground water quality.^[11.3.2, 11.7.2 b3]
- 12.7 As I have condition would be required, in the interests of biodiversity, to secure a habitat enhancement and management plan, with reference to the ES.
- 12.8 In my judgement, the following suggested conditions would be difficult for the local planning authority to monitor and require an intolerable level of supervision. They are day to day operational matters more appropriately controlled through the Environmental Permit. Therefore, I do not support them. They involve control over: the outside storage of waste; how many of the process building's vehicular access doors may be open at a time and for how long; as well as, the performance and monitoring of the proposed odour control plant and emissions from the CHP plant.

³⁴³ EA consultation response dated 26 February 2014.

13. INSPECTOR'S CONCLUSIONS

13.1 The following conclusions are based on the oral and written evidence given to the Inquiry as well as the accompanied and unaccompanied visits made to the site and the surroundings. The numbers in square brackets [] refer back to earlier paragraph numbers.

13.2 Main issues

13.2.1 Reflecting its reasons for refusal, the Council's case focuses on Green Belt issues and odour. However, the scheme is the subject of a substantial level of opposition from members of the public who have raised a number of other valid planning concerns to which I have had regard. The following main issues were identified at the start of the Inquiry, in pursuance of rule 16(2) of the *Town and Country Planning Appeals (Determination by Inspectors)(Inquiries Procedure)(England) Rules 2000* (as amended). Following the recovery of authority for the determination of the appeal by the Secretary of State, I re-stated the issues with reference to rule 15(2) of the *Town and Country Planning (Inquiries Procedure)(England) Rules 2000* (as amended). I consider that the main issues in this case are:

- Whether the proposal would constitute inappropriate development in the Green Belt;
- The effect on the openness of the Green Belt and whether the scheme would conflict with the purposes of the Green Belt;
- The effect on the living conditions of sensitive receptors in the local area, with particular reference to odour and noise;
- The effect on air quality (excluding odour) in the locality;
- The effect on the safety and convenience of highway users;
- The effect on the character and appearance of the local area, which includes the Ramsbottom and Holcombe Conservation Areas;
- The effect on the local economy; and,
- If the development would constitute inappropriate development in the Green Belt, whether the harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations and if so, whether the very special circumstances necessary to justify the proposal would exist.

13.2.2 At the Inquiry I confirmed that I consider the main issues to be the same whether the appeal is determined on the basis of Proposal A or B and this was not disputed by anyone.^[8.6] In addition to these, I also deal with a number of other matters raised by interested parties.

13.3 Inappropriate development in the Green Belt

The Development Plan

13.3.1 UDP Policy OL1/2 indicates that the construction of new buildings inside the Green Belt is inappropriate development, unless it is for one or more of a

number of identified purposes. Criterion b) includes uses of land which preserve the openness of the Green Belt and which do not conflict with the purposes of including land within it.

- 13.3.2 The SoCG refers to the operations at the quarry being split broadly into 2 areas; the north, which includes the appeal site, and the south. Southwestern part of the southern area is largely occupied by the Marshalls concrete products factory, which includes buildings and storage areas. Quarrying operations are underway along the southeastern edge of the quarry, where the quarry face is around 60-70 metres high. Whilst the northern area was excavated to a depth of around 175 metres AOD, the associated quarry void has since been infilled with inert waste, such that the ground level to the north of the appeal site is up to around 212 metres AOD. To the south of the appeal site there is an access road with a weighbridge alongside. The ground level there is around 200 metres AOD. The level of the appeal site is currently part way between the levels to the north and south. To the west of the site, an embankment along the western rim of the quarry has a minimum height of around 212 metres AOD and the land to the east of the site slopes down towards the eastern face of the quarry.
- 13.3.3 Whilst the position of the site within the quarry bowl limits the visibility of the land, this would not mitigate the impact of development within the site on the openness of the Green Belt. With reference to the 'Timmins case' openness means the absence of buildings or development [7.7.3], not as has been suggested an 'absence of visible development' [8.9.13].
- 13.3.4 There are no buildings within the appeal site. Furthermore, in my judgement, as a result of the infilling and re-profiling that has taken place, what development there has been within the site in the past no longer diminishes the openness of the Green Belt to any significant degree. The appeal site contributes positively to the openness of the Green Belt. This would remain the case if the current restoration scheme, approved as part of planning permission Ref. 43038, were to be implemented. Whilst the approved landform may be, as described by the appellant, flat and featureless³⁴⁴, it would be open. I consider that the same can be said for the ground raising to pre-quarrying levels within other parts of the northern area of the quarry, for which planning permission Ref. 56576 has been granted.
- 13.3.5 The appellants have identified the construction and demolition waste recycling facility and green waste composting operations, for which a planning permission Ref. 43048³⁴⁵ has been granted, as a fallback position. However, at the Inquiry they confirmed that, as they did not win the waste contracts which were to have been serviced by the green waste composting operation, it would be unlikely to proceed. Therefore, I give it no weight as a fallback position. In addition to the mobile plant referred to [7.11.8], the approved recycling facility would be likely, in my view, to include stockpiles of materials. The appellants have confirmed that if the appeal is dismissed they would be likely to establish the approved recycling facility on the site

³⁴⁴ P7 para 6.5.

³⁴⁵ ID4c.

[8.9.8]. I have no reason to doubt this and so give it weight as a fallback position. Nonetheless, the impact of that activity on the openness of the Green Belt would be small in comparison with the impact of the proposed AD plant. The appeal proposal would include a large building up to 13 metres high along the eastern side of site and a range of structures up to 18.5 metres high along its northern side. The appellants acknowledge that the scale of development proposed would be greater than the fallback position [8.9.14].

- 13.3.6 Whilst the proposal is promoted as a temporary facility, to 2042, it would be in place for a substantial number of years. During that period it would cause significant harm to the openness of the Green Belt. Insofar as the essential characteristics of Green Belts are openness and permanence, the proposal would diminish those characteristics of the Green Belt hereabouts while it remained in place.
- 13.3.7 I turn now to the purposes fulfilled by Green Belts. FBQ is located at the edge of the settlement of Ramsbottom. To the south of the appeal site, beyond the quarry access road, is a factory complex which includes a number of large buildings. Unlike the identified fallback position, the appeal scheme would extend substantial built development further into the Green Belt, to the north of the factory and east of the settlement. It would conflict with the purpose of a Green Belt to check the unrestricted sprawl of large built-up areas. [7.9.2]
- 13.3.8 There is no dispute that the proposal would not conflict with the purpose of Green Belts of *preventing neighbouring towns from merging into one another*. Furthermore, the appellants have indicated that in the event of planning permission being refused in this case, they would not transfer the proposed investment to a brownfield site elsewhere. In this limited context, the use of Green Belt land as proposed would not conflict with the Green Belt purpose of *assisting in urban regeneration, by encouraging the recycling of derelict and other urban land*. I am conscious that the fallback position would be likely to involve a large part of the site being used for operations associated with the recycling of construction and demolition waste and also that inert landfilling is likely to continue to the north and east of the site for some years to come. Under these circumstances, the proposal would be unlikely to conflict with the purpose of *safeguarding the countryside from encroachment* to any significant degree.
- 13.3.9 The settlement of Ramsbottom contains the Ramsbottom and Holcombe Conservation Areas. I have paid special attention to the desirability of preserving or enhancing the character or appearance of those areas. [8.7.3] However, neither includes the appeal site. RAWs has estimated that the closest, Ramsbottom Conservation Area, is around 500 metres away. Due to the raised embankment with planting along the western side of FBQ, I consider it likely that any views of the proposals would be limited to glimpses of parts of the taller structures from high level vantage points on the opposite side of the valley, such as close to Peel Tower. However, given the distances involved and limited visibility of the proposals, this would be unlikely to have any material impact on the setting of the Conservation Areas, which would be seen in the foreground. Tall chimney stacks of an industrial appearance are not alien features of the existing Ramsbottom sky

line and during my site visits I saw a visible plume arising from one on the western side of the town.^[10.4.6] In this context, I consider that even if the proposed stacks were to give rise to visible plumes from time to time, this would not have a material detrimental effect on the setting of the Conservation Areas or that of the wider settlement. I consider that the scheme would not harm the character, appearance or setting of a Conservation Areas. Nor would it conflict with the Green Belt purpose of *preserving the setting and special character of historic towns* or UDP Policy EN2, which seeks to preserve the Borough's built heritage. The Council has no objection to the scheme in terms of the potential impact on heritage assets and this adds further weight to my finding.^[8.15.1-7]

- 13.3.10 Nevertheless, I conclude overall that, under the terms of UDP Policy OL1/2, the proposals, which would harm the openness of the Green Belt and conflict with one of the purposes of Green Belts, would constitute inappropriate development in the Green Belt.^[8.8.13-14]

The Framework

- 13.3.11 The Framework sets out the exceptional circumstances in which the construction of new buildings is not considered to amount to inappropriate development in the Green Belt. Of the 6 categories of new buildings there is no dispute that the proposal would not fit within the first 5. The 6th relates to *'limited infilling or the partial or complete redevelopment of previously-developed sites, whether redundant or in continuing use, which would not have a greater impact on the openness of the Green Belt and the purpose of including land within it than the existing development'*.
- 13.3.12 The definition of previously-developed land set out in the Framework excludes *'land that has been developed for minerals extraction or waste disposal by landfill purposes where provision for restoration has been made through development control procedures'*.
- 13.3.13 The appeal site lies within the worked limits of FBQ, the historic mineral permissions for which were the subject of a review, under the Environment Act 1995, which was approved in 2009, Ref. 36288³⁴⁶. The associated conditions confirm that the mining operations shall cease not later than 21 February 2042 and the site shall be restored in accordance with the conditions of the permission by 21 February 2043.
- 13.3.14 Planning permission Ref. 43048³⁴⁷, granted in 2006, makes temporary provision for, amongst other things, a construction and demolition waste recycling facility and green waste composting operations, the site for which coincides approximately with the appeal site. Whilst the permission is extant those operations have not yet commenced and, in any event, condition no. 3 requires that they cease in December 2036 and that the affected land shall be restored in accordance with the conditions of the permission by December 2038. Although condition no. 4 indicates that, unless otherwise required by the permission, the restoration of the site shall be carried out in accordance with drawing no. FBQ 6/1-Restoration, it does

³⁴⁶ ID99.

³⁴⁷ ID4c.

not make clear the final restoration requirements for the appeal site area. However, condition no. 26 requires final restoration details to be submitted to the local planning authority by 31 December 2020 at the latest. Condition no. 28 indicates that aim would be to bring the land to a standard suitable for agriculture and amenity after-uses.

13.3.15 Therefore, the land the subject of this appeal has been developed for minerals extraction and provision has been made for its restoration through development control procedures. Notwithstanding the view of the appellants that the site has many of the characteristics of brownfield land, in my judgement, the appeal site does not constitute previously-developed land under the terms of the definition set out in the Framework. It follows that the scheme would comprise inappropriate development in the Green Belt under the terms of the Framework. This is further reinforced by my finding that it would harm the openness of the Green Belt and conflict with one of the purposes of the Green Belt designation.

13.4 **The living conditions of sensitive receptors in the local area - Odour**

13.4.1 UDP Policy EN7/1 indicates that development must not result in unacceptable levels of atmospheric pollution and UDP Policy EN4/1 seeks to ensure, amongst other things, that proposals do not involve an unacceptable loss of amenity. The definition of pollution contained within the Framework includes anything that affects the quality of air, which might lead to an adverse impact on general amenity. What would constitute 'unacceptable' is not specifically defined by either the Framework or UDP. However, the Framework indicates that planning should always seek to secure a good standard of amenity for all existing and future occupants of land and buildings. Insofar as UDP Policies EN4/1 and EN7/1 seek to guard against proposals that would not, I consider that they are consistent with the Framework.

13.4.2 The Framework provides that planning decision-makers should focus on whether the development itself is an acceptable use of the land, and the impact of the use, rather than the control of processes or emissions themselves where these are subject to approval under pollution control regimes. The EA's planning application consultation response (PACR), dated 26 February 2014³⁴⁸, confirms that the proposed activity would require an Environmental Permit from the EA before it can operate. The Framework indicates that planning decision-makers should assume that these regimes will operate effectively.

13.4.3 I have had regard to the view of my colleague, who dealt with appeal Ref. APP/X1355/A/12/2188741, to the effect that as odour control forms part of the EA's regulatory responsibility, it is not something that is a material planning consideration unless the extent of regulation the EA can impose would not deliver a level of odour commensurate with the other surrounding land uses.³⁴⁹ However, in the case before me, whilst the EA's PACR indicates that the Permit would require the operator of the installation to minimise any potential impact on the environment and human health

³⁴⁸ Appeal questionnaire, file 1.

³⁴⁹ CD27.

through the use of appropriate abatement measures and management procedures, it points out that this does not mean there would be no impact from the proposed activities. The IAQM guidance indicates that even with effective operational pollution regulation in place there can remain some residual odour and there may be some situations where such residual effects would make a development an unsuitable use of land at its proposed location³⁵⁰. Furthermore, it indicates that high sensitivity receptors include residential dwellings, schools and tourist facilities, whereas low sensitivity receptors include footpaths.³⁵¹ Whilst the area local to the site is mixed in character, residential properties are located less than 200 metres from the position of the proposed process building, on Greenacre Close, and there would be a significant number of other dwellings within 300 metres of the proposed process building.^[8.10.66, 68] The EA's H4 guidance indicates that where all appropriate measures are being used but are not completely preventing odour pollution, a level of residual odour will have to be accepted unless it amounts to serious pollution that justifies suspension or revocation of the Permit.³⁵²

- 13.4.4 Under these circumstances, I consider that, having regard to the extent of regulation the EA can impose, the likely residual effects of odour on nearby sensitive receptors is a material consideration in the determination of this appeal.
- 13.4.5 The proposed scheme would introduce a new source of odour to FBQ, where the appellants have acknowledged there are no existing odour sources. The GMWP does not prescribe an exclusion zone or stand off distance between sensitive receptors and built facilities of the type proposed, and some of the sites allocated for waste facilities within the Plan are within 250 metres of residential properties.^[8.10.65] Furthermore, I have had regard to SLR's record of AD facilities in semi-urban areas and have no reason to dispute that some of them have demonstrated a satisfactory level of environmental performance.^[8.10.27] However, I agree with SLR that a site specific risk assessment approach, rather than an arbitrary separation distance, is necessary in this particular case to assess the acceptability of the proximity of the appeal proposals to sensitive receptors.³⁵³
- 13.4.6 The EA's H4 guidance characterises odours on a scale of less offensive/moderately offensive/most offensive. The appellants have indicated that under normal operating conditions waste would not be retained in the proposed waste reception hall for longer than 24 hours before being processed and so odours arising from the reception bay would fall within the moderately offensive category. I have not been provided with any compelling evidence to the contrary. However, downstream of the reception bay the core process comprises anaerobic digestion. The EA's H4 guidance indicates that odours from processes likely to become anaerobic or septic are more offensive and it characterises odours associated with processes involving septic effluent or sludge as most offensive. At Tamar's

³⁵⁰ CD23 page 5 section 2.1.

³⁵¹ CD23 page 10 table 2.

³⁵² CD19 page 9.

³⁵³ P6b para 3.24.

Halstead facility, whilst odours within the waste reception bay were moderately offensive, I would characterise those within the adjoining processing room, where the waste is mixed with effluent derived from the core process, as most offensive. Furthermore, I would characterise odours I detected outside the plant buildings at the Halstead site and down wind on the industrial estate as also falling within the most offensive category. Contrary to the view of the appellants, I consider that overall, odours associated with the proposed process would be likely to be most offensive in character.

- 13.4.7 Although there are currently no statutory limit values for the assessment of odour concentrations in England, relevant guidance has been drawn to my attention. The EA's H4 guidance identifies a benchmark criterion of $C_{98,1\text{-hour}} 1.5 \text{ ou}_E/\text{m}^3$ at the boundary of the installation for the most offensive odours.³⁵⁴ IAQM guidance takes this further, identifying odour effect descriptors for impacts predicted by modelling. It indicates that an odour exposure level of $C_{98,1\text{-hour}} 0.5$ to $1.5 \text{ ou}_E/\text{m}^3$ would have a slight adverse effect on highly sensitive receptors, whereas a level of $C_{98,1\text{-hour}} 1.5$ to $3.0 \text{ ou}_E/\text{m}^3$ would have a moderate adverse effect. It indicates that where the overall effect is greater than slight adverse, the effect is likely to be considered significant.³⁵⁵ The Council and appellant agree that an odour exposure level of $C_{98,1\text{-hour}} 1.5 \text{ ou}_E/\text{m}^3$ is the appropriate standard to use when assessing the modelled potential odour impact of the proposals.^[8.10.17]³⁵⁶
- 13.4.8 Assessment of the likely impact of future odorous development may be through empirical observation, if a similar 'surrogate' site is currently operating, or through the use of predictive software models.^[8.10.19, 44]

Predictive software modelling

- 13.4.9 I deal first with the use of predictive software models. SLR, on behalf of the appellants, have sought to predict the potential impacts of odours generated by the proposed development on local sensitive receptors using dispersion models generated by the ADMS and AERMOD software packages.
- 13.4.10 IAQM guidance confirms it is well established that when carrying out dispersion modelling several years of meteorological data should be used and, in common with the EA's H4 guidance, identifies that a 5-year data set is preferable.³⁵⁷ The AERMOD model has been run with 3 different 5 year meteorological data sets. This includes data from the closest Met office meteorological monitoring station, which is located at Manchester Airport approximately 30 Km to the south of the site and Bingley, which is located on the opposite side of the Pennines. These locations are some distance away from FBQ and will be influenced to some extent by localised topographical features. The 3rd data set, which was obtained from the Numerical Weather Prediction (NWP) system, comprises a prediction for the local area, taking account of major topographical features and the broad-

³⁵⁴ CD19 page 31.

³⁵⁵ CD23 pages 19, 11 and 31.

³⁵⁶ CD24 para 8.10.

³⁵⁷ CD23 page 32.

scale characteristics of the weather over the UK. In addition to these data sets, the ADMS model has also been run using 2 other data sets. The first is from a local monitoring station at Scout Moor, although the appellants acknowledge that in comparison with conditions at the appeal site, higher wind speeds would be expected there.³⁵⁸ The second is a one year data set drawn from a monitoring station at FBQ. Model runs have also been undertaken using 4 different topographies to reflect the progressive restoration of FBQ over time.^[8.10.48, 49]

- 13.4.11 Dealing first with proposal A and based on an odour control plant with a output of 2,500 ou_E/m³, AERMOD modelling results set out in ESA1 indicated that the odour level may rise above C_{98,1-hour} 1.5 ou_E/m³ as a 5-year average at one receptor, to C_{98,1-hour} 1.69 ou_E/m³, a moderate adverse effect of significance in relation to high sensitivity receptors. SLR has indicated that if the odour control plant output is reduced to 1,000 ou_E/m³, the equivalent level would reduce to C_{98,1-hour} 0.67 as a 5-year average and a maximum peak year value of C_{98,1-hour} 0.81 ou_E/m³.^[8.10.53] ADMS modelling indicated, based on an odour control plant output of 2,500 ou_E/m³, a level of up to C_{98,1-hour} 0.83 ou_E/m³ as a 5-year average at one receptor. It indicated that the same improvement to the odour control plant would result in a reduction to C_{98,1-hour} 0.33 ou_E/m³ as a 5-year average and a maximum peak year value of C_{98,1-hour} 0.38 ou_E/m³.
- 13.4.12 Between the 98th percentile value and the maximum value the hourly average would be higher than set out above, albeit for a limit period of time. Taking receptor location DR9, Bury Old Road, as an example, SLR has indicated that whereas the maximum peak year value, based on the ADMS model, enhanced odour control plant, NWP data and restored topography, would be up to C_{98,1-hour} 0.26, the associated maximum hourly average value would be 1.85 ou_E/m³.^[8.10.53]³⁵⁹
- 13.4.13 Turning to Proposal B, AERMOD modelling indicates, with the reduced odour plant output, a maximum peak year value of C_{98,1-hour} 0.59 ou_E/m³ rather than C_{98,1-hour} 0.81 ou_E/m³. The ADMS modelling indicates a maximum peak year value of C_{98,1-hour} 0.34 ou_E/m³ rather than C_{98,1-hour} 0.38 ou_E/m³.
- 13.4.14 However, modelling is not intended to provide a perfect simulation of the complex atmospheric turbulence that determines dispersion and the IAQM guidance confirms that before drawing any conclusions based on odour modelling, consideration should be given to the uncertainties inherent within it. The sources of uncertainty relate to: model uncertainty; meteorological data; odour emission rates; and user error.³⁶⁰
- 13.4.15 The AERMOD and the standard ADMS models do not calculate dispersion for periods of 'calm' weather, as at low wind speeds the predictions may be unrealistically large.^[8.10.59] AERMOD and ADMS do not predict dispersion when the windspeed is low, for example <0.75 m/s in the case of ADMS.³⁶¹ However, in the case of ADMS, the application of the ADMS Calms module

³⁵⁸ ESA1 paras 2.31-2.37.

³⁵⁹ P6b Appendix N page 3.

³⁶⁰ CD23 page 33.

³⁶¹ P6a para 5.45, P10 Appendices 2.2.1.a/b/c, P9 Appendix D page 733.

allows dispersion associated with wind speeds as low as 0.5 m/s to be modelled. Sensitivity testing undertaken by SLR using the Calms module indicated an increase in exposure levels in relation to Proposal A and B of up to around 20-30% at some receptors. For example, at receptor DR4, Greenacre Close, the maximum change associated with Proposal A was identified as around 28% (0.074/0.262). These results must be treated with caution, as the Calms module assumes flat terrain and so does not strictly reflect the bowl like terrain in the vicinity of the appeal site, which may result in higher than expected concentrations of odour.³⁶² [8.10.67]

The IAQM guidance confirms that the treatment of calms can have a considerable influence on model predictions.³⁶³ [8.10.52]

13.4.16 SLR has indicated that, based on the range of predicted levels of exposure associated with the sensitivity testing to meteorological and topographical scenarios, an appropriate upper error bar for the results would be to assume that the results may vary by a factor of 2.³⁶⁴ [8.10.54, 9.6.37] At the Inquiry, it confirmed that on this basis the AERMOD derived value of $C_{98,1\text{-hour}}$ 0.81 ou_E/m^3 for residential receptor location DR4, at Greenacre Close, may be up to $C_{98,1\text{-hour}}$ 1.62 ou_E/m^3 . This would exceed the modelling benchmark of $C_{98,1\text{-hour}}$ 1.5 ou_E/m^3 and comprise a moderate adverse impact of significance in relation to high sensitivity receptors. Furthermore, the maximum hourly average value of 1.85 ou_E/m^3 associated with residential receptor location DR9, Bury Old Road, may be up to 3.7 ou_E/m^3 , which would be higher than the typically applied recognition threshold of 3 ou_E/m^3 .³⁶⁴

13.4.17 However, the EA's *Review of Dispersion Modelling for Odour Predictions* indicates that, with reference to the range of reporting uncertainties for some model parameters in one example of an odour modelling study, the error bars associated with dispersion modelling results can be far higher³⁶⁵ [9.6.38-9.6.40]. The report makes clear that the estimated uncertainties may be cumulative, for example the overall impact of terrain and surface roughness may be $\pm 400\%$ (180+210+10).³⁶⁵ Furthermore, it indicates that combining complex effects, such as buildings with terrain, begins to 'rack up' uncertainty rapidly.³⁶⁶ In my judgment, the following factors are likely to add to the level of uncertainty identified by SLR, resulting in a higher error bar.

13.4.18 Dealing first with model uncertainty:

a) Dr S Fraser, author of *Dispersion modelling from a hole in the ground*, has indicated that, based on his experience of studying actual versus predicted air flow in a quarry setting, wind flow was blowing one way outside the quarry and a completely different direction within the quarry. He suggests that in those kinds of situations there is a risk that dispersion models like ADMS and AERMOD will give entirely misleading information.³⁶⁶ [9.6.79] Concerns in this regard are reinforced by a comparison between the 5-year data sets used and the data from the FBQ weather

³⁶² Cross-examination of Mr Branchflower by RAWs.

³⁶³ CD23 page 32.

³⁶⁴ Mr Branchflower in response to Inspector's questions.

³⁶⁵ P10 Appendix 2.4.1.a pages 47 and 82.

³⁶⁶ P10 Appendix 2.4.1.a page 48.

station. For example, in comparison with the NWP data, which is intended to more closely reflect local conditions than the Manchester Airport and Bingley data, the FBQ weather station data indicates lower average wind speeds and a different distribution of wind directions. SLR acknowledges that this is to be expected given that the site weather station is likely to be sheltered by the quarry landform.³⁶⁷ To my mind, this is also likely to be the case at the appeal site, given its position within the quarry.

- b) The ADMS model differs from the AERMOD model, as it is able to take more detailed account of terrain. I understand that in this case the ADMS model has taken into account certain physical features of the site and its surroundings, including the bund along its western edge and the proposed buildings through the application of a surface roughness factor.^[8.10.67] Nonetheless, CERC, the authors of the ADMS software, have confirmed that ADMS makes use of the airflow model FLOWSTAR, the accuracy of which decreases as slopes increase. Whilst FLOWSTAR typically models the flow well for slopes up to 1 in 2 (27°) in relation to upwind slopes and hill summits, and up to 1 in 3 (18°) locally in hill wakes, in the locality of steeper slopes the predicted concentrations will be less accurate. To the west of the site, the slope between the site and Ramsbottom, calculated by RAWs as 21°, exceeds 1 in 3 and the slope of the quarry face, located to the east of the site, is greater than 1 in 2. The cumulative impact of these particular factors in relation to the accuracy of the ADMS modelling results has not been quantified to show that the impact is not significant.³⁶⁸^[8.10.50, 51]

The isopleth plots referred to at Figure 2-3 of ESA1 indicate that a contour representing an odour exposure of $C_{98,1\text{-hour}} 1.5 \text{ ou}_E/\text{m}^3$ would not extend beyond the quarry. However, they do not reflect the worst case modelling results, being based on the ADMS model using the NWP data set. Furthermore, they do not take account of error bars identified by SLR. Under these circumstances, and in light of the uncertainty concerning the accuracy of the output from ADMS due to local steep slopes, I give the isopleth plots little weight.^[8.10.56]

- c) Whilst the appellants and the Council agree that the software used is appropriate in this case^[7.15.6b, 8.10.16], this was disputed at the Inquiry by RAWs with reference to EA guidance. The EA's H4 guidance indicates that steady state Gaussian models, such as ADMS and AERMOD, are well established and routinely applied for odour assessments and they represent a good mathematical approximation of odour plume behaviour when the odour source is located in relatively simple terrain; where the winds are relatively evenly distributed; and, the frequency of low wind speeds (< approx 1.5 m/s) is below 2% for each compass direction. However, non-steady state Lagrangian models are capable of simulating a wider range of dispersal conditions and are useful for odour assessments at sites which are characterised by complex air flow/dispersal conditions.^[9.6.25]

³⁶⁷ ESA2 para 10.24.

³⁶⁸ ID 88 and 97.

The EA did not object to the proposals and its AQMAU has indicated that dispersion models such as ADMS and AERMOD are commonly accepted for modelling of odour from AD facilities. [8.10.45] However, the specialist unit has not reviewed the modelling work undertaken by SLR in this case or commented on whether the use of steady state Gaussian models are appropriate in the particular circumstances of the appeal site. [8.10.17] In relation to terrain, the topography surrounding the appeal site is relatively complex, comprising a quarry 'bowl' at Shuttleworth set within the eastern side of the steeply sloping Irwell valley above Ramsbottom. [9.6.29] Based on the windrose for the FBQ weather station, it appears to me that the frequency of wind speeds less than 1.5 m/s is likely to be greater than 2% in a significant number of compass directions.³⁶⁹ Whilst this must be treated with some caution, given that the monitoring equipment used at FBQ is only accurate to +/-1 m/s, there is no more definitive data.

It appears likely that the circumstances in which the EA's H4 guidance indicates that the use of steady state Gaussian models is appropriate are not met. The assertion of SLR, expressed at the Inquiry, that the EA's guidance concerning the use of Lagrangian models does not reflect the view of the dispersion modelling community has not been supported by any evidence³⁷⁰. This unsupported assertion does not reduce the weight I give to the EA's H4 guidance, which was identified in the SoCG as relevant. This casts further doubt over the reliability of the modelling results.

13.4.19 As regards meteorological data uncertainty, in my judgement, little reliance can be placed on the modelling results based on the FBQ weather station data set, as it only covers 1 year, well short of the 5 years recommended. Nonetheless, as I have indicated above, it casts doubt over the reliability of modelling based on the other data sets.

13.4.20 I turn now to uncertainty associated with odour emission rates. The Sniffer report *entitled Understanding biofilter performance and determining emission concentrations under operational conditions* identifies that the geometric mean odour concentrations in the range 200 to 5,500 ou_E/m³ represent a reasonable indication of the achievable performance of biofilters serving biowaste processes. However, it is notable that in a number of cases the maximum values recorded were significantly higher than the associated geometric mean. The report indicates that the relatively large range of emission concentrations illustrates the complexity of factors that can influence odour generation from biofilters.³⁷¹ The EA's report entitled *Biofilter performance and operation as related to commercial composting* indicates that one of the most common problems that can lead to odorous emissions from biofilters is a sudden change in operational conditions, which may be caused by a change in contaminant loading rates due to variations in feedstock. I have no reason to believe that this would not apply equally to biofilters serving an AD plant. Tamar confirmed it is expected that the

³⁶⁹ P10 para 2.2.2, ESA2 page 40.

³⁷⁰ Mr Branchflower's evidence in chief.

³⁷¹ P10 Appendix 3.1.3.a.

proposed facility would receive a variety of wastes including 'Category 3 animal waste products; Fish and seafood waste; Waste from meat products; Pet food waste; Animal feed waste; Waste from baking and cereals'. No evidence has been provided to show the extent to which an output of 1,000 ou_E/m³ could be reliably maintained by the type of odour control plant proposed to service an AD plant.^[8.10.41]

- 13.4.21 However, the EAS1 indicates that the supplier of the proposed odour control plant would be required to provide a performance guarantee to ensure odour emissions would not exceed 1,000 ou_E/m³ and that this could be enforced through the Environmental Permit for the facility.³⁷² SLR has provided evidence to show that the EA has been willing to impose emission limit values at other sites.³⁷³
- 13.4.22 For the purposes of dispersion modelling SLR has assumed that the only significant odour source would be the exhaust from the proposed odour control plant. This is on the basis that all activities would be undertaken within enclosed buildings and tanks, which would be either sealed, vented to the biogas collection system or extracted to the odour control plant.³⁷⁴ However, RAWs has provided evidence which confirms that odour emissions from CHP engines can vary greatly and odour emissions from biogas CHP engines can be significant.^[9.6.28,] Whilst SLR has suggested that odours associated with the biogas CHP exhaust would not be significant, it confirmed that it did not have any empirical evidence to support this contention. It was made on the basis of its view that engine performance has improved since the study referred to by RAWs was undertaken and SLR is not aware of such plants causing a problem elsewhere.³⁷⁵ The absence of any evidence to support SLR's views raises doubts as to whether all significant odour sources have been accounted for in the modelling.
- 13.4.23 The IAQM guidance confirms that some types of odour source, such as fugitive emissions, may exist, which are not easily modelled and so the model results may not give a complete picture of odour risk on site. I have had regard to the concerns raised with respect to the potential for fugitive emissions to arise when the doors of the proposed process building are open.^[8.10.42] However, the Halstead Odour Management Plan, which is required by the Environmental Permit, confirms that fast acting roller shutter doors would remain closed except when vehicles enter or leave.³⁷⁶ I saw this process in operation at the site visit. SLR has indicated that whilst door opening can result in fugitive emissions, in its experience they are not significant. I am also conscious that fugitive emissions arising from the operation of doorways are not amongst the concerns raised by the EA at the Halstead facility.³⁷⁷ I understand that a similar protocol for door operation would be likely to be put in place at the proposed facility, under the terms of its own Odour Management Plan (OMP). Under these

³⁷² ESA1 PARA 2.40.

³⁷³ ID79.

³⁷⁴ P6a para 5.11 and Environmental Statement July 2013 section 10 para 3.4.1.

³⁷⁵ Evidence in chief of Mr Branchflower, P6a page 30 and cross-examination of Mr Branchflower by RAWs.

³⁷⁶ P1 Appendix 3 page 20.

³⁷⁷ ID75.

circumstances, I consider that emissions from that source are unlikely to have a significant impact on their own, although when they occur they would contribute to odour emissions from the facility.

13.4.24 A number of plant failure scenarios are conceivable, which could give rise to fugitive odour emissions from the site. However, given the regulatory role taken by the EA and procedures likely to be included within the OMP, including the suspension of operations and removal of waste, I consider that such major events would be unlikely and short lived.^[8.10.62]

13.4.25 I consider overall, that it may be possible to ensure that an emission limit value of $1,000 \text{ ou}_E/\text{m}^3$ from the proposed odour control plant would be enforced through the Environmental Permit. Nonetheless, in light of other uncertainties in this particular case, associated with modelling error, met data and odour emission sources, in my view, the upper error bar associated with the modelling results is likely to be much higher than suggested by SLR. Furthermore, there is a significant risk that under normal operating conditions the proposals would release odours that result in the benchmark standard of $C_{98,1\text{-hour}} 1.5 \text{ ou}_E/\text{m}^3$ being exceeded and would have a notable detrimental effect on the living conditions of local high sensitivity receptors, such as those located in the area up to around 300 metres to the west of the location of the proposed process building. I include within this residential properties and the outside space of a local restaurant. The windrose for the FBQ weather station suggests that winds would occur from an easterly quarter up to approximately 25% of the time.³⁷⁸ Sensitive receptors located further afield, such as Peel Brow Primary School and the tourist attractions in the centre of Ramsbottom would be much less likely to be affected, due to the distances involved. Whilst local footpaths may well be affected, they are categorised as low sensitivity receptors by the IAQM guidance and so the impact is less likely to be significant.^[9.11.2, 10.9]

Empirical observation

13.4.26 I turn now to consider the use of empirical observation as a means of assessing the likely impact of future odorous development. Defra's *Anaerobic Digestion Strategy and Action Plan Annual Report 2014* (AR2014) published in February 2015 identifies that the number of serious or potentially serious pollution incidents at AD plants remain a serious concern. EA data shows that the bio-waste treatment sector, particularly AD, has proportionately more serious and significant pollution incidents than the other waste treatment sectors regulated by the EA. The report goes on to identify bio-waste treatment over the period 2010 to 2012 as the poorest in the waste sector which remained the case in 2013. Defra takes the view that those incidents were preventable³⁷⁹.^[8.10.28]

13.4.27 However, IAQM guidance emphasises that if empirical observations at other sites are to be used to judge the likely performance of a future development, it is important that they are regarded as similar surrogates. Whilst there is no evidence to show that the facilities referred to in Defra's AR2014 and the evidence of others were similar surrogate plants to that

³⁷⁸ ESA2 page 40.

³⁷⁹ Mr Branchflower rebuttal proof PBMM/PB/05-J

which is proposed [7.13.9, 8.10.22-26, 32-34, 9.6.7, 10.2.8, 10.4.12, 10.10.1], both the Council and the appellants agree that Tamar's Halstead facility can be regarded as a similar surrogate.

- 13.4.28 The air quality assessment submitted in support of the original planning and permit applications for the Halstead plant indicated that the site would comply with the standard of $C_{98,1\text{-hour}} 1.5 \text{ ou}_E/\text{m}^3$ set out in the EA's H4 guidance.³⁸⁰ Nonetheless, SLR acknowledges that since the Halstead AD plant began operating there have been a significant number of odour complaints during the commissioning phase of the project, which commenced in July/August 2014. Some of the complaints have arisen from properties around 350-400 metres to the northeast of the facility. In connection with a visit to the Halstead plant in January 2015, the EA detected an odour around 400 metres to the northeast of the site, which it concluded emanated from the facility.³⁸¹ [8.10.37, 43]
- 13.4.29 The EA's H4 guidance indicates the approach that would be taken by the EA if odour is detectable beyond the boundary of the site. This includes that where the odour is serious, it may be necessary to suspend or revoke the facility's Environmental Permit. Otherwise, where all appropriate measures are being used, but are not completely preventing odour pollution, a level of residual odour will have to be accepted.³⁸²
- 13.4.30 Whether or not odour emissions amount to serious pollution depends on a number of factors, including: frequency of detection; intensity as perceived; duration of exposure; offensiveness; and, receptor sensitivity, the 'FIDOL' factors.³⁸³ For the purpose of assessing the impact of odour incidents, the EA's *Common Incident Classification Scheme* (CICS) groups the impacts into 4 categories C1-C4. C1 relates to serious incidents including odour causing a serious and widespread effect on human senses or causing a major adverse effect on an important recreation activity or large public event. In contrast, C2 relates to significant incidents, including those that have a significant effect on human senses and amenity value, such as odour which is offensive and persistent enough to cause significant disturbance, rather than the evacuation of dwellings, or leads to a noticeable adverse impact on local businesses. C3 incidents include those that have a minimal effect on human senses, such as a mildly offensive odour that causes a complainant to shut a window.³⁸⁴
- 13.4.31 The Compliance Assessment Report (CAR) associated with the EA's January 2015 visit categorised the impact of the odour incident as C2.³⁸⁵ The Environmental Permit was neither revoked nor suspended, rather the operator was asked to put appropriate measures in place to address the issue. At the Inquiry, Tamar indicated that the necessary appropriate measures had since been put in place to address the odour sources

³⁸⁰ P1 Appendix 3 para 1.3.3.

³⁸¹ ID29 Appendix 4.

³⁸² CD19 page 9.

³⁸³ CD19 pages 9 and 7.

³⁸⁴ P6b para 2.10 and Appendix H page 25.

³⁸⁵ ID75.

identified in the CAR and this also appears to be the view of the EA.³⁸⁶^[8.10.43] Whilst I understand that the EA is continuing to work with the operator, with a view to reducing odour emissions from the plant, I have not been provided with any evidence to show that other appropriate measures have been identified.^[8.10.34, 39]

- 13.4.32 My site visit to the Halstead facility followed Tamar's evidence. Before visiting the facility itself, I spent some time in the local area. Downwind of the plant to the south, at the entrance to a builders merchant's yard on the adjacent industrial estate, I could smell a distinct odour. During the visit to the facility itself I could smell the same odour within the site, close to its southern boundary, and the presence of the odour there was verified by others within the party, including the SLR representative.^[8.10.20, 10.1.3] Whilst the SLR and Council representatives characterised the odour as moderately offensive³⁸⁷, another attendee described it as a bad odour, which was distinct and very unpleasant. Having had regard to the EA's guidance³⁸⁸, I consider that it fell within the most offensive category. I give little weight to the SLR representative's evidence to the Inquiry that he was unable to detect the odour either at a location around 15 metres to the west of the entrance to the builders merchant's yard or during the period of less than 5 minutes he spent at the entrance. These observations may be explained: firstly, as the location to the west of the entrance was neither upwind nor downwind of the entrance under the prevailing weather conditions and so may well not have been affected in the same way; and secondly, given the intermittent nature of the emissions, it may not have occurred during the short period he spent at the entrance.
- 13.4.33 The SLR representative was uncertain about where on the Halstead site the odour was emanating from. Under these circumstances and given that the Tamar believes appropriate measures are in place, I give little weight to the view of SLR and the Council that such emissions could be prevented.^[8.10.35, 37, 38] The Council's witness on odour confirmed in cross-examination that she has little experience concerning the operation of AD plants. Nor do I consider it would be appropriate to categorise the emissions as initial commissioning problems, given the period over which the plant has been operational and remedial measures taken.^[8.10.43]
- 13.4.34 The Environmental Permit does not prohibit odour emissions from the site at levels likely to cause pollution providing the operator has used appropriate measures to prevent or where that is not practicable minimise the odour. Furthermore, SLR was unable to identify any examples of situations in which category C2 odour incidents had resulted in the revocation or suspension of an Environmental Permit.^[8.10.39]³⁸⁹ Under these circumstances, it appears to me it may well be that under the terms of the regulatory regime, the residual level of odour would have to be accepted. I consider that empirical observations associated with the similar surrogate facility at Halstead

³⁸⁶ ID29 Appendix 4.

³⁸⁷ Cross-examination of Miss Gannon and evidence in chief of Mr Branchflower.

³⁸⁸ CD19 and 20.

³⁸⁹ Mr Branchflower in response to Inspector's questions.

indicate that the proposed plant may well give rise to offensive odours outside the site that would have to be tolerated.

Conclusion

- 13.4.35 Having had regard to the particular circumstances in the case before me, I conclude that there is a considerable degree of uncertainty concerning the impact of Proposals A and B on the living conditions of sensitive receptors in the local area and a significant risk that they would routinely release odours at levels which would have a notable detrimental effect. This would be contrary to the aim of the Framework as regards securing a good standard of amenity for all existing and future occupants of land and buildings and, in my judgement, would amount to an unacceptable impact on amenity, contrary to the aims of UDP Policy EN4/1 and an unacceptable level of air pollution, contrary to the aims of UDP Policy EN7/1.^[8.10.70]
- 13.4.36 The *Government Review of Waste Policy in England 2011* indicates that the availability of clear, complete and trusted sources of information is key to gaining acceptance of energy from waste proposals.³⁹⁰^[7.13.7] Under the circumstances in this case, a precautionary approach would be justified and the uncertainty with respect to the overall detrimental impact of the proposal on living conditions of sensitive receptors in the local area, with particular reference to odour, weighs heavily against approval of the proposals.
- 13.5 **The living conditions of sensitive receptors in the local area - Noise**
- 13.5.1 It is expected that the proposed AD facility would be in operation 24 hrs/day and 7 days/week.^[9.8.2] The facility would include a number of items of plant and equipment with significant sound power levels. The likely noise impact of Proposal A was assessed within chapter 8 of the ES against BS 4142:1997, which was extant at the time. ESA2 sets out an assessment in relation to Proposal B against the now extant BS4142:2014. These assessments have been supplemented by further evidence at the Inquiry.^[9.8.3, 7] SLR has confirmed that the sound power levels for the proposed AD plant and equipment used in the assessments are realistic, based on its own experience and confirmation from Tamar's Engineers. No evidence has been provided to demonstrate otherwise.^[9.8.11]
- 13.5.2 The noise assessments consider the likely impact at 5 sensitive receptor locations agreed with the Council.³⁹¹ The noise impact of Proposal B is greater than that of Proposal A. However, in both cases, the assessments indicate that the proposals would be unlikely to give rise to noise complaints, either during the day or night, with the worst impact falling between marginal significance and complaints unlikely.³⁹² The assessments indicate that the predicted day-time noise levels at all the receptors would fall below the limit of 55 dB L_{Aeq} (1 hour) previously imposed by condition 20 attached to planning permission Ref. 43048. Night-time noise levels at all receptors would fall below the WHO's night noise guideline of 40 dB L_{night} ,

³⁹⁰ CD2 page 67.

³⁹¹ SoCG.

³⁹² P5.

outside, which it indicates is sufficiently low to protect public health from night-time noise.^[9.8.4-8]³⁹³ I have not been provided with any compelling evidence to show that a more stringent night-time noise requirement, as suggested by the Council, would be justified.³⁹⁴

- 13.5.3 At the Inquiry, SLR confirmed it is likely that a sound power level of 95 dB would be associated with the loading/unloading of Roll-on/Roll-off skips, which would be used to remove digestate cake from the site under Proposal B.³⁹⁵ This level is higher than the sound power levels associated with all of the other proposed AD plant equipment, except the two CHP engines.³⁹⁶ SLR confirmed that the noise generated by this operation was not accounted for within the ESA2 assessment. Nevertheless, it has since calculated that, providing skip loading and unloading operations only take place during the day-time and inside the process building, then this operation would be unlikely to result in a breach of either the day-time or night-time limits referred to above.³⁹⁷ This was not disputed.
- 13.5.4 The appellants consider that adequate safeguards could be secured by condition. They would include conditions to ensure: the imposition of the noise limits referred to; and, in the case of Proposal B, the loading and unloading of Ro-Ro skips too and from vehicles takes place entirely within the confines of the process building.^[9.8.9]
- 13.5.5 I have had regard to the record of noise complaints logged against the Halstead facility.^[9.8.12] Nevertheless, I conclude that, subject to the imposition of conditions, the proposals before me would be unlikely to have an unacceptable detrimental effect on the living conditions of local sensitive receptors, with particular reference to noise, and in this respect the proposals would not conflict with UDP Policy EN7/2, which seeks to guard against unacceptable noise nuisance.
- 13.5.6 I agree with the Council that when setting the noise limits referred to above it would be reasonable to define night-time as the hours between 23:00 and 07:00, as this is a period when most people are likely to be resting, and the remainder of the time as day-time, notwithstanding that is not as restrictive as condition 20 attached to planning permission Ref. 43048.^[9.8.6, 12] In my judgment, the characteristics of the noise associated with the proposals is likely to be materially different from those associated with a construction and demolition waste recycling facility.

13.6 Air quality (excluding odour)

- 13.6.1 For the Air Quality assessment reported in the ES, the impact of CHP emissions were modelled using the same approach as the original odour modelling, using AERMOD and ADMS. For traffic exhaust emissions a different model type was used, due to the different nature of the source.³⁹⁸

³⁹³ ID23 World Health Organisation Europe-Night Noise Guidelines for Europe.

³⁹⁴ ID120.

³⁹⁵ ID110.

³⁹⁶ ESA2 Table 8-1 page 26.

³⁹⁷ ID110.

³⁹⁸ P6a para 6.25.

- 13.6.2 In order to inform the assessment, a site specific monitoring survey for NO₂ was undertaken over a period of 3 months, from March to May 2013. I have no compelling reason to doubt the results of the monitoring, which SLR has confirmed was carried out in accordance with standard procedures.³⁹⁹ SLR has also confirmed that the results were factored to take account of seasonal variation in accordance with *Defra's Local Air Quality Management Technical Guidance* and I have not been provided with any compelling evidence to show that this approach is inappropriate.⁴⁰⁰ Furthermore, ESA1⁴⁰¹ confirms that the ADMS model assumes an inversion is present under certain meteorological conditions and so the effects of inversions on dispersion has been taken into account.
- 13.6.3 SLR has indicated that the maximum predicted annual NO₂ exposure resulting from the CHP combustion emissions both in isolation and in combination with the traffic exhaust emissions would be less than 75% of the Air Quality Objective (AQO) annual mean limit for NO₂ of 40 µg/m³.⁴⁰² Furthermore, with reference to the impact descriptors set out in the IAQM/Environmental Protection UK consultation guidance document on *Land Use Planning and Development Control: Planning for Air Quality Assessment* the predicted impact would be 'negligible' (% change 1-5%) at all except 5 receptors. At these 5 receptors impacts would be classified as 'slight adverse' (% change 5-10%).⁴⁰³ Furthermore, these figures do not account for the decrease in emissions of combustion pollutants that would result if the heat from the appeal site were to be used within the concrete products factory.^[8.11.4-5]
- 13.6.4 Many of the uncertainties associated with the AERMOD and ADMS modelling for odour would apply to that for air quality.^[9.7.1] Even so, I consider that, in light of: the significant headroom between the predicted results and the AQO; and, the predicted contribution from the proposal is relatively small;⁴⁰⁴ it remains unlikely that the AQO would be exceeded when a reasonable level of uncertainty is accounted for.^[9.7.2]
- 13.6.5 I conclude that the proposal would be unlikely to have an unacceptable effect on air quality (excluding odour) in the locality and in this respect it would not conflict with the aims of UDP Policies EN4/1 and EN7/1 or the Framework.
- 13.7 The safety and convenience of highway users**
- 13.7.1 Whilst the Council considers that the scheme would not be detrimental to highway safety or the operation of the highway, I have had regard to the concerns raised by others. UDP Policy EN 1/2 seeks to ensure that proposals would not have an unacceptable adverse impact, with reference to factors such as access.^[8.13.1-4]

³⁹⁹ P6a paras 6.13-16.

⁴⁰⁰ P6a para 6.16-6.19.

⁴⁰¹ ESA1 para 2.56.

⁴⁰² P6a Appendix 03/2.

⁴⁰³ P6a Appendix 03/2 page 3.

⁴⁰⁴ P6a Appendix 03/2 – maximum cumulative process contribution (PC) = 2.82 µg/m³ and maximum predicted environmental contribution (PEC) = 27.8 µg/m³.

- 13.7.2 The appellants have observed that the predicted increases in traffic associated with the proposals, such as a 5.7% increase in HGV traffic on Whalley Road, fall below the two 'broad rules of thumb' suggested by IEMA as a screening process to delimit the scale and extent of environmental impact assessment.^[8.13.10d] However, the guidance confirms that *'It should be noted that the Department for the Environment suggests.....that increases in traffic of 5% are likely to be considered as significant by the Department for Transport. The context of such a statement relates to the operational and capacity criteria of highway and not its environmental impacts.'* It recommends that the criteria quoted by the appellants are more relevant to the assessment of environmental impacts.⁴⁰⁵ Under these circumstances, I consider those guidelines to be of little relevance when considering the likely impact of traffic resulting from the proposal on highway capacity. I give the cited 'broad rules of thumb' little weight in this context.
- 13.7.3 SLR has estimated that the trip generation rate arising from Proposal A could range from around 27 HGV trips/day, best case, to some 41 HGV trips/day, worst case. Whilst it considers it likely that the actual figure would be somewhere between the 2, use of the upper figure ensures a robust assessment.⁴⁰⁶ This seems reasonable to me, given that there is no guarantee that the upper figure would not be reached.
- 13.7.4 The assessment set out within the ES assumed that the traffic associated with proposal A, at around 41 HGV trips /day, would offset, and not be materially greater than, the traffic likely to be associated with the permitted composting and recycling operation, at 42 HGV trips /day.⁴⁰⁷ The Local Highway Authority (LHA) did not object to Proposal A on the basis that it would generate less vehicle trips than the consented scheme.⁴⁰⁸ However, it appears to me that that assumption was unreliable. As I have already indicated, at the Inquiry the appellants confirmed that the composting element of the scheme would now be unlikely to proceed. Whilst the recycling element of the approved scheme may proceed, SLR indicated that only 32 of the identified 42 trips/day were associated with it.^[8.13.6] It follows that the level of HGV traffic associated with Proposal A may actually be around 28% higher than that generated by the fall back position.^[8.13.10b] Under these circumstances, I consider that little weight can be attached to the lack of objection from the LHA.^[8.13.5-7]
- 13.7.5 RAWs has expressed the concern that traffic associated with the proposals would exacerbate existing congestion on the local highway network. In response SLR has acknowledged that the A56/Bury New Road junction, which is a short distance to the south of the entrance to FBQ, is the primary cause of vehicle queuing in the locality. In order to evaluate this it produced a LinSig model of that traffic signal controlled junction for the morning peak hour.⁴⁰⁹

⁴⁰⁵ CD18 para 3.18.

⁴⁰⁶ P4a para 2.2.6.

⁴⁰⁷ ES para 11.28-29.

⁴⁰⁸ P4a para 2.5.1.

⁴⁰⁹ P4b 3.2.2.

- 13.7.6 The LinSig model output includes a value for the Practical Reserve Capacity (PRC) of the junction, based on the worst performing lane, together with an indication of queue lengths and delays per vehicle. Guidance from the software authors indicates that PRC is 0% when a lane has a degree of saturation (DOS) of 90%, which has been used across the traffic signals industry for many years as a performance threshold that achieves a practical level of performance on a lane. A negative PRC indicates that the DOS is greater than 90%, the junction is overloaded in absolute terms relative to that benchmark and performance has reached an unacceptable level. In practice, as the DOS increases beyond 90%, the performance of the lane will deteriorate at an increasing rate with increasing periods of saturation within the modelled hour, leading to higher levels of queuing and delays.⁴¹⁰
- 13.7.7 In the appeal case the LinSig output for the 2015 baseline condition, without the proposed development, identifies a PRC of +1.7%. SLR has also indicated that whilst vehicle queuing is to be expected at a signal controlled junction, one of the tests of the junction's operational acceptability is the ability for queuing traffic to disperse over its next green cycle. The LinSig model suggests that that is the case now. However, RAWs has indicated that it is not unusual in the morning peak hour for queuing vehicles to be unable to pass on the next green phase and I saw this on a number of occasions when observing traffic during the AM peak hour prior to the accompanied site visit on 2 April 2015. This suggests that conditions may be worse than the model indicates.
- 13.7.8 In any event, when traffic growth to 2020 is included in the model the PRC falls to -5.4% and when an allowance is made for Proposal A it falls further to -5.8%. This indicates that, within a relatively short period of time, expected traffic growth would exceed the capacity of the junction leading to increased queuing and delays and Proposal A would exacerbate that situation, albeit to a limited degree.^[8.13.10d]
- 13.7.9 Turning to proposal B, SLR has indicated that dewatering of the digestate to produce a cake would reduce the tonnage of digestate exported in comparison with Proposal A. It estimates that this may reduce the number of digestate related trips/day from around 9 to 2, which would reduce the overall number from 41 to 34 HGV trips/day.^[8.13.10e]⁴¹¹ This is still more than the fallback position. Furthermore, Marshalls have indicated that there is considerable potential for future development in other parts of FBQ. Whilst SLR acknowledges that it may lead to future increases in traffic, it has not included any allowance for that in the baseline on the assumption that it would require planning permission.⁴¹² However, at the Inquiry, Marshalls confirmed that some development is likely to be possible under permitted development rights. For example, it has under consideration a project involving the provision of a stone sawing shed (SSS), with an estimated lead time of 1-2 years.⁴¹³ SLR estimated if that particular

⁴¹⁰ ID101.

⁴¹¹ Mr Green in evidence in chief.

⁴¹² P4a para 3.3.14.

⁴¹³ P2 para 11.3.4 and cross-examination of Mr Redfern by RAWs.

development were to proceed it would be likely to involve an increase of between 5 and 7 extra HGV trips/day.^[8.13.10j]⁴¹⁴ Therefore, any saving in trips associated with reduced digestate export may be offset by other development.

- 13.7.10 I consider that Proposal A would be likely to have a detrimental effect on the convenience of highway users, by adding to congestion and this may well be the case with Proposal B.
- 13.7.11 Certain features of the operation of the junction between the FBQ access road and the A56 are likely to increase the risk of accidents. These include that: some southbound HGVs exiting FBQ and northbound HGVs entering the site do so at too high a speed; and, some southbound HGVs are unable to turn into FBQ without first swinging out onto the opposing carriageway. Whilst there is no record of accidents at this junction, SLR acknowledges that these grounds for concern are reasonable and has proposed a number of modifications to the junction to address the matter.^[8.13.8d), 8.13.10e)] In light of the potential increases in HGV movements associated with the proposals, I agree that works are necessary to address these matters, in the interests of highway safety, and could be secured through the imposition of a reasonable condition.
- 13.7.12 Concern has also been raised that the proposals may result in an increase in the number of HGV movements along Peel Brow and through the centre of Ramsbottom, to the detriment of highway safety. However, there is no dispute that HGVs routinely use Peel Brow and formal accident records indicate that there were no HGV related accidents along this road in the 5 year period to September 2014.^[8.13.10c)]⁴¹⁵ Whilst the proposal may well lead to an increase in HGVs on this route, I consider that it would be unlikely to have a significant impact on highway safety there. I have also had regard to the view that, as some of the footways alongside Bridge Street in the centre of Ramsbottom are narrow, the passage of HGVs can deter pedestrians and put users of the footways at risk.^[10.1.10] However, I have not been provided with any formal records to show there is a significant history of related accidents. Furthermore, when I visited, notwithstanding the passage of HGVs, the footways were well used and traffic was slow moving, due to the traffic lights at the western end of Bridge Street. I have no reason to believe that these conditions were unusual. In the event that the scheme were to result in increased HGV traffic passing through the centre of Ramsbottom, I consider that it would be unlikely to have a significant detrimental effect on highway safety.
- 13.7.13 I give little weight regarding the concern that appeal traffic would damage the highway. Road going vehicles would be used and maintenance of the public highway is a matter for the Highway Authorities.^[10.3.5]
- 13.7.14 I conclude that whilst the proposals would be unlikely to have a material adverse effect on highway safety, they would harm the convenience of highway users. However, the impact would be unlikely to amount to a severe detrimental effect on the convenience of highway users and

⁴¹⁴ Mr Green in evidence in chief.

⁴¹⁵ P4b section 2.2.

consequently, under the terms of the Framework, its impact in relation to these matters would not be sufficient on its own to justify withholding planning permission.^[8.13.10f), g), k)] Although I consider therefore, that the effect of the proposals in these respects would not conflict with the aims of UDP Policy EN1/2, the harm, albeit limited, weighs against the scheme.

13.8 **The character and appearance of the local area**

- 13.8.1 I set to one side the potential impact on the openness of the Green Belt and its purposes of checking unrestricted sprawl and *safeguarding the countryside from encroachment*, as these are matters with which I have already dealt.
- 13.8.2 The Council has confirmed that it has no objections to the proposed AD plant on the grounds of landscape or visual impact.
- 13.8.3 The UDP designated the Irwell Valley as a Special Landscape Area and this includes FBQ together with land to the north, west and south. UDP Policy EN9/1 requires development to be sympathetic to its surroundings and not unduly obtrusive. UDP Policy EN1/2 seeks to ensure that proposals do not have an unacceptable adverse effect on the particular character of settlements. As set out in the ES, the proposals would be situated in a Moorland Fringe landscape that is already influenced by quarry and industrial development.⁴¹⁶ In this context, I consider that the scheme would not introduce significant change to the landscape character.
- 13.8.4 The ES confirms that, although set down in FBQ, the proposed AD plant would be visible from a number of view points, until the completion of the approved infilling operations, which would be likely to continue to the north and east of the site for some years to come.⁴¹⁷ However, it would be seen against the existing quarrying operations and the Marshalls concrete products factory. In this context its visual impact would be limited.
- 13.8.5 As I have already indicated, parts of the proposals may be glimpsed from elevated public vantage points in the vicinity of Peel Tower, on the opposite side of the valley. However, from there it would be seen with the settlement of Ramsbottom in the foreground as well as together with the more prominent existing Marshalls concrete products factory. In this context, glimpsed views of parts of the proposed structures would not have a material adverse effect on the character or appearance of the area. As I have previously explained, visual plumes from the proposed stacks would not look unduly out of place.
- 13.8.6 Furthermore, I have already concluded that the scheme would not harm the character, appearance or setting of a Conservation Area.
- 13.8.7 Bearing in mind the factors set to one side at the start of this section, I conclude that otherwise the effect of the proposals on the character and appearance of the area would be acceptable and in this respect they would not conflict with the aims of UDP Policies EN9/1 and EN1/2.^[8.16.1-3]

⁴¹⁶ ES para 6.118.

⁴¹⁷ ES para 6.122-6.123.

13.9 **The local economy**

13.9.1 There is no dispute that tourism makes a significant contribution to the local economy, with assets such as the East Lancashire Heritage Railway running through the centre of Ramsbottom and frequent festivals hosted by the town. Nonetheless, in light of my findings on other issues, such as the absence of any material impact on the historic character of the town or the character and appearance of the area and that the area most likely to be affected by odours is remote from the town centre, I conclude that the proposals would be unlikely to have a significant detrimental effect on tourism hereabouts or the wider local economy, nor would it conflict with the Development Plan insofar as it seeks to safeguard tourism and the local economy.^[8.17]⁴¹⁸ This does not weigh against the scheme.

13.9.2 I consider the economic benefits claimed for the scheme by the appellants under 'other considerations' below.

13.10 **Other matters**

13.10.1 Whilst I understand that in the past light pollution associated with the Marshalls' operations has been an issue, it has put measures in place to address the matter. I consider it likely that a scheme of lighting could be designed which addresses the operational needs of the proposals, whilst ensuring that it does not give rise to unacceptable levels of light pollution and that this could be ensured by condition.^[8.14, 11.7.2] This does not weigh against the scheme. The Council does not object to the scheme on the basis of potential light pollution and this adds further weight to my finding.

13.10.2 A number of objectors have raised concerns about the potential impact of the scheme on public health. However, concerns in that regard have not been raised by any relevant health bodies and I have not been provided with any compelling evidence to show that the proposals would be likely to pose a material risk to public health. As observed by a health professional who appeared before me in opposition to the scheme, it does not automatically follow that odours found to be offensive would harm physical health ^[8.18, 10.12] Under the circumstances, I do not give any weight to the concerns raised with respect to public health.^[8.18, 9.12, 10.19.4]

13.10.3 Reference has been made by a number of local interested parties to the potential impact of the proposals on ecology. However, this is a matter that has been considered in some detail in the ES, with reference to desk and field based surveys, and it concludes that 'with the inclusion of mitigating measures... the residual effects to ecological receptors are not significant in the short or long-term'. The consultation response of the Greater Manchester Ecological Unit identified that the site is primarily bare ground and any ecological interest is located on the face of the quarry. I understand that Peregrine Falcons nest annually in the cliffs which form the back of the quarry, which is some distance away from the site.^[11.6] Manchester Ecology Unit did not object to the scheme, subject to the imposition of a condition to secure appropriate landscaping for the benefit of

⁴¹⁸ CD12 chapter 13 page 174 and chapter 8, P11 appendix B.

wildlife. The Council takes the view that 'the proposed development would not have an adverse impact upon protected species or the ecological value of the site and would be in accordance with Policy EN6, MW4/1 and MW4/4 of the Bury Unitary Development Plan.'^[8.19] The only evidence to the contrary amounts to unsupported assertions, to which I attribute little weight. I conclude that, subject to condition, the effect of the proposal on ecology would be acceptable and it would not conflict with UDP Policy EN6.

13.10.4 I give no weight to the concerns related to the impact of the scheme on property values. The planning system does not exist to protect the private interests of one person against the activities of another.^[10.16.2, 10.17.2, 10.18]

13.11 Other considerations

13.11.1 The Framework indicates that the very special circumstances necessary to justify inappropriate development in the Green Belt will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.

Waste Management

13.11.2 The scheme would potentially allow up to 45,000 tonnes of waste to be diverted from landfill per annum, in keeping with the strategic objectives of the GMWP, insofar as it promotes: the movement of waste up the hierarchy; reducing greenhouse gas emissions; and, the mitigation of climate change, which is a requirement of GMWP Policy 10.^[8.8.6-7] However, the Eunomia FMR indicates there is insufficient feedstock capacity within 10 miles of the site to supply the full processing capacity of the proposed plant. Within its 15 mile and 30 mile feedstock catchment areas there is theoretically sufficient feedstock capacity. Nonetheless, the majority of the feedstock within the 3 catchment areas arises from the industrial and commercial sector, in relation to which the level of separate collection is relatively low and so only a proportion of the identified potential arisings would be actually available for AD. Whilst Eunomia expect availability to increase in the future, potentially in response to a number of factors, it confirms that in the short and likely medium terms food waste may have to be sourced from further afield to ensure that the proposed plant operates at full capacity.^[9.13.14] However, previous work undertaken by Eunomia suggests that distances over which food waste can be economically transported to a treatment facility is only up to 30 miles.^[8.20.21]⁴¹⁹ Based on the findings of the Eunomia FMR, it appears unlikely that the capacity of the proposed plant would be fully utilised in the short and likely medium terms.

13.11.3 I have not been provided with any compelling evidence in support of Tamar's contention that 'if we build it the demand will follow'.^[8.20.21] The availability of spare AD process capacity is not one of the factors identified by the Eunomia FMR as having the potential to drive up availability of feedstock, the factors being new recycling targets, associated regulation or changes to the pricing mechanism in place for waste collection. Furthermore, the Eunomia FFR indicates that there now appears to be sufficient AD capacity available, but those organisations which are in a

⁴¹⁹ P1 Appendix 1 pages (i) and 1.

position to provide wide roll-out of commercially attractive food waste collections to the businesses producing food waste are not responding in such a way as to effect change.⁴²⁰ I remain of the view it is unlikely that the capacity of the proposed plant would be fully utilised in the short and likely medium terms.

- 13.11.4 The appellants have identified that the appeal site was not considered as a potential site for built waste management facilities when the GMWP was being drafted, as it had planning permission for a residual waste management facility.^[8.8.9]⁴²¹ Whatever the reason, there is no dispute that it is not a site allocated in the GMWP. It is not for me, as part of a section 78 appeal, to seek to re-run that selection process. In keeping with the aims of the Framework, GMWP Policy 10 requires that applications for waste management facilities on unallocated sites, such as the appeal site, meet the same assessment criteria as allocated sites.⁴²² The reasoned justification for that Policy confirms that all allocated waste sites were assessed against a series of identified criteria, which include the Green Belt. The *Evidence Base: Site Search Methodology*, confirms that this criterion was applied so as to exclude sites within the Green Belt. Although it indicates that certain categories of land cannot be absolutely excluded, for example sites within the Green Belt may be appropriate for specific waste facilities such as composting, AD facilities are not similarly identified. The thrust of this approach is consistent with the aims of the National Planning Policy for Waste. It indicates that local planning authorities should first look for suitable sites and areas outside the Green Belt for waste management facilities that, if located in the Green Belt, would be inappropriate development, whilst recognising the particular locational needs of some types of waste management facilities.⁴²³
- 13.11.5 I do not agree with the appellants that the application of this Green Belt exclusion would run counter to the objectives of the Plan. It appears to me that the criterion is consistent with objective 7, 'to protect...the sub-region's natural environment', and objective 6, 'to ensure appropriate protection of the quality of life of communities'. Furthermore, objective 5 of the Plan, to quote it fully, seeks 'To provide a flexible approach for the delivery of the required waste management facilities, allowing emerging technologies to come forward'.^[8.8.9] As the appellants have pointed out, AD is a relatively longstanding technology.^[8.18.1]
- 13.11.6 Given its Green Belt location, I consider that the proposed AD facility would not meet the same assessment criteria as allocated sites and so would conflict with this limb of GMWP Policy 10.^[8.20.21] However, in my view, this would not be sufficient to withhold planning permission in this case in the event it was determined that very special circumstances exist under the terms of the Framework.^[8.8.8-10]

⁴²⁰ P10 Additional documents – Eunomia FFR page9.

⁴²¹ ID87.

⁴²² Para 98 bullet point 2 of the Framework.

⁴²³ CD5 para 6.

- 13.11.7 Nonetheless, I conclude overall therefore, that there is significant uncertainty as to likely tonnage of waste per annum that would be diverted away from landfill as a result of the proposals, at least in the short and medium term, and I give the benefits of the scheme in this respect only moderate weight.^[8.20.22] Furthermore, the scheme would conflict with GMWP Policy 10.^[8.20.25]

Renewable energy

- 13.11.8 There is no dispute that climate change is one of the most serious threats facing the world today.^[8.20.2] EN-1 confirms the Government's commitment to meeting its legally binding target to cut GHG emissions by at least 80% by 2050, compared to 1990 levels. To that end the UK has committed to sourcing 15% of its total energy generation from renewable sources by 2020 and EN-1 confirms that new projects need to come forward urgently to ensure that target is met.^[8.20.5] The Framework indicates that planning should support the transition to a low carbon future in a changing climate and gives encouragement to the development of renewable energy. Defra's *Anaerobic Digestion Strategy and Action Plan* identifies the part that can be played by AD, such as by helping divert waste from landfill, reducing GHG emissions, and producing renewable energy.⁴²⁴
- 13.11.9 The proposed AD plant would be capable of generating around 2.5 MW of electricity and 2.5 MW of heat from the burning of biogas. Taking account of the energy required by the AD plant itself, around 1.8 MW of electricity and 1.75 MW of heat would be available for other uses.^[8.20.8] It is likely that the electricity would be fully utilised either by the neighbouring Marshalls' facilities at FBQ or through export to the National Grid.^[8.20.9] It is possible that some of the surplus heat could be utilised by the neighbouring Marshalls complex at FBQ, thereby reducing its consumption of fossil fuels. However, it is estimated that the average heat demand of the existing Marshalls facilities is only around 0.351 MW, rising to approximately 0.47 MW if Marshalls future development plans come to fruition, equivalent to approximately 27% of the available supply. I consider overall therefore, that the quantity of available electricity would be limited and the supply of heat likely to be utilised more so. Nonetheless, as observed by my colleague⁴²⁵, the achievement of Government renewable energy targets is dependent on the rapid delivery of many different schemes, from small to large. Furthermore, the Framework identifies that even small-scale projects provide a valuable contribution to cutting GHG emissions. Marshalls estimates that the proposals, if operating at full capacity, would realise an annual CO₂ emissions reduction of around 30,825 tonnes, which is equivalent to around 2.6% of the total emissions in the Bury district in 2012.^[8.20.11-14, 17-19]
- 13.11.10 I conclude that significant weight is attributable to the renewable energy benefits of the scheme, which include a contribution towards meeting

⁴²⁴ CD3 page 2.

⁴²⁵ P7 Appendix 13 - Appeal Ref. APP/M1900/V/13/2192045 para 1068.

local and national climate change objectives. In this respect the proposals would accord with the aims of national Policy insofar as it gives encouragement to the provision of renewable energy sources.^[8.20.20] The scheme does not qualify for the support given to renewable energy projects by UDP Policy EN4/1, due to the identified conflicts with a number of its criteria.

Economic benefits

- 13.11.11 As a result of their close proximity to the appeal site, Marshalls' FBQ facilities would be likely to benefit from energy related cost savings associated with a direct wire connection providing a renewable electricity supply. Whilst Marshalls acknowledge that the security of its existing electricity supply from the National Grid is not in doubt, the alternative provided by the proposals may allow it to take advantage of financial incentives to periodically reduce consumption of power from the National Grid, should such incentives be introduced in the future.⁴²⁶ It would also be technically feasible to deliver heat to the Marshalls complex, although the economic case for this has not yet been finalised. Marshalls use of renewable energy from the proposed facility would also make a contribution, albeit limited, towards meeting its GHG emissions reduction targets.⁴²⁷^[8.20.2, 7, 16]
- 13.11.12 Nevertheless, Marshalls has identified that its existing manufacturing facility at FBQ is strategically important to its business both regionally and nationally. It is envisaged that significant investment will be made in the development of additional facilities on the site in order to ensure that there is sufficient capacity to supply the projected increase in demand that the manufacturing facility should properly satisfy.⁴²⁸ Furthermore, neither the security of the current employment levels at FBQ, which is over 150 FTE jobs, nor the Company's future development plans for the site are contingent upon the grant of planning permission in this case.^[8.20.30]⁴²⁹ It appears to me that the economic benefits to the Company would be unlikely to drive significant benefits to the wider economy and so I give them limited weight.
- 13.11.13 Whilst it is estimated that the construction phase of the scheme would support around 175 FTE construction related jobs, this would be only for a limited period of around 15 months. 10 FTE jobs would be supported in the commissioning phase. Once operational the AD facility would support 5 FTE jobs and it is estimated that it would support the equivalent of a further 5 FTE jobs in the Bury area. I consider that this amounts to a small benefit to the jobs market and attribute weight to it accordingly.
- 13.11.14 The RCR suggests that the proposed AD facility would also deliver some wider economic benefits. The proposed process would produce biofertiliser, which Tamar has indicated would provide farmers with a cost

⁴²⁶ Re-examination of Mr Stevens.

⁴²⁷ P3 figure 6.1.

⁴²⁸ P2 page 15.

⁴²⁹ Cross-examination of Mr Redfern by RAWS.

competitive alternative fertiliser.⁴³⁰ Nevertheless, in the absence of any quantification of potential savings to show that they would be significant, I give this little weight. The RCR estimates that if 45,000 tonnes/annum of waste is diverted away from landfill to the AD facility, it would be likely to save the Bury and Greater Manchester business base around £2.7 million/annum in Landfill Tax payments. However, I consider that this figure must be treated with caution, in light of the uncertainty concerning the availability of feedstock to enable full utilisation of the plant. It is estimated that the business rates for the facility would be in the region of £85,000/annum, which would be retained locally and benefit the local economy.

- 13.11.15 The National Planning Policy for Waste does not indicate that decision makers should or should not *give special consideration to locational needs, or wider economic benefits the site could bring, over other considerations, as justification for building waste facilities on Green Belt land.*^[7.11.4g), 8.20.23] Whilst the Framework gives encouragement to development that would provide economic benefits, in this case it appears to me that overall, the economic benefits of the scheme would be modest and I give them moderate weight.^[8.20.31]

Locational benefits

- 13.11.16 I have found that the proximity of the site to sensitive receptors does not weigh in its favour, with particular reference to odour. Although FBQ is reasonably close to the regional motorway network, I have found that the scheme would harm the convenience of highway users, albeit to a limited degree. The need for future restoration within FBQ provides a sustainable opportunity to utilise biofertiliser from the plant in that process. However, this may only amount to around 1% of the output of the facility.^[9.13.40] Whilst the scheme would not have an unacceptable impact on: living conditions with reference to noise; air quality (excluding odour); the character and appearance of the local area; the safety and convenience of highway users; ecology; or archaeology, these are normal requirements of development and do not weigh significantly in favour of the scheme.
- 13.11.17 The benefits to Marshalls associated with the close proximity of the proposed AD plant to its own facilities at FBQ, such as direct access to a supply of renewable energy, have already been accounted for above. I acknowledge it is unlikely that those benefits to the Company could be realised if the AD facility were to be located elsewhere outside FBQ.^[8.20.14-15, 24]
- 13.11.18 The FBQ site has an existing 11 KV connection to the National Grid with capacity to accept the export of any spare electricity generated by the proposed facility. Nonetheless, the appellants' Fichtner report entitled *Alternative Site Assessment for a Proposed Anaerobic Digestion Facility* has identified a number of sites where a 3 MW export connection could be made even onto a 6.6 KV network that predominates across Greater

⁴³⁰ Cross-examination of Mr Heller by RAWS.

Manchester without causing fault level issues.⁴³¹ I am also conscious that the available electricity supply from the proposals would only be up to 1.8 MW, further reducing any such risk. Whilst the associated cost of connection at those other sites may be up to 3 times that at FBQ and access across third party land may be necessary, there is no compelling evidence before me to show that they would be significant limiting factors.⁴³² The cost of connection estimated by Fichtner of around £300,000⁴³³ equates, by my calculation, to only around 2% of the estimated capital cost for an AD plant of £15 million reported by RAWs. I give the availability of a suitable grid connection at FBQ limited weight.^[9.13.68]

- 13.11.19 I consider that overall, limited weight is attributable to the locational benefits claimed by the appellants.^[8.20.32-36]

Overall balance

- 13.11.20 Whilst the Council's decision to refuse to grant planning permission in this case was against the recommendation of its Planning Officers, this does not alter the merits of the proposals upon which my conclusions and recommendations are based. Furthermore, as observed by the appellants, this Inquiry has had the benefit of a much more detailed assimilation of both the harms and the benefits of the proposals than was originally available to the Council.^[8.5, 8.20.39]
- 13.11.21 The proposals, which would harm the openness of the Green Belt and conflict with one of the purposes of the Green Belt designation, would amount to inappropriate development which is, by definition, harmful to the Green Belt. The Framework indicates that substantial weight should be given to any harm to the Green Belt. Furthermore, the uncertainty with respect to the overall detrimental impact of the proposal on living conditions of sensitive receptors in the local area, with particular reference to odour, weighs heavily against approval of the proposals. In addition, the scheme would have a detrimental impact, albeit limited, on the convenience of highway users.
- 13.11.22 I turn now to the other considerations. The PPG confirms that the need for renewable or low carbon energy does not automatically override environmental considerations.⁴³⁴ In this case I give significant weight to the renewable energy benefits of the scheme, which include a contribution towards meeting local and national climate change objectives. I give the locational and economic benefits of the scheme cited by the appellants moderate weight.^[8.20.23]
- 13.11.23 Having had regard to the particular economic, social and environmental aspects of Proposals A and B, I consider that in both cases, the harm that I have identified is not clearly outweighed by other considerations,

⁴³¹ P7 Appendix 19 - Fichtner report entitled *Alternative Site Assessment for a Proposed Anaerobic Digestion Facility*, Appendix 8.

⁴³² P7 Appendix 19 page14.

⁴³³ P7 Appendix 19, Appendix 8 section 1.2.

⁴³⁴ ID20.

whether considered individually or cumulatively.^[8.7.4, 8.8.12, 15]
Furthermore, in my judgement the harm could not be reduced to an acceptable level through the imposition of reasonable conditions. Consequently, notwithstanding that the Framework identifies that very special circumstances may include the wider environmental benefits associated with increased production of energy from renewable sources, as the harm is not outweighed, very special circumstances do not exist.^[8.8.11, 8.20.4, 6]

13.12 **Conclusion**

- 13.12.1 Proposals A and B would conflict with the aims of the Framework and would not amount to sustainable development. Furthermore, notwithstanding that they would accord with some Development Plan Policies, in light of the conflicts identified, overall it would be contrary to the Development Plan. I make particular reference to UDP Policy EN4/1, which seeks to guard against unacceptable impacts on the Green Belt in common with the Framework^[8.8.4-5] as well as UDP Policies OL1/2 and EN7/1, and GMWP Policy 10.
- 13.12.2 I conclude, for the reasons given above, that the appeal, whether determined on the basis of Proposal A or Proposal B, should be dismissed.

14. **INSPECTOR'S RECOMMENDATIONS**

- 14.1 I recommend that the appeal be dismissed.
- 14.2 In the event that the Secretary of State disagrees with my recommendation, I recommend that the conditions attached at Appendix D to this report are applied.

I Jenkins

INSPECTOR

APPENDIX A - APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr E Owen Of Counsel	Instructed by J Hammond, Solicitor, Bury Metropolitan Borough Council. Urban Vision Partnership Ltd.
Mr J Martin MRTPI	
Miss N Gannon <i>For conditions only</i>	Urban Vision Partnership Ltd.
Mr D Marno	Bury Metropolitan Borough Council.

FOR THE APPELLANT:

Mr A Williamson Of Counsel He called	
Mr W Heller B.Comm MBA	Tamar Energy Ltd.
Mr G Redfern MRICS	Marshalls Mono Ltd.
Mr P Stevens BSc(Hons)	Marshalls Mono Ltd.
Mr T Green BEng CEng MICE	SLR Consulting Ltd.
Mr D Lafon-Anthony MSc MIOA fig	SLR Consulting Ltd.
Mr P Branchflower BSc(Hons) MIAQM	SLR Consulting Ltd.
Mr K Owen BA(Hons) BTP MRTPI FIQ	SLR Consulting Ltd.
Mr S Greaves BA MSc(Spatial Planning) Licentiate MRTPI <i>For conditions only</i>	Tamar Energy Ltd.
Mr K Tames MRICS	Peel Environmental Ltd.
Mr J Leeson BSc MSc FGS CGeol GDL	SLR Consulting Ltd.
Mr D Morrell BSc MCIHT	Marshalls Mono Ltd.

FOR RAWS:

Councillor I Bevan	Local resident.
Dr P Jackson	Local resident.
Mr C Butterworth	Local resident.
Mr G Duckett	Local resident and business owner.

OTHER INTERESTED PARTIES:

Councillor L Fitzwalter	Bury Metropolitan Borough Council.
Councillor R Hodgkinson	Bury Metropolitan Borough Council.
Councillor I Bevan	Bury Metropolitan Borough Council.
Mr R Abrahamsen	Local resident.
Mr D Nuttall MP	Member of Parliament for Bury North.
Mr R McClellan	Local resident.
Mr M Purdy	Local resident.
Mr R Archer	Local resident.
Dr F Binns	Local resident.
Miss P Smart	Local resident.
Mr J Frith	Local resident(Parliamentary candidate) .
Dr E El-malek	Local resident.
Mr S Beresford	Peel Brow Primary School.
Mr C Flint	Local resident.
Mr G Fletcher	Ramsbottom Business Group.
Mr S Murphy	Local resident.
Mr J MacDonald	Local resident.
Mr C West	Local resident.
Mr J Ferrier	Pearson Ferrier Estate Agents.
Mr S Willetts	Local resident.

APPENDIX B – DOCUMENTS**CORE DOCUMENTS (CD)**

National Policy Guidance	
1	National Policy Statement (NPS) EN-1- Overarching NPS for Energy
1A	National Policy Statement (NPS) EN-3 NPS for Renewable Energy Infrastructure
2	Government Review of Waste Policy in England, 2011
3	Anaerobic Digestion Strategy and Action Plan, 2011
4	Meeting the Energy Challenge White Paper (May 2007)
5	National Waste Planning Policy (October 2014)
6	Waste Management Plan for England - Dec 2013
Renewable Energy/Carbon	
7	UK Renewable Energy Strategy (July 2009) Exec summary only
8	UK Renewable Energy Road Map (July 2011)
9	The Carbon Plan: Delivering our low carbon future (December 2011): Exec Summary only
10	AGMA low carbon/energy plan
11	Energy Savings Opportunity Scheme – Guide to ESOS. DECC, June 2014
Development Plan	
12	Bury MBC Unitary Development Plan
13	Greater Manchester Joint Minerals DPD
14	Greater Manchester Waste Plan, 2012
15	Greater Manchester Joint Waste DPD: Evidence Base – Site Search Methodology
16	Bury MBC Second Draft Core Strategy
Highways	
17	Guidance on Transport Assessment, DfT, 2007
18	Guidelines for the Environmental Assessment of Road Traffic, IEMA, 1993
Odour & Air Quality	
19	Environment Agency, H4 – Odour management, Environment Agency, March 2011
19A	Environment Agency, H1 Annex F – Air Emissions
20	Environment Agency (2007) Review of odour character and thresholds. Science Report: SC030170/SR2
21	Odour Guidance for Local Authorities/ DEFRA, March 2010
22	Local Air Quality Management Technical Guidance LAQM.TG(09). DEFRA, 2009.
23	Guidance on the assessment of odour for planning. IAQM, 2014
Other Documents	
24	Statement of Common Ground dated November 2014
25	Committee Report for Appeal (No.57118) dated 18 March 2014
25A	Supplementary Information to Planning Committee, 18 March 2014
26	AD Decision Notice dated 19 March 2014 (No.57118)
27	Appeal decision APP/X1355/A/12/2188741 AD plant at High Hedley Hope Farm, East Hedley Hope, Bishop Auckland, DL13 4PR.
28	PAS110: 2010 Specification for whole digestate, separated liquor and separated fibre derived from source segregated waste

PROOFS OF EVIDENCE (P)

Appellant	
1	Proof of evidence Mr W Heller.
2	Proof of evidence Mr G Redfern.
3	Proof of evidence Mr P Stevens.
4a	Proof of evidence Mr T Green.
4b	Rebuttal proof of evidence Mr T Green.
5	Proof of evidence Mr D Lafon-Anthony.
6a	Proof of evidence Mr P Branchflower.
6b	Rebuttal proof of evidence Mr P Branchflower.
7	Proof of evidence Mr K Owen.
Council	
8	Proof of evidence Mr J Martin.
9	Proof of evidence Miss N Gannon.
RAWS	
10	Dr P Jackson.
11	Councillor I Bevan.
12 (ID11)	Mr C Butterworth.
13 (ID24)	Mr G Duckett.
14 (ID23)	Mrs K Pollard Rylance.

INQUIRY DOCUMENTS (ID)

1	Letter notifying interested parties of the appeal and Inquiry arrangements.
2	Appeal consultation responses.
3	List of appearances on behalf of the appellant.
4a	Inquiry note presented by Bury MBC-Inquiry note 1.
4b	Inquiry note presented by Bury MBC-Inquiry note 2.
4c	Inquiry note presented by Bury MBC-Inquiry note 3.
4d	Inquiry note presented by Bury MBC-Inquiry note 4.
5	Statement of Councillor L Fitzwalter.
6	Council's opening submissions.
7	Appellant's opening submissions.
8	Ramsbottom Conservation Area boundary plan.
9	Email from the Council to statutory consultees, dated 7 January 2015 (ES addendum).
10	Extract from Tyneside Development Framework Development Management Policies, December 2011.
11	Proof of evidence for Mr C Butterworth.
12	Drawing 1-Distance from yard and process building to residential properties.
13	Statement of Councillor R Hodgkinson.
14	The Queen on the application of Mrs Jean Timmins, AW Lymn The Family

	Funeral Service Limited v Gedling Borough Council v Westerleigh Group Limited [2014] EWHC 654 (Admin).
15	The Queen on the application of Mrs Jean Timmins, AW Lymn The Family Funeral Service Limited v Gedling Borough Council v Westerleigh Group Limited [2015] EWCA Civ 10
16	'Show the Love' pledge by party leaders.
17	Tamar Energy Inquiry Note on Revised Scheme.
18	Statement of Councillor I Bevan.
19	Inquiry note presented by Bury MBC-Inquiry note 6.
20	PPG extract paragraphs ID: 5-003 to 009.
21	Reference documents for the proof of evidence of Mr K Owen.
22	Environment Agency H1 Annex F-Air Emissions.
23	Proof of evidence of Karen Pollard-Rylance.
24	Proof of evidence of Glen Duckett.
25	SLR Response to Inquiry Note 3.
26	Email from the Environment Agency to the Council, dated 12 March 2015 (Halstead).
27	Statement of David Nuttall MP.
28	List of Ramsbottom residents for Monday Evening Session (16 March).
29	Inquiry note presented by Bury MBC-Inquiry note 5.
30	Inquiry note PEMM/PB/06-Clarification of references and errata.
31	Extract from Sniffer ER36 Final Report June 2014.
32	Reference documents for appendix 2.4.3 of the proof of evidence of Dr P Jackson.
33	Email train between the Council and the Environment Agency (Halstead).
34	Reference documents for appendix 2.1.1.b of the proof of evidence of Dr P Jackson.
35	Biogas-info webpage extract Official Biogas Plant Map.
36	Footnote reference documents for Company witness statement of Mr Pete Stevens.
37	Reference document for paragraph 12.8 of the proof of evidence of Mr G Redfern.
38	Details of planning permissions 55584 and 56744 (BU1)
39	Supplementary proof of evidence of Mr C Butterworth.
40	Statement of Mr R Abrahamsen.
41	Statement of Dr F Binns.
42	Statement of Mr J Frith.
43	Statement of Dr E El-malek.
44	Letter from CERC to SLR, dated 6 March 2015.
45	Teg webpage extract.
46a	Design Manual for Roads and Bridges vol 5 section 1 part 3 TA 79/99 Amendment no. 1.
46b	Design Manual for Roads and Bridges vol 12 section 2 part 1 Traffic Appraisal in Urban Areas.
46c	Department for Transport Circular 02/2013.
47	Statement of Mr C Butterworth.
48	Supplementary statement of Mr G Duckett.
49	Holcombe Village Conservation Area boundary plan.
50	EAT-list of trainees.
51	Supplementary statement of Councillor I Bevan on behalf of RAWs.

52	Halstead site visit itinerary.
53	Extract from the Environmental Protection Act 1990.
54	ADMS 5 user manual contents list.
55	Aerial photo-approximate view point in Turn village for 'inversion' picture.
56	Aspen Environmental Ltd Odour Management Plan Hemswell Cliff Development: September 2012.
57	Extract From Environmental Statement for quarry extension etc, June 2004 (trip generation).
58	Design Manual for Roads and Bridges vol 6 section 1 part 1 TD 9/93- Amendment no. 1.
59	Design Manual for Roads and Bridges vol 6 section 2 part 6 TD42/95.
60	Aerial photo-composite view of Conservation Area boundaries.
61	Ramsbottom Conservation Area Appraisal & Management Plan.
62	Council's response to SLR Response to Inquiry Note 3.
63	Appellant's note on light pollution.
64	Holcombe Conservation Area Appraisal, May 2010.
65	Statement of Mr C West.
66	Letter from Mr N Mather to the Planning Inspectorate, dated 18 March 2015.
67	Statement of Mr S Willetts.
68	References for company witness statement of Mr P Stevens.
69	Drawing 1 (FBA 6/1) ZTV of anaerobic digestion plant existing landform with Conservation Areas.
70	Environmental Permit Halstead Anaerobic Digestion Facility.
71	Halstead site visit RAWs observations.
72	Environmental Permit extract Poplars Landfill Site and Anaerobic Digestion Facility.
73	Environmental Permit extract ReFood UK Limited Anaerobic Digestion Facility.
74	Environmental Permit decision document ReFood UK Limited Anaerobic Digestion Facility.
75	Halstead EPR Compliance Assessment Report 104262/0229118.
76	WRAP Digestates: Realising the fertiliser benefits for crops and grassland.
77	RAWs Inquiry Note (CERC)
78	Reference document for paragraph 9.14 of the proof of evidence of Mr K Owen.
79	Inquiry Note-Regulatory Control of Odour Emissions presented by Mr Branchflower.
80	ADMS 5 Complex Terrain Flowfield Validation: Blashaval and Askervein Hill.
81	Emission factors for gas fired CHP units < 25 MW.
82	Extract from the Scott Wilson Sustainability Appraisal and Strategic Environmental Assessment of the Greater Manchester Joint Waste Draft Publication DPD.
83	Reference document for the proof of evidence of Mr G Duckett.
84	Email from the appellants to the Council, dated 26 March 2015 (site visit details).
85	Appellant's note on digestate for use in restoration of Fletcher Bank Quarry.
86	Plan showing the Dumers Lane allocation and the areas subject to applications 55584 and 56744.
87	Extract from the Outcomes Report on the Stage Two Issues and Options: Built Facilities Consultation.

88	RAWS Inquiry Note-CERC data on ADMS terrain model validation, dated 30 March 2015.
89	Schedule of suggested conditions with comments from the main parties.
90	Letter from DCLG to The Planning Inspectorate, dated 27 March 2015.
91	Appellants' Inquiry Note-Clarifications requested by Inspector in relation to evidence of Philip Branchflower.
92	Drawing no. TWG/3 rev A.
93	Appellants' comments on the suggested conditions.
94	Revised Schedule of suggested conditions with comments from the main parties.
95	RAWS – Potential HGV routing.
96	Extract from the World Health Organisation Europe-Night Noise Guidelines for Europe.
97	Appellants' Response to RAWS Inquiry Note (31 March 2015).
98	ROMP Ref. 36288-Notice of Planning Decision, Fletcher Bank Quarry, dated 22 April 2009.
99	Extract from the Department of Transport's Manual For Streets.
100	SNIFFER Code of Practice for the use of sludge, compost and other organic materials for land reclamation.
101	Appellants' Inquiry Note-Highways & Transport, dated 1 April 2015.
102	Drawing 2-Proposed AD Site Areas.
103	Extract from Good Practice Guide for Atmospheric Dispersion Modelling, prepared by the National Institute of Water and Atmospheric Research, Aurora Pacific Limited and Earth Tech Incorporated for the Ministry of the Environment.
104	Closing statement on behalf of Mr R Abrahamsen.
105	Closing statement on behalf of RAWS.
106	Closing statement on behalf of the Council.
107	Closing statement on behalf of the appellants.
108	Core Documents list and list of appeal documents-updated 1 April 2015.
109	Appellants' conditions session appearances.
110	Email from the appellants to PINS, dated 8 April 2015 (Response to Inspector's queries on noise and night-time noise condition).
111	Email from PINS to the appellants, dated 10 April 2015 (Inspector's supplementary questions).
112	Email from the appellant to PINS, dated 13 April 2015 (Response to Inspector's supplementary questions).
113	Email from the Council to PINS, dated 14 April 2015 (night-time noise condition).
114	Email from the Council to PINS, dated 17 April 2015 (Council and RAWS-no further comments).
115	Email from PINS to the Council, dated 23 April 2015 (night-time noise condition).
116	Email from the Council to PINS, dated 27 April 2015 (night-time noise condition).
117	Email from the appellant to PINS, dated 29 April 2015 (night-time noise condition).
118	Letter from Mrs P Brown to the Prime Minister, dated 17 March 2015.
119	Letter from PINS to Mrs P Brown, dated 30 April 2015.
120	Email from the Council to PINS, dated 5 May 2015 (night-time noise condition).

121	Email from the appellants to PINS, dated 6 May 2015 (no comment with respect to Mrs P Brown's letter).
122	Email from PINS to the main parties, dated 6 May 2015 (any further comments?).
123	Email from the appellants to PINS, dated 6 May 2015 (no further comments)
124	Email from the Council to PINS, dated 6 May 2015 (no further comments)
125	Email from RAWs to PINS, dated 6 May 2015 (no further comments)
126	Email from PINS to the main parties, dated 7 May 2015 (notification that Inquiry closed).
127	Letter from PINS to the appellants, dated 11 March 2015 (recovery of the appeal by the Secretary of State).

APPENDIX C – ABBREVIATIONS

1990 Act	The Town and Country Planning Act 1990.
AD	Anaerobic digestion.
AOD	Above Ordnance Datum.
AQMAU	Air Quality Modelling and Assessment Unit (within the Environment Agency).
CHP	Combined heat and power.
the Council	Bury Metropolitan Borough Council.
DCLG	The Department for Communities and Local Government.
Defra	The Department for Environment, Food and Rural Affairs.
EA	Environment Agency.
ES	Environmental Statement, July 2013.
ESA1	Environmental Statement Addendum-Air Quality and Planning Policy, January 2014.
ESA2	Revised Layout Environmental Statement Addendum, December 2014.
Eunomia FFR	Eunomia Research & Consulting report entitled <i>Anaerobic Digestion Market Update-Addressing the Feedstock Famine, June 2014</i> .
Eunomia FMR	Eunomia Research & Consulting report entitled <i>Feedstock Modelling for Potential Site at Fletcher Bank-Final Report</i> .
FBQ	Fletcher Bank Quarry.
The FIDOL factors	Frequency, intensity, duration, offensiveness and location of the source and receptor.
the Framework	The National Planning Policy Framework.
FTE	Full time equivalent.
GMWP	Greater Manchester Joint Waste Development Plan Document.
LHA	Local Highway Authority.
Met	Meteorological.
NNG	Night-time Noise Guidance.
NPPW	National Planning Policy for Waste.
NPS	National Policy Statement.
NWP	Numerical weather prediction.

OMP	Odour Management Plan.
PRC	Practical reserve capacity of a junction.
RAWS	Ramsbottom Against the Waste Site.
RCR	The Regeneris Consulting report entitled <i>Socio-Economic Impacts of Existing Marshalls Operations & the Proposed AD Energy Facility</i> .
SoCG	Statement of Common Ground, dated November 2014 (CD24).
SSM	Site search methodology.
PPG	National Planning Practice Guidance.
UDP	Bury Unitary Development Plan, August 1997.
UU	United Utilities.
WHO	World Health Organisation.

APPENDIX D – SCHEDULES OF CONDITIONS

Appendix D1 - related to Proposal A, the original scheme

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The use hereby permitted shall be for a limited period ending on 31 March 2042. The use hereby permitted shall be discontinued, the associated structures and works shall be removed and the land restored on or before that end date in accordance with a scheme of work that shall first have been submitted to and approved in writing by the local planning authority.
- 3) The development hereby permitted shall be carried out in accordance with the following approved plans: FBA 1/1, FBA 2/3, FBA 3/1, FBA 3/2, FBA 3/3, FBA 3/4, FBA 3/6.
- 4) No deliveries shall be taken at or despatched from the site outside the following times: 07:30 to 18:30 Monday to Friday; 08:00 to 14:00 Saturdays nor at any time on Sundays, Bank or Public Holidays.
- 5) There shall be no more than a total of 80 HGV movements, averaged over a one month period consisting of 22 working days, entering and leaving the site on any working day. Records of HGV movements to and from the site as well as the times of entry and departure shall be kept and made available for inspection at the request of the local planning authority.
- 6) Between the hours of 07:00 and 23:00 noise emitted from the site shall not exceed 55 dB $L_{Aeq(1\text{ hour})}$ at the locations identified in the table below, which are representative of the facades of the noise sensitive properties closest to the facility. Between the hours of 23:00 and 07:00 noise emitted from the site shall not exceed 40 dB $L_{night, outside}$ at the locations identified in the table below.

Location	Grid Reference for the location	
	Easting	Northing
Greenacre Close	380068	417094
Shipper Bottom Farm	380070	416518
Bye Road	380263	417573
Green Hill	380785	417399
Moorside Farm	381512	417019

- 7) Prior to the first use of vehicles or equipment to be based on the site details of any associated reversing alarms shall be submitted to and approved in writing by the local planning authority. The approved measures only shall be implemented.
- 8) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be

adhered to throughout the construction period. The Statement shall provide for:

- a) delivery, demolition and construction working hours;
 - b) the parking of vehicles of site operatives and visitors;
 - c) loading and unloading of plant and materials;
 - d) storage of plant and materials used in constructing the development;
 - e) wheel washing facilities;
 - f) measures to control the emission of dust and dirt during construction; and,
 - g) a scheme for recycling/disposing of waste resulting from demolition and construction works.
- 9) Any internal haul road or private way between the proposed AD facility and the public highway shall, throughout the construction and operation of the facility, be drained and kept clear of debris along its entire length at all times.
- 10) No development shall commence until the following details have been submitted to and approved in writing by the local planning authority: a plan showing the position of every existing tree along the section of the western boundary of Fletcher Bank Quarry to the west of the location of the proposed AD facility and which are to be retained (retained tree); a schedule in relation to every tree identified listing information as specified in *British Standard BS 5837:2012 Trees in relation to design, demolition and construction* (or in an equivalent British Standard if replaced).
- 11) No retained tree shall be cut down, uprooted, destroyed, pruned, cut or damaged in any manner within 5 years from the date of the first occupation of the AD facility for its permitted use without the prior written approval of the local planning authority. In this condition retained tree means an existing tree identified for retention in the details submitted in accordance with condition 10) above. If within a period of 5 years from the date of the first occupation of the AD facility for its permitted use any retained tree dies then another tree shall be planted at the same place and that tree shall be of such size and species and shall be planted at such time as may be specified in writing by the local planning authority.
- 12) No development shall commence until detailed elevation drawings as well as details of the materials to be used in the external elevations of all buildings, external fixed plant and machinery as well as details of the type/size colour/manufacturer of fixed plant and machinery have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 13) The heights of buildings and structures shown on drawing nos.: FBA3/3 and FBA 3/ 4 shall be interpreted as being relative to a ground level of 200 metres above ordnance datum.
- 14) The buildings and structures hereby approved shall have a finished floor level of 200 metres above ordnance datum.
- 15) Details of any external lighting within the site shall be submitted to and approved in writing by the local planning authority before the use hereby permitted takes place. Development shall be carried out in accordance with the approved details.

- 16) Operation of the AD facility hereby approved shall not commence until the improvements to the entrance to Fletcher Bank Quarry off the A56, as detailed on drawing no. TWG/3 revision A⁴³⁵, have been implemented.
- 17) No building hereby permitted shall be first occupied until a scheme for surface water drainage of the site has been implemented in accordance with details that have been submitted to and approved in writing by the local planning authority. The scheme shall be based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development and the details shall include timing/phasing and maintenance arrangements. The scheme shall be maintained in accordance with the approved details.
- 18) No building hereby permitted shall be first occupied until works for the disposal of foul water, including process effluent and sewage, shall have been provided on the site to serve the development hereby permitted, in accordance with details that have first been submitted to and approved in writing by the local planning authority.
- 19) No development shall commence until ground water monitoring points have been established in accordance with details that have been submitted to and approved in writing by the local planning authority. The monitoring points shall include: a monitoring point down hydraulic gradient of the AD facility; and, a monitoring point between the AD facility and the landfill activity.
- 20) No development shall commence until an assessment of the risks posed by any contamination have been submitted to and approved in writing by the local planning authority. This assessment must be undertaken by a suitably qualified contaminated land practitioner, in accordance with *British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency's Model Procedures for the Management of Land Contamination (CLR 11)* (or equivalent British Standard and Model Procedures if replaced), and shall assess any contamination on the site, whether or not it originates on the site. The assessment shall include: survey of the extent, scale and nature of contamination; and, the potential risks.
- 21) No development shall take place where (following the risk assessment) land affected by contamination is found which poses risks identified as unacceptable in the risk assessment, until a detailed remediation scheme shall have been submitted to and approved in writing by the local planning authority. The scheme shall include an appraisal of remediation options, identification of the preferred option(s), the proposed remediation objectives and remediation criteria, and a description and programme of the works to be undertaken including the verification plan. The remediation scheme shall be sufficiently detailed and thorough to ensure that upon completion the site will not qualify as contaminated land under Part IIA of the Environmental Protection Act 1990 in relation to its intended use. The approved remediation scheme shall be carried out and upon completion a verification report by a suitably qualified contaminated land practitioner shall be submitted to and approved in writing by the local planning authority before the development is occupied.

⁴³⁵ ID92.

- 22) Any contamination that is found during the course of construction of the approved development that was not previously identified shall be reported immediately to the local planning authority. Development on the part of the site affected shall be suspended and a risk assessment carried out and submitted to and approved in writing by the local planning authority. Where unacceptable risks are found remediation and verification schemes shall be submitted to and approved in writing by the local planning authority. These approved schemes shall be carried out before the development is resumed or continued.
- 23) No development shall commence until a habitat enhancement and management plan, with reference to the measures set out in section 7 of the Environmental Statement July 2013, has been submitted to and approved in writing by the local planning authority. The plan shall be implemented as approved.

APPENDIX D2 - related to Proposal B, the revised scheme

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The use hereby permitted shall be for a limited period ending on 31 March 2042. The use hereby permitted shall be discontinued, the associated structures and works shall be removed and the land restored on or before that end date in accordance with a scheme of work that shall first have been submitted to and approved in writing by the local planning authority.
- 3) The development hereby permitted shall be carried out in accordance with the following approved plans: FBA 1/1, FBA 2/3, FBA 3/1A, FBA 3/2A, FBA 3/3A, FBA 3/4A, FBA 3/6A.
- 4) No deliveries shall be taken at or despatched from the site outside the following times: 07:30 to 18:30 Monday to Friday; 08:00 to 14:00 Saturdays nor at any time on Sundays, Bank or Public Holidays.
- 5) There shall be no more than a total of 80 HGV movements, averaged over a one month period consisting of 22 working days, entering and leaving the site on any working day. Records of HGV movements to and from the site as well as the times of entry and departure shall be kept and made available for inspection at the request of the local planning authority.
- 6) Between the hours of 07:00 and 23:00 noise emitted from the site shall not exceed 55 dB L_{Aeq} (1 hour) at the locations identified in the table below, which are representative of the facades of the noise sensitive properties closest to the facility. Between the hours of 23:00 and 07:00 noise emitted from the site shall not exceed 40 dB $L_{night, outside}$ at the locations identified in the table below.

Location	Grid Reference for the location	
	Easting	Northing
Greenacre Close	380068	417094
Shipper Bottom Farm	380070	416518

Bye Road	380263	417573
Green Hill	380785	417399
Moorside Farm	381512	417019

- 7) Prior to the first use of vehicles or equipment to be based on the site details of any associated reversing alarms shall be submitted to and approved in writing by the local planning authority. The approved measures only shall be implemented.
- 8) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
- a) delivery, demolition and construction working hours;
 - b) the parking of vehicles of site operatives and visitors;
 - c) loading and unloading of plant and materials;
 - d) storage of plant and materials used in constructing the development;
 - e) wheel washing facilities;
 - f) measures to control the emission of dust and dirt during construction; and,
 - g) a scheme for recycling/disposing of waste resulting from demolition and construction works.
- 9) Any internal haul road or private way between the proposed AD facility and the public highway shall, throughout the construction and operation of the facility, be drained and kept clear of debris along its entire length at all times.
- 10) No development shall commence until the following details have been submitted to and approved in writing by the local planning authority: a plan showing the position of every existing tree along the section of the western boundary of Fletcher Bank Quarry to the west of the location of the proposed AD facility and which are to be retained (retained tree); a schedule in relation to every tree identified listing information as specified in *British Standard BS 5837: 2012 Trees in relation to design, demolition and construction* (or in an equivalent British Standard if replaced).
- 11) No retained tree shall be cut down, uprooted, destroyed, pruned, cut or damaged in any manner within 5 years from the date of the first occupation of the AD facility for its permitted use without the prior written approval of the local planning authority. In this condition retained tree means an existing tree identified for retention in the details submitted in accordance with condition 10) above. If within a period of 5 years from the date of the first occupation of the AD facility for its permitted use any retained tree dies then another tree shall be planted at the same place and that tree shall be of such size and species and shall be planted at such time as may be specified in writing by the local planning authority.
- 12) No development shall commence until detailed elevation drawings as well as details of the materials to be used in the external elevations of all buildings, external fixed plant and machinery as well as details of the type/size colour/manufacturer of fixed plant and machinery have been submitted to and

- approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 13) The heights of buildings and structures shown on drawing nos.: FBA3/3 and FBA 3/ 4 shall be interpreted as being relative to a ground level of 200 metres above ordnance datum.
 - 14) The buildings and structures hereby approved shall have a finished floor level of 200 metres above ordnance datum.
 - 15) Details of any external lighting within the site shall be submitted to and approved in writing by the local planning authority before the use hereby permitted takes place. Development shall be carried out in accordance with the approved details.
 - 16) Operation of the AD facility hereby approved shall not commence until the improvements to the entrance to Fletcher Bank Quarry off the A56, as detailed on drawing no. TWG/3 revision A⁴³⁶, have been implemented.
 - 17) No building hereby permitted shall be first occupied until a scheme for surface water drainage of the site has been implemented in accordance with details that have been submitted to and approved in writing by the local planning authority. The scheme shall be based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development and the details shall include timing/phasing and maintenance arrangements. The scheme shall be maintained in accordance with the approved details.
 - 18) No building hereby permitted shall be occupied until works for the disposal of foul water, including process effluent and sewage, shall have been provided on the site to serve the development hereby permitted, in accordance with details that have first been submitted to and approved in writing by the local planning authority.
 - 19) No development shall commence until ground water monitoring points have been established in accordance with details that have been submitted to and approved in writing by the local planning authority. The monitoring points shall include: a monitoring point down hydraulic gradient of the AD facility; and, a monitoring point between the AD facility and the landfill activity.
 - 20) No development shall commence until an assessment of the risks posed by any contamination have been submitted to and approved in writing by the local planning authority. This assessment must be undertaken by a suitably qualified contaminated land practitioner, in accordance with *British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency's Model Procedures for the Management of Land Contamination (CLR 11)* (or equivalent British Standard and Model Procedures if replaced), and shall assess any contamination on the site, whether or not it originates on the site. The assessment shall include: survey of the extent, scale and nature of contamination; and, the potential risks.
 - 21) No development shall take place where (following the risk assessment) land affected by contamination is found which poses risks identified as unacceptable in the risk assessment, until a detailed remediation scheme shall have been

⁴³⁶ ID92.

submitted to and approved in writing by the local planning authority. The scheme shall include an appraisal of remediation options, identification of the preferred option(s), the proposed remediation objectives and remediation criteria, and a description and programme of the works to be undertaken including the verification plan. The remediation scheme shall be sufficiently detailed and thorough to ensure that upon completion the site will not qualify as contaminated land under Part IIA of the Environmental Protection Act 1990 in relation to its intended use. The approved remediation scheme shall be carried out and upon completion a verification report by a suitably qualified contaminated land practitioner shall be submitted to and approved in writing by the local planning authority before the development is occupied.

- 22) Any contamination that is found during the course of construction of the approved development that was not previously identified shall be reported immediately to the local planning authority. Development on the part of the site affected shall be suspended and a risk assessment carried out and submitted to and approved in writing by the local planning authority. Where unacceptable risks are found remediation and verification schemes shall be submitted to and approved in writing by the local planning authority. These approved schemes shall be carried out before the development is resumed or continued.
- 23) No development shall commence until a habitat enhancement and management plan, with reference to the measures set out in section 7 of the *Environmental Statement July 2013*, has been submitted to and approved in writing by the local planning authority. The plan shall be implemented as approved.
- 24) Skip loading or unloading operations undertaken within the site shall not take place outside of the proposed process building at any time.



RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial Review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS

The decision may be challenged by making an application for permission to the High Court under section 288 of the Town and Country Planning Act 1990 (the TCP Act). This new requirement for permission to bring a challenge applies to decisions made on or after 26 October 2015.

Challenges under Section 288 of the TCP Act

With the permission of the High Court under section 288 of the TCP Act, decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application for leave under this section must be made within six weeks from the date of the decision.

SECTION 2: ENFORCEMENT APPEALS

Challenges under Section 289 of the TCP Act

Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for leave to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

SECTION 3: AWARDS OF COSTS

A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

SECTION 4: INSPECTION OF DOCUMENTS

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the Inspector's report of the inquiry or hearing within 6 weeks of the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.