

Case Name: *Stop Portland Waste Incinerator v Secretary of State for Housing, Communities and Local Government & Ors [2025] EWCA Civ 1405*

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Commentary: The Court of Appeal dismissed an appeal by Stop Portland Waste Incinerator ('the Appellant') against the decision of Lang J to reject the Appellant's application for statutory review of the Secretary of State's decision to grant planning permission to Powerfuel Portland Limited ('PPL'). The permission concerned a proposal for an energy recovery facility ('ERF') at Portland Port on the Isle of Portland, Dorset.

The narrow issue raised by this appeal was whether the reasons for approval given by the Secretary of State and Inspector in relation to Policy 4(c) of the Bournemouth, Christchurch, Poole and Dorset Waste Plan 2019 ('the Waste Plan') were adequate. Holgate LJ held that the Appellant's characterisation of the scope of Policy 4(c) was unduly narrow. Properly interpreted, the reasoning of the Secretary of State and Inspector substantially addressed the matters engaged by the policy. The Appellant's submission that opponents of the development do not know why they failed on this matter, or the implications of the decision for future planning applications, was held to be untenable.

Background

PPL applied to Dorset Council, as the waste planning authority ('WPA'), for permission to construct an ERF which would incinerate non-hazardous waste and thereby generate 15MW of energy for the national grid and potentially for ships berthed at the port. The ERF would treat 202,000 tonnes of waste per year. The WPA refused the application for landscape and heritage reasons, and because the site was not allocated in the Waste Plan.

On appeal, the Inspector recommended that permission be granted. The Secretary of State accepted this recommendation. The Appellant, which had been an active Rule 6 party at the inquiry, applied for statutory review of the Secretary of State's decision under section 288 of the Town and Country Planning Act 1990. At first instance, Lang J rejected arguments in relation to error of policy interpretation, irrationality and failure to give reasons. On appeal, only one aspect of the reasons challenge was pursued.

Legal Principles

Holgate LJ summarised four well-known principles which apply to failure to give reasons challenges.

(1) To be legally adequate the reasons for a decision need only provide conclusions on the principal important controversial issues, and not on every material consideration or matter raised.

(2) Reasons (a) must not give rise to a substantial doubt as to whether the decision-maker erred in law and (b) should enable unsuccessful opponents of the development proposed to understand how the policy or approach underlying the decision may impact upon future such applications.

(3) Decision letters should be read in a straightforward manner, recognising that they are addressed to parties well aware of the issues involved and the arguments advanced.

(4) A reasons challenge will only succeed if the party aggrieved can satisfy the court that it has genuinely been substantially prejudiced by the failure to provide an adequately reasoned decision.

Policy Framework

Policy 1 of the Waste Plan endorses the following underlying principles: (1) Facilities should contribute to 'moving waste up the waste hierarchy', which proceeds upwards from landfill to recovery (including energy recovery via incineration), recycling, reuse, and finally avoidance of waste; (2) Facilities should enable the WPA area to move towards self-sufficiency; (3) Facilities should adhere to the 'proximity principle' through being appropriately located relative to the source of waste.

Policy 3 identifies plots allocated for waste facilities. At the inquiry, the WPA and PPL agreed that only two were relevant, namely land at Parley and land at Canford Magna.

Policy 4 provides that facilities on unallocated sites may only be permitted where they meet 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.

Chapter 5 contains the Spatial Strategy. It lends support to the above underlying principles and the allocation of sites for waste management.

Reasons for Approval

The Inspector, whose reasons were accepted by the Secretary of State, compared the merits of the unallocated appeal site with those of the allocated Parley and Canford Magna sites. He noted that the Parley site is located in the Green Belt, could not cope with the waste needs set out in the Waste Plan, would cause landscape and heritage harm, and would not provide other benefits such as shore power.

The Inspector considered that the Canford Magna site would be 'obviously' inappropriate development on the Green Belt, which would 'massively reduce openness'. This harm

outweighed the fact that the Canford Magna site would likely better accord with the Spatial Strategy, due in part to its 'locational benefits'. Consequently, the Inspector concluded that the appeal site, which is not located in the Green Belt, has 'clear advantages over the allocated sites ... and as such, it complies with Policy 4'.

The Appellant submitted that whether the proposal would support the Spatial Strategy and comply with the proximity principle was a separate issue which required additional reasoning. Like the Inspector and the Secretary of State, the judge allegedly erred by treating the issue of appropriate waste management capacity as supplanting the application of the proximity principle. It was said to be insufficient for the Inspector to give reasoning in relation to Policy 4(a) of the Waste Plan but not Policy 4(c).

Analysis

Holgate LJ held that the Appellant's case failed to acknowledge the overlap between different parts of Policy 4. For instance, the need for additional waste management capacity is a consideration in applying criteria (a), (b) and (c). Similarly, the Spatial Strategy 'permeates' Policy 4, notwithstanding the express reference to it in criteria (c). The Spatial Strategy is reflected when considering whether a non-allocated site would perform better than an allocated site.

Holgate LJ also agreed with Lang J that the Appellant's interpretation of the Spatial Strategy focused too narrowly on the proximity principle, disregarding the plethora of other objectives which it promotes, including self-sufficiency. The relative weighting of these various objectives is a fact-sensitive exercise of discretion for the decision-maker.

Nevertheless, Holgate LJ found that the Inspector had 'plainly' applied the proximity principle when concluding that the proposal would lead to a reduction in waste miles relative to the existing situation, in which waste would continue to be moved to landfill and ERFs beyond Dorset. Moreover, in finding that the Canford Site was better located than the appeal site, the Inspector had applied the proximity principle. It was not unlawful for the Inspector to find that this policy consideration was outweighed by countervailing considerations, such as harm to the Green Belt.

Consequently, the Inspector and Secretary of State gave adequate reasons in relation to issues concerning Policy 4(c), the Spatial Strategy and the proximity principle. The Appellant's suggestion that opponents of the development do not know why they failed on those matters, or the implications of the decision for future planning applications, was held to be untenable.

Case summary prepared by Archie Hunter