

**Case Name:** *Stop Portland Waste Incinerator v Secretary of State for Housing, Communities and Local Government & Ors* [2025] EWHC 777 (Admin) (02 April 2025)

**Full case:** [Click Here](#)

**Commentary:** This case was a statutory challenge to the Secretary of State's approval of an energy recovery facility ("ERF") on the Isle of Portland, Dorset, by local campaign group Stop Portland Waste Incinerator.

The challenge hinged on the compliance of the Decision Letter and Inspector's Report with the Bournemouth, Christchurch, Poole and Dorset Waste Plan (2019), and in particular Policy 4 which states:

*"Proposals for waste management facilities on unallocated sites will only be permitted where it is demonstrated that they meet all of the following criteria:*

*a. there is no available site allocated for serving the waste management need that the proposal is designed to address or the non-allocated site provides advantages over the allocated site;*

*b. the proposal would not sterilise, or prejudice the delivery of, an allocated site that would otherwise be capable of meeting waste needs, by reason of cumulative or other adverse impacts;*

*c. the proposal supports the delivery of the Spatial Strategy, in particular contributing to meeting the needs identified in this Plan, moving waste up the waste hierarchy and adhering to the proximity principle; and*

*d. the proposal complies with the relevant policies of this Plan.*

*...."*

Accordingly, the challenge was brought on three grounds:

- (1) The Decision Letter and Inspector's Report express no conclusion regarding the ERF's compliance with the Waste Plan and the consideration of unallocated sites under Policy 4. This either misinterpreted Policy 4, failed to give adequate reasons or irrationally applied Policy 4.

- (2) The Decision Letter and Inspector's Report contain material errors of fact relating to an alternative proposal for an allocated site at Canford which informed the assessment of the ERF proposal under Policy 4.
- (3) The Decision Letter and Inspector's Report compared the ERF proposals against the proposals for two allocated sites, when under Policy 4(a) they should have compared the sites themselves (rather than the proposals), and should have also considered all four allocated sites in the Waste Plan.

Ground 1 had been granted permission for statutory review; permission was sought again to proceed with Grounds 2 and 3.

On Ground 1, the Court construed Policy 4 following the guidance in *Tesco Stores Limited v Dundee City Council* [2012] UKSC 13 that planning policies allow "a measure of flexibility to be retained". The judgment sets out the ways in which Inspector had referred to Policy 4, and states that the Claimant had interpreted the spatial strategy in the Waste Plan too narrowly. The Inspector had given an adequate standard of reasons for his conclusions and the Claimant's criticisms of the approach were "forensic, rather than genuine". Therefore, Ground 1 did not succeed.

On Ground 2, the Court considered the alleged factual errors relating to the Inspector's assessment of the size, aviation concerns, and capacity of the Canford site. These points were found to either demonstrate the Inspector's judgment, rather than constitute errors, or, alternatively, they were secondary matters which would not have altered the overall outcome, even when considered cumulatively. Therefore, permission to apply for statutory review on Ground 2 was refused.

On Ground 3, the Court found that the Claimant had misinterpreted Policy 4, which did not require comparison with all four allocated sites. The Inspector had undertaken a comparative exercise in accordance with Policy 4, and "as an exercise of discretionary judgment" was entitled to consider both the site itself and the proposal currently before the local planning authority. Moreover, "no rational comparison can be made as to availability and ability to serve the relevant waste management need without reference to actual proposals or use in respect of an allocated site." Therefore, permission to apply for statutory review on Ground 3 was also refused.

*Case summary prepared by Tom Brooks*