



Town and Country Planning Act 1990 (as amended)

Planning and Compulsory Purchase Act 2004

The Town and Country Planning (Determination by Inspectors) (Inquiries Procedure)
(England) Rules 2000 (as amended)

PROOF OF EVIDENCE

ALAN POTTER

on behalf of London Borough of Richmond

Site: Arlington Works, 23 - 27 Arlington Road, Twickenham, TW1 2BB

LPA reference:18/2714/FUL

Appeal PINs reference: APP/L5810/W/20/3249153

Proof of Evidence of Mr Alan Potter *BSc (Hons), FCIWM, CEnv, UKELA.*

Introduction

1. My name is Alan Potter, elected Fellow of the Chartered Institution of Wastes Management, a Chartered Environmentalist, a qualified environmental auditor to the Institute of Environmental Management and a member of the United Kingdom Environmental Law Association. I am a founding partner of minerals and waste planning consultancy BPP Consulting LLP.
2. I have worked in the field of waste management planning all my professional career (34 years) including:
 - Central Electricity Generating Board advising on power station ash disposal and recycling routes;
 - East Sussex County Council & Environment Agency - Waste Regulation and Waste Planning Authority including county wide waste strategy;
 - Environmental Services Association; National Lead on Waste Planning matters including advising Government on development of waste policy;
 - Consultancy - prepare planning and permit applications for waste management facilities; research on behalf of the Royal Institution of Chartered Surveyors on the effectiveness of the waste planning system;
 - BPP Consulting - partner advising Waste Planning Authorities on the formulation of compliant waste plans including the six London Boroughs in the production of the West London Waste Plan through examination, having specific responsibility amongst other matters for production of the supporting capacity assessment report that identifies the safeguarded throughput of existing waste sites in the WLWP area.
3. I have been retained by the London Borough of Richmond to provide independent professional evidence concerning the application of policy to the release of a safeguarded waste management site. The evidence which I have prepared and provide in this Proof of Evidence is true. I confirm that the opinions expressed are my true and professional opinions, I have no conflict of interest and confirm that this Proof of Evidence has been produced with full cognisance of the rules relating to such matters adopted by the relevant professional institutions.

Proof of Evidence of Mr Alan Potter BSc (Hons), FCIWM, CEnv, UKELA.

Reason for Refusal 1

4. This Proof of Evidence solely addresses the first reason for refusal on the Decision Notice (U0069278) relating to the 'Loss of Designated Waste site'.

This states:

The proposed development, by reason of its complete loss of an existing safeguarded waste site and lack of satisfactory full and proper evidence to demonstrate there is satisfactory compensatory and equal provision of capacity for waste, in scale and quantity, elsewhere within the Waste London Waste Plan Area; would result in the unacceptable loss of land accommodating an existing waste manage(ment) use which forms an essential resource for dealing with all waste streams within the Waste Plan area. The scheme is therefore contrary to policy, in particular, policies 5.17 and 5.19 of the London Plan (2016), policy WLWP2 of the West London Waste Plan (2015) and LP24 of the Local Plan (2018).

The Policy Context & the Importance of Safeguarding Waste Management Sites

5. The principle of safeguarding London's waste management sites is established in the London Plan. This is on the basis that London strives towards achieving net self sufficiency in waste management capacity, meaning that the management capacity of the network of facilities provided is at least equivalent to the quantity of waste produced within London. This is expressed in the extant version of the London Plan (2016) as follows:

"5.73 The key objectives in terms of the spatial distribution of waste facilities within London, as set out in PPS10: Planning for Sustainable Waste Management, are that communities should take more responsibility for the management of their own waste (self-sufficiency), and that waste should be disposed of in one of the nearest appropriate installations (proximity). This means that waste planning authorities should achieve the maximum degree of self-sufficiency possible commensurate with their obligations for managing waste... ."

Proof of Evidence of Mr Alan Potter BSc (Hons), FCIWM, CEnv, UKELA.

6. Currently a greater amount of waste is being exported from London for management than is managed within London, indicating a gap exists between London's current capacity and required capacity. Prevention of loss of London's existing waste management capacity is therefore critical to the achievement of that goal. I note that the appellant raises the issue of the source of waste managed at the appeal site and address this point fully in paragraph 44 of this Proof of Evidence.

7. The London Plan (2016) [CDB2] articulates the need to safeguard existing waste management sites in the following terms:

‘POLICY 5.17 WASTE CAPACITY

...H If, for any reason, an existing waste management site is lost to non waste use, an additional compensatory site provision will be required that normally meets the maximum throughput that the site could have achieved....’

8. Further, given the site is managing hazardous waste the London Plan concludes that "...without sustained action there remains the risk of a major shortfall in the capital's (hazardous waste management) capacity" Policy 5.19 gives express protection of London's sites managing hazardous waste in the following terms:

‘POLICY 5.19 HAZARDOUS WASTE

Planning Decisions

...B Development proposals that would result in the loss of existing sites for the treatment and/or disposal of hazardous waste should not be permitted unless compensatory hazardous waste site provision has been secured in accordance with Policy 5.17H....’

9. Under the Planning and Compulsory Purchase Act 2004, London Borough local development documents are required to be ‘in general conformity’ with the London Plan.

Proof of Evidence of Mr Alan Potter BSc (Hons), FCIWM, CEnv, UKELA.

10. Recognising the importance of retaining the waste management capacity provided by existing permitted facilities in West London to meeting current and forecast waste management needs, the West London Boroughs¹ included policy WLWP 2 'Safeguarding and Protection of Existing and Allocated Waste Sites' within the Plan. This reads as follows (with explanatory text inserted):

"Land accommodating existing waste management uses in West London will be protected for continued use for waste management"²⁸ 2

This paragraph enunciates the principle of safeguarding of all land with existing waste management uses in West London. The footnote references how an existing waste management use is to be defined/understood when applying the policy.

"Existing sites which have been allocated as having the potential for capacity expansion by redevelopment (Table 5-1) and new sites with potential for development for waste management facilities (Table 5-2) are also (to) be safeguarded."

This paragraph reiterates the safeguarding of the particular existing waste sites identified as offering potential for expansion of capacity and introduces safeguarding of additional sites allocated for a waste use that are not currently existing waste uses.

"To ensure no loss in existing capacity, re-development of any existing waste management sites must ensure that the quantity of waste to be managed is equal to or greater than the quantity of waste for which the site is currently permitted²⁹ to manage, or that the management of the waste is being moved up the waste hierarchy." 3

This paragraph articulates the need for proposals to redevelop existing waste sites for further waste development to demonstrate how they will ensure that capacity is not lost or is provided at a level further up the waste hierarchy.

¹ The London Boroughs of Brent, Ealing, Harrow, Hillingdon, Hounslow and Richmond upon Thames. This includes the Old Oak and Park Royal Development Corporation area within the London Boroughs of Brent and Ealing.

² Footnote 28 reads "Existing waste management sites are those sites managing waste which are lawfully permitted to do so as set out in Appendix 2. The latest list of existing waste management sites will be found in Authority Monitoring Reports. Safeguarded existing permitted facilities and allocated sites will be shown on the Policies Maps associated with each Borough's Local Plan." See paragraph 42 of this Proof for further discussion.

³ Footnote 29 reads "'permitted' = granted planning permission".

Proof of Evidence of Mr Alan Potter BSc (Hons), FCIWM, CEnv, UKELA.

"Development for non-waste uses will only be considered on land in existing³⁰ waste management use, or land allocated in Table 5-2 if compensatory and equal provision of capacity for waste, in scale and quality, is made elsewhere within the West London Boroughs"⁴.

This paragraph articulates the need to provide compensatory capacity when seeking the release of land hosting an existing waste use for non waste development, providing guidance on the quantum and/or nature of capacity to be provided.

11. The inclusion of this policy in the WLWP [CDB3] also assured compliance with the requirement to be in general conformity with the version of the London Plan in force at the time, 2011 and the 2016 revision promoted through the Further Alteration to the London Plan, and clause H of Policy 5.17 and Policy 5.19 in particular. It is notable that the intention of safeguarding all existing waste sites, in line with the London Plan, was stated in earlier consultation draft versions of the WLWP. As part of the consultation on the WLWP, the appellant would have been given full opportunity to make representations regarding the inclusion of Arlington Works in the WLWLP as a safeguarded site. It is worth noting that representations were received in relation to a number of other waste sites within the West London Waste Plan area identified as being subject to plans for non waste development, and following assessment some sites that would have otherwise been safeguarded were released from this requirement via omission from the listing in Appendix 2 of the West London Waste Plan. This is consistent with the approach advanced in the 2019 Intend to Publish version of the London Plan [CDD1] which expressly states:

"9.9.2 Any proposed release of current waste sites or those identified for future waste management capacity should be part of a plan-led process, rather than done on an ad-hoc basis."

⁴ Footnote 30 reads "As stated in paragraph 5.14 the Quattro site is subject to HS2 safeguarding direction and therefore may be expected to be developed as an exception to this policy until 2024."

*Note to policy refers to "This includes the Old Oak and Park Royal Development Corporation area within the London Boroughs of Brent and Ealing".

Proof of Evidence of Mr Alan Potter BSc (Hons), FCIWM, CEnv, UKELA.

As explained later in this Proof of Evidence the appellant attempt to release the site during the formulation of the Richmond Local Plan was rejected.

12. The report of the Inspector examining the WLWP [CDE7] expressly identifies the need for the WLWP to articulate the objective of achieving net self sufficiency of provision within the West London Waste Plan area i.e. the combined area of the signatory Boroughs alone (p10) and not London as a whole, as well as recognising the contents of the Hazardous Waste Strategy for London (para 42, page 11) recommending modifications be made to the WLWP to address these concerns. The Inspector's conclusions therefore supported both the inclusion of the requirement for compensatory capacity to be provided within the West London Waste Plan area itself thereby maintaining the capacity counted towards achievement of net self sufficiency within the West London Waste Plan area, and the singling out of capacity at existing hazardous waste facilities within the West London Waste Plan area "to be monitored closely" as it contributes towards London's capacity to manage hazardous waste (paragraph 4.5.2 of the WLWP).

The Policy Tests to be Met

13. The policy test for qualifying compensatory capacity to override the general expectation that existing waste sites are safeguarded in perpetuity as set by Policy WLWP 2 is as follows:

"Development for non-waste uses will only be considered on land in existing³⁰⁵ waste management use, or land allocated in Table 5-2 if compensatory and equal provision of capacity for waste, in scale and quality, is made elsewhere within the West London Boroughs."

The following section sets out the type and quantity of compensatory capacity that would need to be provided to justify release of the application site from the safeguarding requirement of Policy WLWP2. That is to say, how the policy test set can be shown to have been met.

⁵ See footnote 4 of this Proof above for Policy footnote 30.

Proof of Evidence of Mr Alan Potter *BSc (Hons), FCIWM, CEnv, UKELA.*

The Nature, Type and Quantity of Compensatory Capacity to be Provided

14. The starting point for determining the compensatory capacity is the throughput set out in the BPP Consulting Report that assessed existing capacity [CDE8]. This assessment formed part of the adopted Plan evidence base and was subject to specific scrutiny by the Inspector during the course of the Examination. I was the principal author of that report and defended it at examination.
15. As capacity of a waste management facility is not always defined in the planning consent, it is often necessary to consider the peak annual input of waste to a particular facility as a proxy. This is presented in the Environment Agency Waste Data Interrogator (WDI), a compilation of waste input and output data of sites permitted to manage waste in England released by the Environment Agency that were operational in that particular year. If a site is not operational in any given year, its capacity may be assessed by reference to planning consents, any applicable environmental permit and historic input data.
16. Appendix 2 of the BPP report includes a table presenting a breakdown of capacity estimates for each operational site within the WLWP area. The input tonnages provided were taken from records provided by the Environment Agency Waste Data Interrogator (WDI) for waste inputs for 2011. These values were then adjusted to reflect the fact that the 2011 tonnage is unlikely to represent the maximum capacity and therefore an additional 20% was added. This method was subject to specific scrutiny at the Plan examination and was accepted by the Inspector having been confirmed by the Environment Agency. Reliance on historic input data to assess capacity is supported by the Intend to Publish version of the London Plan discussed in para 20 below.

Proof of Evidence of Mr Alan Potter BSc (Hons), FCIWM, CEnv, UKELA.

17. The appeal site is identified in Appendix 2 of the BPP Report as having the following capacity:

- WDI 2011 reported inputs - 10,165 tonnes
- Best Possible Capacity: 12,707 tpa based on assessment of Operator information and 2011 WDI input plus c20%. All input classed as hazardous waste.

18. It was on the above basis that Richmond Council officers identified the compensatory capacity as being 12,000 tonnes per annum of hazardous waste in pre-application discussions with the appellant.

19. The Officer Report on the application refers to Environment Agency data over the past three years showing an average input of 10,512.462 tonnes, with a peak input over that period of 13,403.92 tonnes in 2017. All waste received was reported as hazardous in the Environment Agency WDI.

20. The Intend to Publish version of the new London Plan is a material consideration in this determination. At paragraph 9.9.2, it expects safeguarded capacity to be taken as the maximum or peak throughput achieved over the last 5 years and so it is worth considering what the application of this approach would mean for this application. Since the production of the Officer Report, the Environment Agency has released the Waste Data Interrogator which includes data for 2019. Table 1 displays the quantity of waste managed at the site (the input) over a 5 year period.

Table 1 – Appeal Site Inputs reported in the WDI 2015-2019

	2015	2016	2017	2018	2019
Input (tonnes)	8,446	9,688	13,404	9,234	0

21. The zero value for 2019 reflects the fact the site ceased to operate in the last quarter of 2018.

Proof of Evidence of Mr Alan Potter BSc (Hons), FCIWM, CEnv, UKELA.

22. Given the 2017 peak value, use of the 12,000 tpa value from the BPP report (using 2011 data) does in fact underestimate the compensatory provision to be made the correct value to be used being c13,500 tpa. This is reinforced by the approach set out in the Intend to Publish version of the London Plan.
23. In its Statement of Case, the appellant asserts that the facility was declining in viability before its final closure in 2018, however the table above confirms that the peak input value over the 5 year period occurred in 2017 (13,404 tonnes), which represents a significant increase on previous years. Moreover, recent enquiries of the Environment Agency revealed that inputs for the final quarter of 2018 only amounted to 18 tonnes meaning that value shown for 2018 only covers the first three quarters of 2018 and yet the value was still as high as that seen in the full years of 2015 and 2016. This directly contradicts the appellant's claim of declining viability of the facility in its Statement of Case.
24. Based on the above the appeal site provides the following safeguarded waste management capacity:
- Hazardous waste recovery capacity of 13,500 tonnes per annum. Waste oil being classed as hazardous waste (*WLWP Hazardous Waste Assessment 27 February 2014 BPP Consulting [CDE9], Table 1 above & Appendix 2 Assessment of Existing Capacity And Apportionment*).
25. I note that the Waterman report at paragraph 6.1.1 suggests the quantum of compensatory capacity to be provided ought to be reduced to "...avoid drawing in waste from far and wide". However given the West London Waste Plan stated objective of net self sufficiency I consider there is no basis for such a reduction. Even if individual sites draw in waste from outside London, that is not a reason for reducing safeguarded throughput as the protection is of the site capacity itself and its ability to meet London's needs even if the waste managed at any particular time may not actually arise from London. As shown by Table 1, inputs to any particular site change from year to year as operators respond to the market, so the significance of a permitted use's contribution to overall capacity should therefore be distinguished from a particular operator's business activity. Moreover, were the site to fall under the control of a different commercial operator it might well deal with a greater

Proof of Evidence of Mr Alan Potter BSc (Hons), FCIWM, CEnv, UKELA.

proportion of waste arising from West London or London as a whole, if that were relevant to the case.

Compensatory Capacity Proposed by the Appellant

26. The report submitted in support of the original planning application ('*Waste planning policy considerations July 2018*' referred to as 'the Waterman Report') claims to have identified over 20,000 tonnes of 'unexploited hazardous waste capacity' to compensate for the loss of 12,500tpa of capacity at the Appeal site. The sites identified as providing this capacity in Table 6 of the report are listed below:

- Associated Reclaimed Oils - Royal Borough of Greenwich;
- Brent Oil Contractors - London Borough of Brent;
- Heathrow Airport Ltd - London Borough of Hillingdon; and
- Williams Environmental - London Borough of Newham.

27. The Officer's report for the application found the following:

"92. The submitted report claims that Brent Oil contractors are in the WLWP area and have around 1,978 tonnes of spare capacity on average, with which the LPA agrees. However, the other sites oil reclamation facilities are not within the WLWP area (Associated Reclaimed Oils and Williams Environmental). Furthermore, the Heathrow Airport Ltd. facilities in Cranford Lane, Hillingdon is a non-hazardous waste transfer station and is not considered as an appropriate site to absorb waste deposited for hazardous waste transfer by Sharpe's Oil Recycle Ltd."

28. It therefore went on to conclude that:

"93. In light of the above; it is not considered that the application identifies that there is sufficient capacity within the West London Waste Plan area to accommodate the change of use of the application site away from the existing waste management facility. The significant majority of unexploited capacity within the WLWP area identified within the submitted Waterman report is for non-hazardous construction, demolition and excavation waste management."

Proof of Evidence of Mr Alan Potter BSc (Hons), FCIWM, CEnv, UKELA.

29. I have considered the information presented in the supporting report produced on behalf of the appellant entitled 'Waste planning policy considerations' dated July 2018 [CDF43]. I concur with the findings in the officer report. In particular two of the four sites identified for potential compensatory capacity are located outside the WLWP area, and therefore clearly fail to satisfy the policy test of being provided within the Plan area. Whilst the report identifies two sites within the Plan area it does not demonstrate adequate capacity, either with respect to type of waste (Heathrow), or the quantum of available capacity (Brent Oil Contractors). Moreover, the Heathrow facility is not a commercial waste management site as it exists to transfer on-airport waste and so would not be available to receive waste managed at the Appeal site. Moreover I note the absence of any evidence to suggest that the capacity proposed as compensatory by the appellant would actually be available to manage the waste displaced, were the site to be released.
30. Review of EA WDI data indicates the appeal site is one of only four specialist waste oil management facilities in London, with the Appeal site, in its peak year of operation of 2017, managing the largest quantity of oil of all those facilities. It may therefore be regarded as a strategically significant facility serving an extensive catchment of industry and business. It is significant in this regard that the most current national assessment of capacity requirements for hazardous waste expressly identifies provision of management capacity for waste oils as a national priority [CDE10]. The safeguarded site's contribution towards meeting this need is expressly acknowledged in the assessment of hazardous waste capacity produced by BPP Consulting that forms part of the evidence base of the adopted WLWP [CDE9].
31. I note that the Waterman report makes reference to Paragraph 6.3.2 of the WLWP that forms part of the preamble to Policy WLWP 3 relating to the Location of Waste Future Development, rather than WLWP 2 the safeguarding policy. As one of the authors of the Plan, I can confirm that rather than amplifying the application of safeguarding as claimed, this preamble merely seeks to reiterate Policy WLWP 2. The use of the word "can" is intended to relate to the fact that the safeguarding requirement has been

Proof of Evidence of Mr Alan Potter BSc (Hons), FCIWM, CEnv, UKELA.

dealt with in the previous section. It is clear from any common sense reading of the policy wording, that use of the present tense "is made" means that compensatory capacity is to be available at the time of release, not some undefined point in the future. Notwithstanding the above, were the appellant to have identified appropriately located suitable capacity, which is not the case, I note that they did not confirm the actual availability of that capacity to provide the compensatory capacity for the waste that would be displaced. In the absence of that, they have failed to provide the necessary evidence to support the case for release.

Richmond upon Thames Local Plan (RuTLP)

32. The reason for refusal also cites non-compliance with LP24 of the Richmond upon Thames Local Plan adopted July 2018. This policy principally addresses waste management for all development but also includes a clause stating that *"Proposals affecting existing waste management sites, as well as proposals for new or additional waste management facilities, will be assessed against the policies of the West London Waste Plan (2015)".* Hence the Plan defers to the WLWP, and Policy WLWP2 prevails.
33. The commentary on policy LP24 confirms this approach in the following terms: *"6.5.6 The Council will apply the policies of the WLWP when dealing with applications affecting existing waste sites, such as the Central Depot in Twickenham, the Civic Amenity site in Townmead Road or any other sites with waste management or treatment facilities as identified in the WLWP. In addition, the policies of the WLWP will be used for assessing proposals for new or additional waste management facilities in the borough."*
34. A footnote to policy LP24 in related commentary clarifies how this policy clause is intended to apply: *"The existing waste management sites as set out in Appendix 2 of the West London Waste Plan were identified at a snapshot in time. This list can be revised. New waste sites, permissions and licences may be granted by the Council or Environment Agency. The Council carries out regular monitoring of existing waste sites, the results of which, including maps of operational sites, are published as part of the Authority's Monitoring*

Proof of Evidence of Mr Alan Potter BSc (Hons), FCIWM, CEnv, UKELA.

Report." This reflects the footnote to WLWP Policy 2 cited at paragraph 42 of this Proof of Evidence.

35. In this context it is worth noting that the appellant made representations at the Regulation 20 stage of the RuTLP's preparation concerning the appropriateness of, and justification for, including the Appeal Site as a waste management site. As a result the approach to Arlington Works was expressly considered at the Examination hearing. The Local Plan Inspector examining the RuTLP did not recommend that the Appeal Site be released from safeguarding in his Final Report of 26 April 2018 [CDE11]. Stating instead, at paragraphs 84 and 85 of his report:

"84 The Council has developed Policy LP 24 'Waste Management' in the context of the London Plan targets for waste and recycling and in the context of the West London Waste Plan which contains a suite of policies and a range of identified waste sites serving the Borough. An allowance for the effects of the policy has been made in the Whole Plan Viability Assessment which I consider adequate and I find the approach of the Plan in this regard to be consistent with national policy and in general conformity with the London Plan. The Council has suggested clarification to the policy and its supporting text which I consider necessary for reasons of legal compliance and to ensure effective implementation (MM12⁶).

85 Arlington Waste Works is a site that has a relatively small geographic area but is identified as a waste management site in the WLWP. I note the Council's recognition, in changes to the submitted Plan (MM12), that 'the existing waste management sites as set out in Appendix 2 of the West London Waste Plan were identified at a snapshot in time. This list can be revised'. As such the continued identification of the Arlington Works site is justified albeit the Council retains the flexibility to assess its retention through its monitoring processes. The submitted Plan is sound in this regard."

⁶ MM12 added the new paragraph after paragraph 6.5.6 reproduced within quoted paragraph 85 above.

Proof of Evidence of Mr Alan Potter *BSc (Hons), FCIWM, CEnv, UKELA.*

36. This demonstrates that the appellant is attempting to secure what it failed to achieve through the plan-making process. This is an approach that undermines the plan-led approach to release of such sites, as enunciated in the Intend to Publish version of the London Plan, reproduced in paragraph 11 of this Proof of Evidence.

Intend to Publish version of the London Plan

37. In December 2019 the 'Intend to Publish' version of the New London Plan was published. This was an update on the Draft London Plan (July 2019) whose policies are referred to in the officer's report. The Intend to Publish version carries more weight than the previous version, having taken into account the Inspectors' recommendations and progressed to the final stage prior to adoption. Whilst it is noted that the Intend to Publish version of the Plan is subject to ongoing exchanges between the Secretary of State and the Mayor of London, it is considered that the policies not requiring modification carry 'reasonable' weight and these include those relating to waste, and to the safeguarding of existing waste sites in particular.

38. It is notable that the Intend to Publish London Plan [CDD1] is more proscriptive on the release of existing waste sites than the previous (current) London Plan. Draft London Plan Policy SI 9 (Safeguarded waste sites) states that:

- a) Existing waste sites should be safeguarded and retained in waste management use.
- b) Waste facilities located in areas identified for non-waste related development should be integrated with other uses as a first principle where they deliver clear local benefits.
- c) Waste plans should be adopted before considering the loss of waste sites. The proposed loss of an existing waste site will only be supported where appropriate compensatory capacity is made within London that must at least meet, and should exceed, the maximum achievable throughput of the site proposed to be lost.
- d) Development proposals that would result in the loss of existing sites for the treatment and/or disposal of hazardous waste should not be permitted unless

Proof of Evidence of Mr Alan Potter BSc (Hons), FCIWM, CEnv, UKELA.

compensatory hazardous waste site provision has been secured in accordance with this policy.

e) Development proposals for the relocation of waste sites within London are supported where strategic waste management outcomes are achieved.

39. Furthermore, as quoted earlier in this Proof of Evidence, paragraph 9.9.2 of the Draft London Plan explicitly sets out that any waste site release should be part of a plan-led process, rather than on an ad-hoc basis.

The Area of the Safeguarded Site

40. I note that much has been made by the appellant about the area of land utilised for waste management to which safeguarding policy applies. I consider the site area to be an irrelevant factor in the consideration of whether the test in Policy WLWP 2 has been met or not, as it is the throughput that is safeguarded, not the site area.

41. The only reference to the site within the adopted West London Waste Plan is its listing in Appendix 2. This identifies the Arlington Oil Reclamation Facility, Twickenham as safeguarded for the purposes of Policy WLWP 2 with its capacity counted towards meeting the requirement for the management of waste subject to the London Plan apportionment. The area of the site subject to safeguarding is not defined within the Plan.

42. Footnote 28 to Policy WLWP 2 includes the following definition:

"Existing waste management sites are those sites managing waste which are lawfully permitted to do so as set out in Appendix 2. The latest list of existing waste management sites will be found in Authority Monitoring Reports. Safeguarded existing permitted facilities and allocated sites will be shown on the Policies Maps associated with each Borough's Local Plan. "

Hence, the entry in Appendix 2 is the starting point for determining the sites to which the safeguarding policy applies at any particular time. It is then necessary to reference the most current relevant Authority Monitoring Report (AMR) to understand the latest position.

Proof of Evidence of Mr Alan Potter BSc (Hons), FCIWM, CEnv, UKELA.

43. The most current AMR for LB Richmond [CDE12] covering the matter is that relating to Waste Sites Monitoring 01/04/2016 – 31/03/2017 published in October 2017. This confirms that the appeal site remains safeguarded.

Other Matters Raised by The Appellant

44. I also note that the appellant has raised the following matters: The fact that the site received waste from outside London; and, that the site was ranked low in the screening site assessment conducted in the earlier stages of development of the West London Waste Plan. I deal with each of these points below.

45. The fact that the site received waste from outside London has no bearing on the application of safeguarding policy. This is because the basis on which waste plan areas plan for waste utilises a principle referred to as "net self sufficiency". This acknowledges that waste travels across administrative boundaries, meaning that sites within each waste plan area rarely only manage waste produced within that particular plan area. Hence the planning objective is to ensure that capacity is provided to manage at least the equivalent to the quantity of waste produced within it. So it is entirely normal for waste to have travelled from outside the West London Waste Plan area to be managed within it. The principle of planning for net self sufficiency within West London is enshrined in the West London Waste Plan vision. It should be noted that the reference to net self sufficiency was added as Main Modification 1C on page 4 of Appendix A of the Inspector's report in direct response to the Inspector's observation at paragraph 34. of his report concerning the need to clarify the geographic context of the Plan [CDE11].

46. Given the site is managing hazardous waste, I now deal with the application of net self sufficiency to that particular waste stream in West London. The inward and outward flows of hazardous waste to and from the West London Waste Plan area were investigated in the WLWP Hazardous Waste Assessment 27 February 2014 BPP Consulting [CDE9]. The outcome of this study is summarised at paragraph 3.5.1 of the adopted WLWP as follows:

- *In 2012, West London produced just over 88,000 tonnes of which approximately 85% was exported for management*

Proof of Evidence of Mr Alan Potter BSc (Hons), FCIWM, CEnv, UKELA.

- *At the same time 20,000 tonnes was imported from outside the Plan area*
- *Overall the Plan Area achieved 40% net self sufficiency in 2012*

47. Policy WLWP1 of the adopted Plan includes provision for additional hazardous waste treatment capacity that contributes towards net self sufficiency in clause b of the section addressing non apportioned Waste, in the following terms:

"Non apportioned Waste:

Development of management capacity will be supported in principle that contributes towards net self sufficiency across the Plan area for...

*b. Hazardous waste treatment capacity that accords with any hazardous waste. (sic) "*⁷

This confirms that the pursuit of net self sufficiency for hazardous waste is an express goal of the adopted Plan, and given the significant imbalance in capacity identified, any loss of such capacity within the West London Waste Plan area for dealing with this waste stream ought to be resisted.

48. The second other matter relates to the ranking of the appeal site within the site assessment exercise undertaken during the development of the West London Waste Plan. In paragraph 4.46 of its Statement of Case the appellant refers to the Site Selection and Assessment Process- Summary Report prepared by BPP Consulting. The appellant states that this report ranked the appeal site poorly as a waste site and *"...highlighted capacity for waste at other sites within the West London Waste Plan area and wider London area which would compensate for any loss of the waste facility at the Appeal site, thereby complying with Policy WLWP 2."*

49. Having checked this report I can confirm that:

- there is no specific reference to the appeal site in the report; and
- the purpose of the report was to summarise the process by which the land proposed for allocation in the West London Waste Plan to meet the predicted shortfall in capacity. It is important to note that the projected

⁷ This should read: *"b. Hazardous waste treatment capacity that accords with any hazardous waste strategy, or similar, prepared by the Mayor of London."* as appeared on page 11 of Appendix A of the Inspector's report as Main Modification 3B [CDE11].

Proof of Evidence of Mr Alan Potter BSc (Hons), FCIWM, CEnv, UKELA.

capacity gap, is the need estimated to arise in future based on existing capacity and forecast need, and that the capacity at the appeal site was counted towards meeting that, hence its loss would increase the gap, potentially requiring additional land to be identified for allocation. That is to say, the land and sites identified in the report are over and above the capacity of existing sites towards which the safeguarded capacity of the appeal site contributed and cannot therefore be relied upon to provide compensatory capacity were they to be redeveloped; and

- there is no reference to compensatory capacity within the wider London area.

50.I therefore conclude that these other matters raised have no bearing on the outcome of the authority's original refusal, and should carry no weight in the determination of this appeal.

Areas of disagreement.

51.I note the following areas have been identified in the Statement of Disagreement in relation to the possible implications for a designated waste site:

- Whether the prevailing safeguarding policy requirement to provide compensatory capacity can be interpreted to allow such capacity to:
 - a. be located outside the West London Plan Area; and/or
 - b. deal with a different type of waste to that which it is intended to replace particularly when dealing with hazardous waste; and/or
 - c. offer significantly less capacity to that which it is intended to replace.
- Whether the prevailing safeguarding policy requires compensatory capacity to exist at the time release from safeguarding is sought.
- Whether the area of an existing waste site proposed for release is relevant to the application of the prevailing safeguarding policy.
- Whether current viability of an existing waste site is relevant to the application of the prevailing safeguarding policy.
- Whether suitability of an existing waste site for further waste development is relevant to the application of the prevailing safeguarding policy.

Proof of Evidence of Mr Alan Potter *BSc (Hons), FCIWM, CEnv, UKELA.*

- Whether the host Borough of a safeguarded waste site within the West London Waste Plan area is the sole determining authority to any application for release.

I provide observations on each of these points below.

52. With regard to the interpretation of the prevailing safeguarding policy requirement to provide compensatory capacity I consider any plain reading of the policy can only be interpreted as requiring such capacity to be:

- located within the West London Plan Area; and
- capable of managing the same waste to that it is intended to replace by means of a process that sits at least at the same level of the waste hierarchy; and
- offering at least the equivalent amount of capacity to that it is intended to replace.

53. With regard to the interpretation of the prevailing safeguarding policy requirement to provide compensatory capacity, I consider any plain reading of the policy can only be interpreted to require such capacity to exist at the time release from safeguarding is sought.

54. With regard to the interpretation of the prevailing safeguarding policy requirement to provide compensatory capacity, I consider any plain reading of the Plan and its evidence base can only be interpreted to apply to the throughput of each existing site and that the actual area occupied by such a facility is not directly relevant to application of the Policy. That is to say the sufficiency of compensatory capacity is not based on the land area of the site proposed for release.

55. With regard to the interpretation of the prevailing safeguarding policy requirement to provide compensatory capacity, I consider any plain reading of the Plan can only be interpreted to apply to any existing waste site regardless of its perceived viability. That is to say the application of policy is not conditional on the viability of a site. In that context I also note the observations in paragraph 23 of this Proof of Evidence in relation to the relatively high level of throughputs in the years immediately prior to the site's closure.

Proof of Evidence of Mr Alan Potter *BSc (Hons), FCIWM, CEnv, UKELA*.

56. With regard to the interpretation of the prevailing safeguarding policy requirement to provide compensatory capacity, I consider any plain reading of the Plan can only be interpreted to apply to any existing waste site listed in Appendix 2 of the Plan or any subsequent update in the Borough's AMR regardless of its perceived suitability for further waste development. That is to say the application of policy is not conditional on the suitability of a site for continued waste use.
57. With regard to the question of whether Richmond upon Thames Council's power to determine the application to which this appeal relates, is in any way fettered by the fact that the West London Waste Plan was produced on behalf of six London Boroughs, this is not supported by the fact that the Plan had to be adopted by each Borough Council, before it came into force. Hence, Richmond upon Thames Council's ability to approve or refuse the application is not determined by any response or lack of from the other Boroughs party to the development of the West London Waste Plan.

Summary

58. This Proof of Evidence sets out the case for Reason for Refusal 1 relating to failure of planning application 18/2714/FUL to have met the test for provision of compensatory waste management capacity set out in Policy WLWP 2 of the West London Waste Plan. It does so by explaining the Policy context and reasoning for inclusion of the Policy within the adopted Plan and explains the application of the relevant Policy test. It finds that the evidence submitted in support of the application failed to meet the test.
59. I have considered the type and quantity of compensatory capacity that would need to be provided to satisfy the policy test. This is by reference to the West London Waste Plan evidence base documentation that I was lead author of. This found that the site capacity initially safeguarded amounted to 12,707 tonnes per annum. Since all the waste managed was identified as hazardous, the capacity offered by the site was assessed as being for the management of hazardous waste.

Proof of Evidence of Mr Alan Potter BSc (Hons), FCIWM, CEnv, UKELA.

60. Given the throughput was assessed using 2011 data, I have updated this by reference to the 2015 to 2019 datasets presented in the Environment Agency Waste Data Interrogator. This shows that the peak throughput safeguarded through the Plan was actually exceeded by nearly 1,500 tonnes in 2017, and therefore the correct value for which compensatory capacity should be provided ought to reflect this. That is to say c13,500 tpa capacity.
61. I have then considered the proposed compensatory capacity identified by the appellant in its application documentation. I concur with the officer's report that due either to geographical location (2 sites being located outside the West London Waste Plan area), type of capacity (the Heathrow Airport site is not a waste oil treatment facility) or actual capacity (the surplus capacity at Brent Oil falls significantly short of the target amount) the application failed to provide the capacity required. Moreover I note the absence of any evidence to suggest that the identified capacity would actually be available to manage the waste displaced were the site to be released.
62. I have considered the points raised by the appellant on how factors such as suitability, viability and waste source might be taken into consideration but can find no other way of reading the safeguarding policy that would allow such matters to affect the requirement for compensatory capacity to be provided at the time of release. I also note that the policy position in the Intend to Publish version of the London Plan relating to the release of safeguarded waste sites makes no reference to such qualifying considerations either.

Conclusion

63. Having reviewed the evidence provided by the appellant against the prevailing policy WLWP2 of the West London Waste Plan I find myself in agreement with the findings of the Officer's report. I also find there are no material factors which would affect the application of the policy such that an alternative conclusion, that the proposal is consistent with Policy WLWP2 could sensibly be reached. Therefore, I conclude that the appellant failed to demonstrate that the relevant policy test, that would allow the release of the appeal site from safeguarding as a waste site for redevelopment as a non waste use, has been met.