
Appeal Reference:	2021/A0131
Appeal by:	Dargan Road Biogas Ltd. against the refusal of full planning permission
Development:	A centralised anaerobic digestion (CAD) plant to include a bunded tank farm, (6 no. digester tanks, 2 no. buffer tanks, 1 no. storage tank and associated pump rooms), biogas holder, biogas conditioning system, temperature control system, waste water treatment plant (WWTP), motor circuit control room building, hot/cold water recovery system, feedstock reception and digestate treatment building, product storage building, odour control system and associated tanks, emergency gas flare, back-up boiler, administration/office building, car parking, 3 no. weighbridges, fire water tank and pumphouse, pipelines to existing combined heat and power (CHP) plant engines, switchgear, earth bunding, 3 no. accesses to existing Giant's Park service road infrastructure and ancillary plant/site works
Location:	Lands to the north-west of existing Belfast City Council Waste Transfer Station at 2a Dargan Road, Belfast
Application Reference:	LA04/2019/1540/F
Procedure:	Informal Hearing on 12 th and 13 th January 2023
Decision by:	Commissioner Julie de-Courcey, dated 6 th March 2023

Decision

1. The appeal is allowed and full planning permission is granted, subject to the conditions set out below.
2. An Environmental Statement (ES) accompanied the planning application subject of this appeal. This was supplemented by addenda dated December 2019 and October 2020. As required by the Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2017 [the Regulations], I have taken into consideration all environmental information presented in relation to the planning application and appeal proposal in reaching my conclusions.

Claim for Costs

3. The appellant made a claim for costs against Belfast City Council (BCC). That claim is the subject of a separate decision.

Preliminary Matters

4. Notwithstanding that that its Planning Officers recommended approval of the proposal on 4 occasions, the Local Planning Authority's (LPA) corporate stance on the planning application subject of this appeal is set out in the two reasons for refusal on the decision notice issued by BCC on 27 September 2021.
5. The 5.15 hectare (ha) appeal site is part of 138 ha site that is subject of the North Foreshore Giant's Park Comprehensive Masterplan (CMP). The CMP was prepared by BCC in anticipation of closure of this former landfill site and following designation of the wider area as a mixed-use zoning in the draft Belfast Metropolitan Area Plan (dBMAP). The Plan required preparation of a CMP to set out the concept for the site, identify objectives and priorities and set out an appropriate mix of land uses. The CMP was published in 2009, after dBMAP in 2004 and approved by the former Department of the Environment Planning in January 2010.
6. A third party (TP) asserted that an assessment of the cumulative effects of the proposed development combined with existing, approved, planned and "*reasonably foreseeable*" for the overall CMP site (whether or not the subject of a current planning application) should have been carried out.
7. There was no evidence that the CMP was or should have been subject to assessment under The Environmental Assessment of Plans and Programmes Regulations (Northern Ireland) 2004. There was no indication that the planning applications in respect of either the existing Belfast Harbour Film Studios (BHFS) on the adjoining site or its approved phase 2 extension were required to consider the cumulative impact of existing, approved and development for which extant planning permission exists in addition to that planned within the overall site covered by the CMP but not yet subject of a planning application.
8. Reference was made to the Planning Inspectorate's (PINS) "*Advice Note Nine: Rochdale Envelope*" and "*Advice Note Seventeen: Cumulative effects assessment relevant to nationally significant infrastructure projects*" (NSIPs). Both publications are concerned with operation of the Planning Act 2008 that is intended to speed up the process for approving major new infrastructure developments. Aside from the issue of the weight to be given to that advice in this jurisdiction, the Planning Act 2008 as amended, identifies thresholds for what is considered a NSIP in England and Wales. The threshold for generating stations is lower in England than Wales but that is 50 megawatts (MW). At a generating capacity of 4.1 MW, the appeal proposal falls short of that so would not be considered a NSIP in that context. Accordingly, I am not persuaded that the guidance is applicable in this instance.
9. Pursuant to Regulation 11(2), Schedule 4 of the Regulations sets out matters for inclusion in an ES. Section 5 (e) requires a description of the likely significant effects of the development resulting from the cumulation of effects with other existing and/or approved development, taking into account any existing environmental problems relating to areas of particular environmental importance likely to be affected or the use of natural resources. That statutory requirement does not support the contention that consideration of cumulative impact should include proposed development that is not subject of a current planning application or that is "*reasonably foreseeable*".

10. It would be reasonable to assess the cumulative environmental impact of future proposed development within the overall CMP site together with existing and/or approved development in the context of any subsequent planning applications. This is not an instance where concerns about “*project splitting*” reasonably engage.
11. There was no evidence that advertisement or notification requirements imposed by planning or environmental legislation were not observed in respect of the application subject of this appeal; no such deficiencies are perceived. In that context, the contention that consultation on and publicity for the proposed development should have, as a minimum, matched the scope of that associated with the CMP, does not weigh against the current proposal.
12. The appellant may be BCC’s “*development partner*” but the proposal must still be considered in the context of planning law, policy and guidance. Therefore, little weight is attached to that contractual relationship between those parties.
13. The appointment of Giant’s Park Belfast Limited (GPBL) as a “*preferred developer*” in commercial negotiations with BCC as landowners or any property rights afforded to that company, confers little weight on a proposal or proposals that have yet to be subject of a formal planning application; nor does it create any presumption in favour of any such proposed development.
14. That the proposed development allegedly clashes with the vision for the site set out in BCC’s “*Expression of Interest (Development Brief)*” to tenderers, where there was no mention of the proposed CAD, is not germane to my consideration of this appeal. Its compatibility with surrounding land uses and the character of the area are separate, valid considerations that are assessed in this decision.

Reasons

15. The main issues in this appeal are:
 - Whether the proposed development is acceptable in principle;
 - Impact on the area’s environmental quality, amenity, character and appearance;
 - Compatibility with surrounding land uses;
 - Adequacy of the submitted environmental information (EI) including further environmental information (FEI) in the addenda to the ES; and
 - Whether the proposed development is likely to have direct or indirect significant effects on environmental assets.

Site and area

16. The appeal site lies to the north of Dargan Road, on low-lying ground adjacent to Belfast Lough, on reclaimed lands that are that are part of the North Foreshore or “Giant’s Park”. It comprises a former landfill whose use as such by BCC ended in 2007 when the site was capped and landscaped. It is predominantly flat and open in character but levels rise to the north where the landscape has a more undulating profile across the wider North Foreshore lands.

17. The immediate site context is as follows:

- To the south-east of the site is Dargan Road Waste Transfer Station that the appellant advised is licensed to accept 165,000 tonnes per annum of non-hazardous waste. To its north is an existing combined heat and power (CHP) engine compound. The appellant advised that this was installed as part of a landfill gas management system that originally comprised 5 no. CHP engines. As the supply of landfill gas depleted, only 2 are now used to generate electricity. The proposed development will use the 3 remaining CHP engines to generate heat and electricity from biogas;
- To the north-east of the appeal site is Belfast Harbour Film Studios (BHFS) [phase 1]. Phase 2 of this development has been approved to the south of phase 1 and to the east of the appeal site;
- To the south of Dargan Road are a variety of industrial and commercial facilities;
- Dargan Road is the main access to Belfast Port and connects to the M2 motorway at Fortwilliam Roundabout. It comprises a 4-lane dual carriageway. Two “spine” roads lead northwards off Dargan Road with a link between the two. These roads adjoin 3 of the appeal site’s 4 boundaries; and
- The nearest residential properties are more than 0.5km from the appeal site in the Fortwilliam area to the west with the NI Railway line and M2 motorway located in the intervening landscape.

18. Chapter 2 of the ES provides a more detailed description of the site including plans for redevelopment of the remainder of Giant’s Park. All this evidence has been taken account of in assessing the proposal’s compatibility with its environs.

Proposal

19. The proposal is for a Centralised Anaerobic Digestion (CAD) plant that would power the 3 no. existing CHP engines with an installed capacity 4.1 MW. Allowing for annual maintenance, the gas engines are expected to export 4.1 MW of electricity for 8,000 hours per year (around 91% uptime) giving a total electricity exportation of 32,800 MWh/per annum (pa) from up to 99,999 tonnes pa of organic feedstock.

20. Chapter 3 of the ES sets out a detailed description of the proposal, the built elements of the proposed facility and how these integrate into the processes that would take place on site. It advises on: feedstock delivery; feedstock reception; pre-treatment; AD; biogas collection; piping of biogas to the 3 existing CHP engines located to the east of the site, across the internal access road; post-digestion; waste water treatment plant; odour control system; plant design and abatement systems; the individual elements of the proposed development; landfill gas extraction system; proposed plant operations; and plant construction. In addition to the brief description of the processes set out in the next paragraph, all of this evidence has been taken account of in assessing the proposal’s environmental impact.

21. The facility has primarily been designed to process two main feedstock types: organic fine fraction of Municipal Solid Waste (MSW) i.e. food waste; and Source Separated Organic Waste (SSO) i.e. brown bin (food/garden) waste. The feedstock types would be processed in physically separate process lines to ensure no cross-contamination between the waste streams, The plant would accept up to 49,999.5

tonnes pa per process line. During the AD process micro-organisms would break down the biodegradable material, in the absence of oxygen in an enclosed system. The process produces a methane-rich biogas and compost-like material known as digestate. The existing 3 no. CHP engines would convert the biogas into heat and electricity. Part of the generated electricity would be used to power the AD plant with the remainder exported to the national grid; the correspondent proportions were not available. An export meter is already in situ, adjacent to the existing CHP engines, to facilitate export to the grid. The heat would be captured and used within the plant for, amongst other things, heating the digestion tanks and drying the digestate.

22. The EI says that it is expected that each process line would produce between 5-8,000 tonnes pa of digestate. This would vary dependent on the quality of the input feedstock. However, the volume of output would be reduced by pre-treatment (screening out unsuitable materials) and drying after the AD process. Subject to the digestate being produced using only those source-segregated input materials listed within the Anaerobic Digestate Quality Protocol endorsed by Northern Ireland Environment Agency (NIEA), the appellant advised that outputs from AD would normally be regarded as having ceased to be waste. The dried digestate from SSO waste would be processed and bagged on site as a fertiliser. Following thermal drying, the digestate from MSW organic fines would be disposed to landfill off-site.

Scoping

23. Regulation 5 (2) of the Regulations requires that the environmental impact assessment shall identify, describe and assess in an appropriate manner, in the light of each individual case, the direct and indirect significant (*my emphasis*) effects of the proposed development. A TP highlighted that some of the topics identified by BCC in its scoping opinion, in accordance with Regulation 8 (1) (b) of the Regulations, had not be addressed by the EI as required by Regulation 11 (3) (c). Chapter 4 of the ES dealt with “*ES Screening and Scoping*”. At paragraphs 4.16 - 4.17 inclusive and 4.37 – 4.39 inclusive, the appellant persuasively explained why those issues were not considered further. This was supplemented in their letter to BCC of 20 April 2020. Therefore, although the full range of issues subject of the scoping opinion were not pursued in individual chapters, the appellant addressed them; and consideration of them was not omitted. For the reasons given in the appellant’s evidence, none of the matters cited by the TP could reasonably be argued to result in potential significant effects given the site’s context and its former use. Accordingly, the EI is not deficient in that respect.

Local Development Plans

24. Section 45 (1) of the Planning Act (Northern Ireland) 2011 requires that regard must be had to the Local Development Plan (LDP), so far as material to the application, and to any other material considerations. Where regard is to be had to the LDP, Section 6 (4) of the Act requires that the determination must be made in accordance with the plan unless material considerations indicate otherwise.
25. In 2017, the purported adoption of the Belfast Metropolitan Area Plan 2015 (BMAP) was declared unlawful by the Court of Appeal. Therefore, although past their stated

end date, the Belfast Urban Area Plan 2001 (BUAP) and the Belfast Harbour Local Plan 1990-2005 (BHLP) are the statutory development plans for the area in accordance with the Schedule to The Planning (Local Development Plan) Regulations (Northern Ireland) 2015 as amended. A further consequence of the judgement is that the draft Belfast Metropolitan Area Plan (dBMAP), published in 2004, is a material consideration in the appeal.

26. In the BUAP the site is unzoned land within the development limit of Belfast. The BHLP includes the site within an extensive zoning for Industry and Commerce/ Nature Conservation/ Open Space (Map 4), as part of Proposal IC1. Proposal NC3 is that the North Foreshore will be developed for a mixture of nature conservation, open space, industry and commerce. What was meant by "*Industry and Commerce*" was not specified. The Plan was adopted in 1991 and Article 2 of The Planning (Northern Ireland) Order 1991 did not define the terms "*industry*", "*industrial*" or "*commerce*". The proposed use does not fall within any of the classes within the Schedule to the Planning (Use Classes) Order (Northern Ireland) 1989 nor was it included in Article 3(5) thereof as a *sui generis* use. In that context, the proposed use of the appeal site comes within the broad, undefined remit of "*Industry and Commerce*" as given their everyday meaning. The principle of the proposed development is consistent with both statutory development plans.
27. Policy IC3 of the BHLP says that the Department will endeavour to improve the quality of new industrial development through the encouragement of better design and finishes of buildings and the use of landscaping. Policy ENV1 requires landscape proposals to be appropriate to their location within the harbour area.
28. Map 3/001 – Belfast Harbour Area of the dBMAP shows the appeal site within the 47.4 ha Zoning BHA 07 Employment/Industry North Foreshore that is subject to 8 no. Key Site Requirements (KSRs). The first 2 of those relate to the principle of the proposed development. The first says that development shall only include 6 uses one of which is waste management facilities. The 2nd KSR says that development of the site shall only be permitted in accordance with an overall comprehensive masterplan to be agreed with the Department outlining the design concept, objectives and priorities for the site. The North Foreshore Giant's Park Comprehensive Masterplan (CMP), referred to in paragraph 5 of this decision, was subsequently published. Pending the CMP, dBMAP gave no indication of where permitted uses would be accommodated within the overall site.
29. The CMP's Location Map showed the site approximately occupied by BHFS, BCC Waste Transfer Station and the existing CHP engines as "*ARC 21 lands for waste management facilities*". The remainder of the area to the west of that annotation was labelled "*Environmental Resource Recovery Park*" with "*Public Open Space*" to the north of both areas. The Zone Diagram and Schedule of Accommodation divide the overall site into 15 zones. The appeal site seemingly comprises Zones 6 and 8. The 3 ha Zone 6 is for logistical warehousing, depending on demand and the 1.2 ha within Zone 8, the southern end of the appeal site, for phased development initially temporary Roads Service Park & Ride (5 years) (phase 1), later logistical warehousing. The "*ARC 21 waste management facilities*" occupied Zone 15 comprising: the existing waste transfer station; proposed organic composting facility; and landfill gas generation facility.

30. The Commission's report on the Public Local Inquiry (PLI) into dBMAP recommended that Zoning BHA 07 and neighbouring BHA 19 – Open Space Lands on the North Foreshore adjacent to the M2 Motorway be deleted and replaced by a new mixed-use zoning with consequent amendments to the wording of the 1st and 2nd KSRs. BMAP included this recommendation; and the appeal site is part of the 127.2 ha Zoning BHA 05 Mixed Use Site North Foreshore, shown on Map No. 3/001 – Belfast Harbour Area. The uses permitted by the 1st KSR included waste management and recycling facilities and all 4 Class B industrial and business uses as specified in the Planning (Use Classes) Order (Northern Ireland) 2004. As with the 2004 draft, the 2nd KSR says that development of the site shall only be permitted in accordance with an overall comprehensive masterplan to be agreed with the Department outlining the design concept, objectives and priorities for the site. Whilst the CMP was published before the Commission's report issued, it post-dated close of the PLI. Given that BMAP had been subject to public consultation and PLI, more weight is attached to it than dBMAP.
31. The proposed use is consistent with the 1st KSR of BMAP Zoning BHA 05. In the intervening period since publication of the CMP, Arc 21 sought planning permission in respect of an alternate site and the portion of Zone 15 not occupied by the waste transfer station and CHP engines has been developed by BHFS, with phase 1 operational and phase 2 subject of extant planning permission. Thus there is no specifically earmarked provision for additional waste management within the CMP. Zone 4 to the north-east of the appeal site that is to be part of the 2nd phase of the "resource recovery village" was said to be a possible commercial waste management facility.
32. The first sentence of the wording of the 2nd KSR is permissive where the proposal is in accordance (*my emphasis*) with the CMP – not in general accordance/conformity or broad compliance. As the waste management and recycling use was shown on Zone 15 and not Zones 6 and/or 8, the proposal offends that KSR.
33. There is no indication that BMAP will be adopted; on the contrary there is no evidence that it will not. However, that: the Department for Infrastructure (DfI) has issued a Direction that BCC's draft Plan Strategy (dPS) be adopted subject to Modifications specified therein; and the report on the independent examination on the Lisburn & Castlereagh City Council dPS has been forwarded to DfI, suggests that it will not. However, given its advanced stage in the development plan process, significant weight is given to it.
34. BCC asserted that loss of this site for logistical warehousing and displacement of associated potential jobs would be at odds with BMAP's BMA Employment Strategy that seeks to sustain balanced economic growth and job creation. Apart from the fact that the proposed development would generate direct and indirect employment during both its construction and operational phases, no further precise detail was given as to how it would be offended other than those concerns about displacement. There was no indication of: a shortfall in provision of a generous and continuous supply of land for employment uses; an estimate of the likely number of jobs displaced etc that would make retention of this site for more labour-intensive use that the proposed CAD vital to realisation of the Employment Strategy. Indeed, BCC said that the latest evidence gathered as part of the LDP process did not identify an

undersupply of employment land. The evidence BCC tabled in this respect invited comparison to the GPBL pre-application proposal with reference to deprivation indices and statistics relating to demography and economic activity in North Belfast; but was not persuasive of the point being pursued. Moreover, the alternative use within Zone 4, for a possible commercial waste management facility, specifically provides for such displacement within the overall site subject of the CMP. At any rate, the consideration of displacement needs to be looked at in a more strategic context if the concern relating to the BMA Employment Strategy were to be persuasive; the site subject of the CMP and Zoning BHA 05 is only one element of that wider picture.

35. The CMP and BMAP identify waste management and recycling as acceptable within the overall site subject of Zoning BHA 05. The former did not stipulate that there was need for a waste management facility within the site subject of the CMP, it was merely deemed acceptable in principle. Neither was there a specified requirement that a location-specific case for need would have to be met over and above applicable regional policy. BMAP did not identify waste management and recycling as suitable uses within Zoning BHA 05 only if promoted by Arc 21; again, they are considered acceptable in principle. However, with the material change in circumstances regarding Zone 15 in the 13+ years since publication of the CMP, there is no definitively earmarked site on which that use could be accommodated.
36. Phases 1 and 2 of the BHFS were granted planning permission on Zone 15 of the CMP despite being a *sui generis* use that did not accord with either the 1st or 2nd KSR of BMAP Zoning BHA 05. BCC's Planning Officers addressed this in their report of 24 August 2021 to the Planning Committee in respect of the application subject of this appeal at paragraphs 3.4, 3.5 and 3.7. The following noteworthy points are taken directly from that report as opposed to being my analysis of the issues:
 - The agreed CMP is conceptual and it is unclear from the document how definitive the spatial configuration of uses across the zoning is. In any event, greater weight should be afforded to the Zoning BHA 05 itself as the CMP is a subordinate policy document. Moreover, it was published in 2009, does not reflect the planning permission granted for BHFS (phase 1) and is arguably outdated;
 - When planning permission was granted for BHFS phase 1, the Planning Committee accepted the Case Officer report that advised that the proposal "*conformed in principle*" with Zoning BHA 05 in recognition of the broad zoning of the land for employment uses;
 - The Planning Committee did not grant permission on the basis that there was no longer a requirement for waste management facilities; and
 - BCC's decision to grant planning permission for BHFS on land assigned for Arc 21 waste management facilities in the CMP establishes the principle of it taking a flexible approach to zoned uses under Zoning BHA 05. The planning process often has to be reactive to changing circumstances on the ground.

37. BCC said that the reason that BHFS were granted planning permission contrary to the CMP was based on the “*considerably compelling economic case around the significant investment and job creation that the film studios would bring to the city*”. In considers that the appeal proposal would have much less economic benefit in this regard. Albeit that no evidence was given as to the comparative value of the BHFS development, BCC makes the salient point that each proposal must be considered on its own merits. That said, apart from the relative weight attached to each proposal’s economic benefit, it is difficult to distinguish the analyses of the proposal for phase 2 of BHFS from the current scheme in terms of the provisions of the CMP and BMAP Zoning BHA 05; both were considered concurrently, yet a more liberal interpretation of BMAP policy seems to have been applied to the former.
38. The proposed development would make use of 3 of the existing CHP engines, secure redevelopment of the former landfill site and yield significant associated environmental, economic and social benefits, identified in paragraph 58 pf this decision. Account has also been taken of the regional policy and legislation set out below in paragraphs 36 – 38 inclusive. On those bases, even if primacy were accorded to BMAP rather than the statutory LDPs, the material considerations to which significant weight is attached would be sufficient to outweigh the presumption in favour of development in accordance with the LDP.
39. Whilst BCC’s dPS is a material consideration, it has limited weight until adopted. Its Policies W1 – Environmental impact of a waste management facility and W2 – Waste collection and treatment facilities largely reflect Polices WM1 Environmental Impact of a Waste Management Facility and WM2 Waste Collection and Treatment Facilities of Planning Policy Statement 11: “*Planning and Waste Management*” (PPS 11). BCC’s concern related specifically to criterion b. of Policy W1 of its dPS that mirrors the 2nd bullet point of Policy WM1 of PPS 11 “Planning and Waste Management (PPS 11), which will be considered in due course. It is noted that Policy EC1 – Delivering inclusive economic growth includes clean technology within the business sectors with strong growth potential whose development will be supported subject to normal planning considerations. BCC considered that the proposal fails that test given its concerns about incompatibility of the proposed development with land uses in the area.
40. BCC’s LDP will be the spatial articulation of its Community Plan “*The Belfast Agenda*” that, despite its statutory basis and fundamental relationship with the LDP is not, of itself, a yardstick against which to assess this proposal. Pending adoption of the LDP, little weight is accorded to its provisions.
41. For all the above reasons, BCC’s second reason for refusal is not sustained.

Regional Policy

42. The Regional Development Strategy sets out wider strategic policy relevant to the proposal in RG5: Deliver a sustainable and secure energy supply and RG 10: Manage our waste sustainably.

43. In December 2021 the Department for the Economy (DfE) published the NI Energy Strategy “*The Path to Net Zero Energy*”. Of the three targets, two are particularly pertinent to this proposal:
- Renewables: Meet at least 70% of electricity consumption from a diverse mix of renewable sources by 2030; and
 - Green Economy: Double the size of our low carbon and renewable energy economy to a turnover of more than £2 billion by 2030.
44. Thereafter, Section 15 Climate Change Act (Northern Ireland) 2022 increased the renewables target for 2030 to 80%. There was no rebuttal of the appellant’s evidence that, for the 12 month period April 2021 to March 2022, 43.8% of total energy consumption in NI was generated from renewable sources.
45. The Strategic Planning Policy Statement for Northern Ireland “*Planning for Sustainable Development*” (SPPS) sets out the transitional arrangements that will operate until such times as the local Council adopts a Plan Strategy for the whole of the Council area. As no Plan Strategy has been adopted for the BCC area, the SPPS and the retained Planning Policy Statements (PPSs) apply. These include: PPS 2: “*Nature Conservation*”; PPS 11; and “PPS18 “*Renewable Energy*”. Although not cited in the SPPS, the Department’s update on extant planning guidance prepared by the Department of the Environment, published on 18 October 2019 included Draft Supplementary Planning Guidance to PPS 18 “*Renewable Energy*” Anaerobic Digestion (AD).

PPS 11

46. PPS 11 sets out the regional planning policies for the development of waste management facilities. Having considered the proposal in the context of Policy WM2 Waste Collection and Treatment Facilities, BCC had no issue with need for the proposed facility. However, as it remained a TP concern, it is material in determination of this appeal. Policy WM2 states that proposals for the development of a waste collection or treatment facility will be permitted where 4 criteria are met.
47. Criterion (a) requires that there is a need for the facility as established through the Waste Management Strategy (WMS) and the relevant Waste Management Plan (WMP). The proposal is consistent with the wider aims of waste management policy (established through the WMS and WMP) in that the AD process moves waste up the hierarchy from disposal to recycling and recovery, diverting organic waste from landfill. Noted is the appellant’s unrebutted verbal evidence that the need for the facility is made more acute by virtue of: Mullaghglass Quarry not taking municipal waste: the Arc 21 incinerator has been refused planning permission; and Kilroot waste incinerator is subject of an on-going judicial review.
48. By virtue of a November 2013 update on PPS 11 following publication of the revised WMS “*Delivering Resource Efficiency*”, Best Practicable Environmental option (BPEO) is no longer a material consideration in the planning process so criterion (b) of Policy WM 2 is not applicable.

49. Criterion (c) requires that the proposed facility complies with one or more of 5 locational criteria. The appeal site is a former landfill site and the proposal would bring previously developed, derelict or contaminated land back into productive use. Thereby it would satisfy two of the criteria. It is also located within an industrial or port area: whether it is of a character appropriate to the development remains to be considered. However, as at least 2 of the criteria are satisfied, the proposal complies with criterion (c).
50. Criterion (d) requires that 5 further criteria are satisfied. The proposed development would meet at least 4 of those for the following reasons:
- The appeal site adjoins the M2 motorway and Dargan Road is the main access route to the Port of Belfast;
 - As set out in Chapter 3 of the ES, the sorting and processing of waste would be carried out within a purpose-built facility;
 - On the basis of the EI and input of statutory consultees to the decision-making process, there is no persuasive evidence that the built development associated with the proposed methods of handling, storage, treatment and processing of waste is not appropriate to the nature and hazards of the waste(s) concerned; and
 - The proposal would generate heat and electricity.

The 5th criterion requires that the proposed development would not result in an unacceptable adverse impact that cannot be prevented to appropriately controlled by mitigating measures. This consideration is concluded on later in this decision.

51. There is no planning policy requirement that the decision-maker investigate: contractual surety of the supply of waste; or the proposal's commercial viability. Nevertheless, on the basis of the appellant's rebuttal of TP concerns raised in respect of a raft of such matters and BCC's Planning Officers' objective assessment of that evidence, I note that those concerns did not weigh against the proposal when recommendation to approve the planning application was made to their Planning Committee on 20 April 2021. I concur with that analysis, which was thorough, considered and robust. Accordingly, little weight attaches to the TP concerns in those respects.
52. Policy WM1 Environmental Impact of a Waste Management Facility of PPS 11 requires that proposals for their development of waste management facilities will be subject to a thorough examination of environmental effects and will only be permitted where it can be demonstrated that all of 12 listed criteria are met. BCC's concerns related to the 2nd and 9th criteria, in part, whereby the proposal is designed to be compatible with the character of the surrounding area and adjacent land uses; and the types of waste to be treated and the proposed method of disposal or treatment will not pose a serious environmental risk to air resources that cannot be prevented or appropriately controlled by mitigating measures. As TP concerns about impact on water and soil resources are no longer being pursued, in addition to the identified criteria, matters encompassed in the 1st and 3rd criteria must be considered. This shall be done in due course.

53. In the interim it is noted that, in respect of “*Compatibility with Adjacent Development*”, the justification and amplification text to Policy WM1 says that it is not always necessary or appropriate to separate waste management facilities from residential or other sensitive uses, provided that they will not cause detriment to amenity by reason of noise, dust or noxious emissions. It adds that development will not be restricted solely because it differs from the predominant land use in the locality. This echoes legacy BCC’s vision at page 17 of the CMP where it identified the North Foreshore Giant’s Park site as presenting it with a unique opportunity to transform a former landfill site into an area where economic development, waste management and open space can co-exist in a way that creates jobs, facilitates future waste management and provides a valuable open space resource to create a better Belfast.
54. In respect of the BCC Waste Transfer Station to the south-east of the appeal site, there was no suggestion that the proposed development would be at odds with Policy WM5 – Development in the vicinity of Waste Management Facilities. The submitted contention was that account should be taken of it in the context of the proposed leisure-led, mixed use development at North Foreshore. The appeal proposal may have implications for that planned development and, if Policy WM5 still applicable when any future planning application is being considered, would be a material consideration in its determination if planning permission for the CAD is forthcoming. However, it is beyond the remit of this appeal to consider the implications of Policy WM5 for that pre-application proposal in the context of the development currently being considered.

PPS 18

55. PPS18’s aim (consistent with that of the SPPS) is to facilitate the siting of renewable energy generating facilities in appropriate locations in order to achieve renewable energy targets and to realise the benefits of such energy. Both documents set out a qualified presumption in favour of renewable energy development unless they would have unacceptable adverse effects which are not outweighed by the wider environmental, economic and social benefits of the development. In relation to such benefits, Policy RE1 of PPS18 advises that they be given “*significant*” weight in determining an application. However, paragraph 6.225 of the SPPS says that they be given “*appropriate*” weight. In accordance with paragraph 1.12 of the SPPS, appropriate weight will be given to those considerations.
56. Policy RE 1 Renewable Energy Development says that development that generates energy from renewable resources will be permitted provided the proposal, and any associated buildings and infrastructure, will not result in an unacceptable adverse impact on: (a) public safety, human health, or residential amenity; (b) visual amenity and landscape character; (c) biodiversity, nature conservation or built heritage interests; (d) local natural resources, such as air quality or water quality; and (e) public access to the countryside. Of those, BCC’s and TP concerns relate to: the public safety and human health elements of criterion (a); criterion (b); and local natural resources, such as air quality that is the bailiwick of criterion (d). These considerations shall be weighed in due course.

57. In respect of a CHP scheme, Policy RE 1 says that proposals need to demonstrate that the benefits of the scheme outweigh the need for transportation and an end user is identified. The Best Practice Guidance (BPG) to PPS 18 says at paragraph 3.3.2 that acceptable sites for CAD facilities handling large quantities of MSW are likely to include those in close proximity to a waste transfer station. As already set out, the proposal would utilise existing infrastructure in the form of the 3 no. CHP engines within the appeal site, which is located within an industrial/commercial area that includes the BCC Waste Transfer Station to the south-east. Given the site's location within an established industrial/commercial area, it could be advantageous from both an environmental and commercial point of view to locate close to potential customers. This element of policy is satisfied.

Environmental, Economic and Social Benefits

58. The appellant's evidence, principally at Chapters 13 and 14 of the ES, is that the proposed development would yield environmental, economic and social benefits including:
- With a capital spend of around £40m, it would create employment during the construction phase (213 direct per month & 141 indirect jobs over an assumed 24 month period) and its operation (22 direct & 40 indirect jobs);
 - Generation of £34.4m of Gross Value Added during the construction phase (direct & indirect) and £7.7m pa during operation (direct & indirect);
 - An annual rates payment of up to £121,000;
 - Contribution to climate change measures required in energy and waste management policy;
 - The generation of low-carbon, renewable energy (see "Proposal" section above) and production of fertiliser from local organic waste material;
 - Contribution to renewable energy targets and reduction in reliance on fossil fuels over an operating life-time of approximately 25 years;
 - Reduction in greenhouse gas emissions and pathogens;
 - Redevelopment of the former landfill site; and
 - Potential to attract other industrial/business uses to the North Foreshore who seek to avail of the renewable heat and energy that the facility will generate.
59. A Statement of Authority is contained within both chapters identifying the author(s), their credentials, membership of professional bodies and experience. There is no reason to doubt their objectivity. BCC's Economic Development Unit advised that the approach and methodology that were applied in determining the proposal's economic impacts are robust, having employed well-recognised models and assessment tools. Having objectively considered the EI and this opinion, there is no persuasive evidence that the forecasts are over-optimistic.
60. When taking into account the wider environmental, economic and social benefits presented, it is considered appropriate to attach significant weight to these considerations.

PPS 4

61. By virtue of Article 3 (4) (o) of The Planning (Use Classes) Order (Northern Ireland) 2015 the proposed use is *sui generis*. The Preamble to Planning Policy Statement 4: “*Planning and Economic Development*” (PPS 4) says that it does not provide policy for waste disposal or waste management facilities, which are dealt with in other PPSs. However, it adds that the policy approach and associated guidance contained within PPS 4 may (*my emphasis*) be useful in assessing proposals for other *sui generis* employment uses. The first reason for refusal refers to Policies PED 8 and PED 9 (a) of PPS4.
62. Criterion (a) of Policy PED 9 General Criteria for Economic Development of PPS 4 is concerned with the compatibility of a proposal for economic development with surrounding land uses. Although specifically concerned with waste management facilities, the second criterion of Policy WM 1 of PPS 11, addresses the same concern. Policy PED 8 Development Incompatible with Economic Development Uses gives rise to largely the same considerations as the 2nd bullet point of Policy WM1 of PPS 11 save for the former including approved as well as economic development uses and including the issue of prejudice to their future operation. The policy is subject to Supplementary Planning Guidance that requires 3 tests to be met instances involving “*sensitive industrial enterprises*”.
63. Paragraph 1.2 of the SPG to Policy PED 8 of PPS 4 refers to the “higher end” of the economic development spectrum offering employment in specialised jobs, significant sales in markets outside Northern Ireland and that may be significant to the regional economy. However, this description of businesses that might be considered “*sensitive industrial enterprises*” must be read in the round not only with the previous sentence but also paragraphs 1.1 and 1.2 thereof. Although the cited examples of industries that the SPG might apply to is not exhaustive, there is no persuasive evidence that the business conducted by BHFS requires a “*particularly contaminant free environment*”. In that context, I am not persuaded that the additional protection for existing “*sensitive industrial enterprises*” that the SPG to Policy PED 8 is applicable in this instance whether regardless of the weight attached to PPS 4.
64. BCC referred to BHFS (phases 1 and 2) as “*environmentally sensitive uses in a commercial context*”. In oral evidence clarification was given that, unlike the TP, reliance was not being placed on the SPG to Policy PED 8. Its concern was general incompatibility with BHFS and the proposed leisure-led, mixed-use development of the North Shore. There is no such definition in PPS 4 or associated policy provisions that might apply to uses considered to be “*environmentally sensitive uses in a commercial context*”.
65. If the proposal complies with the contended provisions of PPS 11 and PPS 18, then it would not be inappropriate to return to PPS 4 to see what, if any, further consideration it merits in the context of what is said in its Preamble.

Visual Impact and landscape character

66. The proposed development's landscape and visual impacts were assessed at Chapter 12 of the ES, updated in Chapter 3 of the first addendum and Chapter 6 of the second addendum. The updated information took account of the cumulative impact of the proposed development, that existing and the approved phase 2 of BHFS. The TP objection in this respect related not to the adequacy of the associated EI but the proposed development's impact on character.
67. Existing mature trees limit views from sections of Dargan Road looking northwards over the North Foreshore and appeal site. At gaps in the vegetation or the junctions with the two spine roads leading to the North Foreshore, the site is seen in the context of the existing BHFS. The site presents itself as a vacant, degraded, brownfield, poor quality landscape that is of low importance in landscape and visual amenity terms.
68. The tallest proposed tank within the appeal development would be 23.7m. A single circular chimney would extend to 30m high. The photomontages at Appendix 3.2 of the first addendum to the ES show the existing views from 5 locations on the spine roads leading north from Dargan Road that extend along the west and east sides of the appeal site. The views are between 5 – 266m from the site. From close range views from the easternmost spine road, looking westwards, the proposed development would block view of the Belfast Hills, be visually dominant by virtue of its scale, massing and extent and have significant visual effects. From views of up to 266m, the proposed complex would be visually dominant, albeit less so with distance, and seen as industrial in character.
69. Development along Dargan Road is industrial and commercial in appearance, scale and character. Travelling westwards along it, the Film Studios are visually predominant in the foreground with the Belfast Hills providing a backdrop. Phase 1 of the BHFS comprises: 2 film studios and sound stages approximately 33,000 sq.ft each; two workshop buildings approximately 11,000 sq.ft. each; and a 3 storey 37,000 sq.ft office and production building. The approved phase 2 development would have a more extensive built footprint than the existing premises. Due to their scale, massing, design and finish, the existing and approved BHFS buildings are industrial in character and appearance. The high magnitude of change that the proposed development would represent from shorter range views would be dissipated by the site context with adjacent large-scale industrial/commercial premises.
70. The photomontages at Appendix 6.2 of the second addendum to the ES are longer range views. That from Dargan Road, 246m away, shows both the proposed building/structures and those existing and approved at the BHFS seen on the skyline. From this vantage the proposed development would be consistent with the established character of the area. From Edgewater Road, 941m to the east, the existing and approved BHFS would visually predominate. From views from Belfast Castle Demense (2.3km to the north-west) and Cavehill County Park (2.6km to the north-west), the proposed development is consistent with the scale and extent of both phases of the BHFS and the wider setting of Dargan Road, West Bank Road and with the M2 motorway in the foreground. From these vantages, the proposed

development would not change the character from that of existing and approved development nor result in significant additional impact on landscape character and visual amenity.

71. The proposed development's form and design is reflective of its function. However, consistent with Policy IC3 of the BHLP, further consideration was given to its finishes to minimise visual impact. Whilst the proposed development would alter the view from the site's immediate environs, it would not unacceptably change the area's overall character when considered in context and in the round. The scale would be appropriate in the receiving landscape and compatible when considered with the existing and approved development in the area and the wider physical context.
72. The landscape and visual Impact assessment was predicated on: the proposed landscaping scheme in addition to retention of existing boundary vegetation; and revised proposals for the buildings' and tanks' finish. The latest version of the former is found at Appendix 3.1 of the 1st ES addendum. As it matures, the proposed landscaping scheme would make a valuable contribution to largely screening views of the proposed yard, operational areas and lower extent of the AD plant. Therefore, conditions are needed to ensure: the safeguarding of existing trees during the construction phase; implementation of the agreed landscaping proposals; maintenance of those provisions; and ensuring that the structures' finishes are in accordance with the approved plans.
73. Subject to imposition of those conditions, the proposal is consistent with Policies IC3 and ENV1 of the BHLP, the 3rd bullet point/criterion of Policy WM1 of PPS 11 and criterion (b) of Policy RE1 of PPS 18

Compatibility with neighbouring land uses

74. Evidence was submitted of the number of complaints that NIEA's Resource Efficiency Division (letter of 26 March 2021) received for the period 1 January 2020 to 5 March 2021 in respect of an AD facility at Granville Ecopark (Mid-Ulster District) in respect of noise, odour and noise & odour. Account has also been taken that a resident of the area local to that facility spoke to BCC's Planning Committee about his personal experience of associated nuisance. Other than a TP describing the facility as "*being located in the middle of a heavily industrialised business park, which includes a number of other industrial producers*", there is no evidence as to how it is perceived to be on all fours with the appeal proposal in terms of considerations such as: the nature of the proposal including feedstock; processing; volume of waste; whether it was the subject of EIA; what conditions were imposed on the planning permission; and whether these have been complied with. In that evidential context, limited weight is given to Granville Ecopark as a comparator to the appeal proposal. In contrast, there is specific EI relating to the potential impacts that the current proposal is likely to give rise to in respect of those considerations and it is on that basis that I shall consider whether the effects would be significant.

Noise & Vibration

75. The potential impact of noise and vibration from the proposed development, during both the construction and operational phases, were considered at Chapter 7 of the

ES in accordance with associated British Standards. BCC's EHD has no issue with the general methodology that was set out in paragraph 7.10 of Chapter 7 of the ES; it is comprehensive and robust. The assessment included:

- Undertaking a baseline noise survey and determining background sound pressure levels to establish appropriate and representative background noise levels for both day and night-time;
- Identification of 5 noise-sensitive receptors both on and off the North Foreshore site including phase 1 of the BHFS to the north-east of the site and residential properties on Shore Road separated from the appeal site by the M2 motorway and Fortwilliam Roundabout; and
- Noise modelling to predict the impact of the proposed development on identified receptors during both phases of the proposed development. This included consideration of: HGV movements associated with the proposed development; inter-relationships with transportation and ecology in relation to potential disturbance; and noise from the existing CHP engines that would remain the dominant noise source further to construction of the proposed development.

76. Subject to mitigation at the construction phase, the assessment concluded that there would generally be no significant noise impacts associated with the proposed development. The impacts of the construction and operational phases were therefore assessed as negative (slight): *“where impacts will be observable but where the scale of impact is unlikely to be of material significance in the locality”*. Nevertheless, there would be some noise impact on BHFS during the construction phase, particularly in respect of piling. BCC Planning Officers noted in one their reports to the Planning Committee that: best practice guidance does not safeguard commercial uses during the construction process; and that construction noise, including piling, would occur during the build for other built development proposals for the site including logistical warehousing. The associated potential impact in this respect from development of the appeal site would arise regardless of the use. This consideration must be balanced against the positive impacts of the site's regeneration. Assumptions underlying the construction phase assessment and associated mitigations could be subject of a condition on any forthcoming planning permission to secure implementation of an agreed Final Construction Noise and Vibration Management Plan in order to minimise impact on BHFS and require, as a minimum, the mitigation measures contained in the ES and addenda. This would strike an acceptable balance between safeguarding the established use and redeveloping the brownfield appeal site.

77. The updated noise and vibration impact assessment at Chapter 4 of ES II considered the impact of the proposed development on the phase 2 of BHFS that was approved in August 2020, subsequent to submission of the planning application subject of this appeal. It identified two additional receptors namely the BHFS phase 2 building and its amenity area. Notwithstanding that: The Phase 2 development site is located in a non-residential area and commercial in nature; and that the noise impact assessment submitted with the planning application for phase 2 of BHFS said that *“The majority of the proposed operational activities will be undertaken within the relevant buildings”*, consistent with the conservative approach to assessment of the potential impact of noise and vibration on the existing BHFS in

the original ES assessment, the stricter limits applicable to residential receptors were applied to these additional receptors to ensure a “worst case” scenario. At any rate, the noise assessment for the two additional receptors indicates that the predicted noise levels would be consistent with standards required for residential neighbours. Therefore, no additional mitigation would be required during either phase of the development; a stance that BCC’s EHD agreed with. On the basis of the EI, there is no persuasive evidence that noise from operation of the proposed development would preclude BHFS from outdoor filming of the frequency envisaged in its ES for its phase 2 development.

78. The planning consultancy who objected to the proposed development on behalf of the owners of BHFS (Belfast Harbour Commissioners) raised concerns in April 2020 about noise impact. Subsequent to submission of the 2nd addendum to the ES in October 2020, that addressed the impact of noise and vibration on the then current planning application for the phase 2 development and the issue of piling, this objection was not followed up on. With the FEI, those concerns have not been found to weigh against the development. The appellant gave un rebutted evidence that their baseline data on the prevailing noise environment was used by BHFS in that application; suggesting that its reliability was not disputed.
79. It is noted that based on advice from its EHD, BCC’s Planning Officers concluded in their final report to its Planning Committee that “*the film studios and proposed CAD facility would be compatible in terms of noise impacts*”. This was predicated on a comprehensive “note” from the EHD appended to the report, dated 7 May 2021. This is consistent with my conclusion on the issue based on the submitted EI.
80. In this evidential context, I am not persuaded that sensitive receptors further removed from the appeal site than either phase of the BHFS complex would experience an unacceptable adverse impact associated with noise and/or vibration during either the proposed development’s construction or operational phases.
81. Subject to imposition of the aforementioned condition, the proposal is consistent with criterion (a) of Policy RE1 of PPS 18 as it relates to human health or residential amenity.

Odour & Air Quality

82. The potential air quality impacts that could arise as a result of the proposed CAD plant to power the existing CHP engines, during the construction and operational phases, was considered at Chapter 6 of the ES in accordance with: guidance published by the Institute of Air Quality Management; the Air Quality Strategy for England, Scotland, Wales and Northern Ireland (2007); the Air Quality Standards Regulations 2010; guidance from the Department for Environment, Food & Rural Affairs (DEFRA) and Environment Agency; and guidance on using dispersion modelling and identifying target odour levels at the nearest sensitive locations published by the Environment Agency for England and Wales in consultation with Northern Ireland Environment Agency (NIEA). BCC’s EHD has no issue with the methodology that was set out in Chapter 6 of the ES; it is comprehensive and robust. The assessment considered:

- The construction process associated with the proposed development and the impact this would have on the surrounding sensitive receptors;
 - The impact on existing air quality at sensitive receptors within the vicinity of the proposed development during the operational phase; and
 - The impacts that the proposed development would have on ecologically sensitive receptors once operational. This included predicted nitrogen concentrations at designated sites within 2km of the proposed plant.
83. The ES contained a detailed description of proposed mitigation measures at both phases of the proposed development – paragraphs 6.147 and 6.148. If planning permission is forthcoming, conditions would be necessary in respect of submission of a Final Dust Management Plan and a Final Construction Environmental Management Plan. On that basis: no significant impacts would result as a consequence of the construction phase of the development; and existing and approved sensitive receptors would not experience a significant air quality impact as deduced from the results of the AERMOD air quality assessment, which predicts pollutant concentrations to be significantly lower than the appropriate guideline limits during the operational phase. Given the above, it can be concluded that residual effects from the construction and operation of the proposed development would be negative (slight) i.e. where impacts will be observable but where the scale of the impact is unlikely to be of material significance in the locality.
84. The existing BHFS complex was considered as a sensitive receptor in the original ES. This was a robust and conservative basis of assessment; and it was concluded that there would be no unacceptable impact. The updated air quality impact assessment at Chapter 3 of the ES 2nd addendum considered the impact of the proposed development on the phase 2 of BHFS. It identified two additional receptors namely its closest building and closest associated external area. The updated assessment of air quality and odour from the operational phase concluded that the additional receptor locations would meet the same criteria as is applicable to human receptor locations. As the updated assessment concluded that the air quality and odour impact would be below the relevant limits applicable to human receptors, no additional mitigation would be necessary as a result of the phase 2 permitted development.
85. BCC’s Planning Officers concluded in their final report to its Planning Committee, based on advice from its EHD, that “*the film studios and proposed CAD facility would be compatible in terms of ambient air quality impacts*”. The same conclusion was reached in respect of odour impacts. This was predicated on a comprehensive “note” from the EHD appended to the report, dated 7 May 2021. This is consistent with my conclusion on the issue based on the submitted EI.
86. In this evidential context, I am not persuaded that that sensitive receptors further removed from the appeal site than either phase of BHFS would experience an unacceptable adverse impact associated with air quality and/or odour during either the proposed development’s construction or operational phases.

87. As the assessment of the significance of the associated environmental impacts in respect of air quality, odour and the integrity of European Sites were predicated on the description of the proposal at Chapter 3 of the ES, planning conditions would be needed in respect of waste streams accepted at the facility and the annual quantum. As the permitted waste streams could be specified by condition, there is no need to stipulate that no other feedstock should be used or specify waste that should not be accepted.
88. The processing of digestate and its “end use” as described in the ES was set out earlier in this decision; spreading within the site is not proposed. In the absence of assurance that this would be covered by the separate permitting regime and to safeguard interests of acknowledged importance, the inclusion of an associated condition would not be inconsistent with the provisions of paragraph 5.65 of the SPPS.
89. Subject to imposition of conditions, the proposal is consistent with the 9th bullet point/criterion of Policy WM1 of PPS 11 and criterion (d) of Policy RE1 of PPS 18.

Traffic, birds & vermin

90. TP remaining concerns relating to traffic related to the potential odour from waste being delivered to site and from its possible spillage. Measures for management and mitigation of these potential environmental impacts are set out at Chapters 3 and 15 of the ES. One of the considerations subject of the latter is airport safeguarding given the site’s relative proximity to George Best Belfast City Airport (GBBCA). Paragraph 15.52 of the ES acknowledges that waste management facilities have the potential to attract scavenging birds but mitigation to reduce the site’s attractiveness to them has been built into the process flow/design of the proposed development. The following paragraph states that all delivery/collection vehicles entering and leaving the site will be contractually obliged to be covered. Paragraph 15.54 adds that upon entering the site and passing through the weighbridge, drivers would be directed to enter the reception building via fast acting roller shutter doors that would immediately close on entry ensuring that all waste is unloaded within an enclosed, controlled environment. Provided such measures are implemented, the TP concerns would not be justified.
91. Execution of contractual obligation is a distinct matter from enforcement of planning control. Discussion as to whether this aspect of the process would be controlled by associated permitting was inconclusive. Appendix 4.2 of the ES 2nd addendum comprises a Service Management Plan that, as written, is aimed at achieving efficient freight operations to minimise congestion. It could be amended to require incorporation of the cited mitigation measures in the ES. Together with a condition specifying that there must be no external storage of waste at any time, associated TP concerns are addressed.

Adequacy of EI

92. The “*Rochdale Envelope*” referred to earlier arises from two cases: *R v Rochdale MBC ex parte Milne (no. 1)* and *R v Rochdale MBC ex parte Tew [1999]* and *R v Rochdale MBC ex parte Milne (no. 2) [2000]* (‘the judgement’). Whilst the ensuing

PINS guidance that those cases gave rise to is not applicable in this instance, the issue of precedent remains to be considered. The appeal proposal is for full planning permission. Other than the criticism that insufficient consideration has been given to proposed and “*reasonably foreseeable*” development within the scope of the 138ha subject of the CMP that is not yet subject of a current planning application, there was no specific indication as to how the proposal is perceived to be at odds with the *Rochdale* cases.

93. In considering whether the current proposal is consistent with that precedent, consideration has been given to:

- The appellant has given an adequate description of the project and their environmental assessment has taken a cautious approach to assessing likely significant effects that has fed through into the mitigation measures envisaged. They considered issues such as contamination, dust and construction noise and vibration and did not postpone proper assessment of the likely significant environmental impacts and requisite mitigation until after the grant of planning permission;
- An Outline Construction Environmental Management Plan (OCEMP) was submitted as Appendix 3.2 of the ES. Its page 5 explains that it details the environmental monitoring and mitigation measures that are to be implemented during construction work to minimise the effects of site operations on sensitive receptors. The detailed mitigation and control mechanisms therein are informed by the associated environmental assessments. Any conditions requiring post-consent agreement of those matters with BCC would require, as a minimum, the mitigation measures identified in the ES and its addenda;
- It is common practice that an outline Construction Environmental Management Plan (CEMP) provides a framework from which a final CEMP will be developed, post-consent. BCC’s associated draft conditions referring to post-consent agreement/approval or my endorsement of them is not acknowledgement that the EI and associated assessment is deficient or incomplete; and
- The environmental information was updated to take account of submission and approval of the planning application for the BHFS phase 2 development during the life-time of the application subject of this appeal.

94. In all, the evidence on which my decision is based is “*sufficient information to enable ‘the main’, or the ‘likely significant’ effects on the environment to be assessed....and the mitigation measures to be described*” (paragraph 122 of the judgement). No inconsistency with the *Rochdale* cases or short-comings in the scope of the EI, including FEI, is perceived.

Habitats Regulation Assessment

95. Whilst the appeal site is not subject to environmental designation, it is within 0.5km of a number of national, European and international designated sites. Policy NH 1 - European and Ramsar Sites – International of Planning Policy Statement 2: “*Nature Conservation*” states that planning permission will only be granted for a

development proposal that, either individually or in combination with existing and/or proposed plans or projects is not likely to have a significant effect on a European Site. It adds that where a development is likely to have a significant effect (either alone or in combination) or reasonable scientific doubt remains, the decision-maker shall make an appropriate assessment (AA) of the implications for the site in view of the its conservation objectives. This policy requirement derives from Article 6(3) of the Habitats Directive which establishes the requirement that any plan or project likely to have a significant effect on a SAC site shall be subject to an AA.

96. Shared Environmental Services (SES) carried out a HRA of the proposal on BCC's behalf. The Stage 1 Screening Assessment was carried out in accordance with the cautious approach required by *People over Wind & Sweetman* and concluded that any conceivable effect on any European site could not objectively be ruled out. In carrying out the Stage 2 AA, SES took account of responses from a range of statutory consultees in assessing mitigation measures, sites and features and in combination effects. It concluded that, provided the mitigation measures detailed in the assessment are conditioned in any planning approval, there would be no adverse effects on the sites' integrity.
97. Ecology was considered at Chapter 11 of the ES and a shadow Habitat Regulations Assessment (sHRA) carried out. The issue was reconsidered in Chapter 2 of the ES 2nd addendum and a revised sHRA submitted. Having also proceeded to Stage 2 AA, the appellant reached the same conclusion as SES.
98. Having objectively considered this evidence and subject to the imposition of associated planning conditions, the proposed development is not likely to have a significant effect on the integrity of the designated sites in view of their conservation objectives nor does reasonable scientific doubt remain in this respect. Accordingly, the proposal is consistent with associated legal and policy requirements.

Environmental impact

99. The totality of the submitted EI assessed the proposal's impact on the considerations, as appropriate, set out in paragraph 6.321 of the SPPS. The remaining environmental concerns being pursued have all been considered and, for all of the foregoing reasons, there is no persuasive evidence that the proposal would could cause demonstrable harm to human health or result in an unacceptable adverse environmental impact that cannot be prevented or appropriately controlled by mitigating measures. As there is no persuasive evidence that the proposed development would give rise to significant risk of damage to the environment, the precautionary principle, referred to at paragraph 6.322 of the SPPS, does not engage. Therefore, the proposal is consistent with: the 5th bullet point of Policy WM2 of PPS 11 and that policy in the round; and the 1st and 2nd bullet points of Policy WM1 of PPS 11 and also that policy as a whole. As the proposal is compatible with the 2nd bullet point of Policy WM1, it is also consistent with criterion (a) of Policy PED 9 of PPS 4.
100. Irrespective of the disputed weight that should be given to a proposed development not yet subject of a planning application and to PPS 4 in light of its Preamble, the SPG to its Policy PED 8 is concerned with "*sensitive industrial enterprises*". Whilst

the leisure-led, mixed-use development earmarked for the North Foreshore includes a research and development hub, there is no evidence that this would include “*sensitive industrial enterprises*”. As required by paragraph 6.317 of the SPPS, particular attention has been given to the proposal’s potential impact on neighbouring areas and the need to separate incompatible land uses. Having concluded on a range of potential environmental impacts that the proposed development would give rise to, none are considered inconsistent with law or regional policy. On that basis Policy PED 8 does not weigh against the proposal. Accordingly, whatever the weight given to the provisions of PPS 4, the proposal is consistent with them.

Perception of Harm

101. Evidence was submitted on the likely economic, environmental and social benefits that would be associated with this proposal and also the planned leisure-led mixed-use development of the North Foreshore area that is subject of a Proposal of Application Notice (PAN) and Pre-Application Discussion (PAD). The proposal relates to indoor and outdoor leisure and recreation use, hotels, food and beverage units, petrol filling station and research and development hub. It is not for me to make a binary choice between the two or undertake a cost-benefit analysis of their relative economic worth; rather to consider the current proposal on its own merits.
102. Perception of harm arising from the proposed development is a material consideration. However, in deciding the weight to attach to it, the decision-maker is entitled to have regard to the extent which perceived risks have objective justification.
103. The proposal would not give rise to significant environmental effects in respect of the parties’ concerns about: noise and vibration; odour and air quality; the identified issues about traffic, birds and vermin; compatibility with existing and approved land uses in the vicinity and it would be consistent with associated regional policy in those respects. Given the outcome of the HRA, there is no persuasive evidence that the proposed development would be incompatible with plans to establish “*an exemplar RSPB nature reserve*” on the northern 200 acres of North Foreshore Giant’s Park. Reference was made to RSPB’s Window on Wildlife at Airport Road West as a comparator. That it is in the vicinity of GBBCA bolsters that conclusion. In that evidential context, the degree of concern that is objectively justified is limited both in respect of actual or perceived impacts.
104. On the issue of proposed development’s compatibility with nearby economic development enterprises, paragraph 6.90 of the SPPS refers to operational/ established or approved economic development use/enterprises. Irrespective of the weight that should attach to a pre-application proposal, subject of a PAN and PAD, having objectively assessed the totality of the evidence before me, I am not persuaded that the proposal would: significantly prejudice development of the North Foreshore Giant’s Park for leisure-led, mixed-use development; or be detrimental to the attractiveness of BHFS to end users and/or investors.
105. Having found the proposal to be consistent with Policy WM1 of PPS 11 and Policies PED 8 and PED 9 (a) of PPS 4, I am not persuaded by BCC’s stance that although

not having advance technical based or scientific evidence of incompatibility between the appeal proposal, BHFS and the pre-application proposal, that determining weight should be given to its concern “*around the environmentally sensitive nature of those uses in a commercial context*”. In all, BCC’s first reason for refusal is not sustained.

Further planning conditions

106. The magnitude of the proposed development’s likely impact on hydrology and drainage was considered in Chapter 8 of the ES and in the Outline CEMP. Paragraphs 8.74 – 8.91 of the latter sets out associated mitigation measures to be employed during the proposed development’s construction and operational phases. Associated planning conditions are necessary to ensure implementation of those measures.
107. In light of the site’s previous use for landfill, EI on land contamination was submitted as Chapter 9 of the ES and Chapter 2 of the 1st addendum, which included a Remediation Strategy and Landfill Gas Extraction System Report as Appendices 2.1 and 2.2 respectively. On the basis of that FEI, in its advice of 7 May 2021, BCC’s EHD was satisfied that outstanding matters could be dealt with by way of suggested conditions on any forthcoming planning permission. Having considered the totality of the EI and this expert opinion, I am satisfied that the imposition of associated conditions would be necessary in order to mitigate significant environmental impact in respect of land contamination.
108. Transportation impacts of the proposed development were considered in Chapter 10 of the ES and Chapter 7 its 2nd addendum. To ensure that the forecast impacts are not significant, conditions are needed to ensure that: access to the site is constructed as approved; parking, turning and manoeuvring areas within it are provided and kept free for those purposes; and implementation of the agreed Travel Plan.

Conclusion

109. BCC has not sustained either of its reasons for refusal. Having considered there to be no likely significant environmental impacts and concluded that the weight given to the perception of harm to proposals for further development of the North Foreshore Giant’s Park is not determining, concerns about blight of the area’s regeneration do not weigh against this proposal. Remaining TP concerns have been assessed and do not attract determining weight. Accordingly, the appeal is allowed subject to the conditions set out below.

Conditions

1. The development hereby permitted shall be begun before the expiration of 5 years from the date of this permission.
2. The Anaerobic Digester shall not exceed a maximum of 99,999 tonnes of permitted waste per annum in accordance with written records that must be made available to the Local Planning Authority upon request.

3. The feedstock accepted at the facility shall be limited to MSW organic fines (European Waste Catalogue code 19 12 12) and the Codes set out in the Environmental Statement at Appendix 3.1.
4. No digestate from the facility shall be spread within the site. It shall only be disposed of in the manner set out in the Environmental Statement at Chapter 3.
5. There must be no external storage of waste at any time.
6. No works (including site preparation, clearance or construction works) shall commence on site until a Final Service Management Plan has been submitted to and approved in writing by the Local Planning Authority. As a minimum, this Plan must conform to the measures set out in Appendix 4.2 of the 1st addendum to the Environmental Statement dated December 2019. It must include details of the methods to be employed in order to avoid waste spillage noise in external areas and ensure opening of waste loads in internal areas behind closed doors. Site operations and management must be carried out in accordance with the Final Service Management Plan.
7. No works (including site preparation, clearance or construction works) shall commence on site until a Final Construction Noise and Vibration Management Plan has been submitted to and approved in writing by the Local Planning Authority. As a minimum, this Plan must conform to the measures set out in the Environmental Statement submitted to the Local Planning Authority in June 2019 and those set out in Chapter 4 of the 2nd addendum dated October 2020. It must outline the methods to be employed to minimise any noise and vibration impacts associated with site preparation and construction works, demonstrating the use of 'best practicable means'. The Plan must have regard to BS 5228:2009+A1:2014 Parts 1 and 2 Code of practice for noise and vibration control on construction and open sites (or successor publications) and demonstrate that site preparatory and construction works will achieve the BS5228 'ABC method' (or successor publication) Category A noise threshold value for daytime and Saturdays at relevant sensitive receptors. All site preparation and construction works must be carried out in accordance with the approved Final Construction Noise and Vibration Management Plan.
8. No works (including site preparation, clearance or construction works) shall commence on site until a Final Construction Environmental Management Plan has been submitted to and approved in writing by the Local Planning Authority. As a minimum this Plan must conform to the measures set out in the Outline Construction Environmental Management Plan (authored by RPS Group, dated June 2019). All site preparation and construction works thereafter must be carried out in accordance with the approved Construction Environmental Management Plan
9. Notwithstanding details submitted to date, no works (including site preparation, clearance or construction works) shall commence on site until a Final Dust Management Plan has been submitted to approved in writing by the Local Planning Authority. As a minimum this Plan must conform to the measures set out in the Outline Construction Environmental Management Plan (authored by RPS Group, dated June 2019). It must outline the methods to be employed to minimise any dust impacts associated with site preparation and construction works, demonstrating the

use of 'best practicable means'. The Plan must have regard to the Institute of Air Quality Management Guidance on the Assessment of dust from demolition and construction 2014. All site preparation and construction works thereafter must be carried out in accordance with the approved Final Dust Management Plan.

10. Prior to the commencement of any works hereby approved, an Arboricultural Impact Assessment in accordance with BS: 5837:2012 (or successor publication) shall be submitted to and agreed in writing by the Local Planning Authority. This will identify, evaluate and mitigate, where appropriate, the extent of any direct and indirect impacts on existing trees that may arise as a result of any site layout proposal. The development shall be carried out in accordance with the approved details.
11. Prior to any work commencing (including site preparation, clearance or construction works), protective barriers (fencing) and ground protection shall be erected/installed, as specified in BS 5837: 2012 (Section 6.2) or successor publication, to all trees to be retained within the site and must be in place before any materials or machinery are brought onto site for demolition, development or soil stripping. Protective fencing must remain in place until all work is completed and all associated materials and equipment are removed from the site. Within the fenced area, no activities associated with building operations shall take place, no storage of materials and the ground levels within those areas shall not be altered.
12. All trees within the site shall be retained unless shown on the approved drawings as being removed. Any existing or proposed trees or planting indicated on the approved plans which, within a period of 5 years from the date of planting, die, are removed or become seriously damaged, diseased or are dying, shall be replaced during the next planting season with other trees or planting of a location, species and size to be first approved in writing by the Local Planning Authority.
13. No retained tree shall be cut down, uprooted or destroyed or have its roots damaged within the crown spread, nor shall arboricultural work or tree surgery take place or any retained tree be topped or lipped other than in accordance with the approved plans and particulars, without the written approval of the Local Planning Authority. Any approved arboricultural work or tree surgery shall be carried out in accordance with BS 3998, 2010 or successor publication.
14. If any retained tree is removed, uprooted, destroyed or dies, another tree shall be planted in the same location and shall be of such a size, species and planted at such time as agreed with writing with the Local Planning Authority.
15. All soft landscaping works shall be carried out in accordance with the details on Dwg.no: 6448-L-001 A Proposed Landscape Works. The works shall be carried out prior to the commissioning of the development hereby approved or before the end of the first planting season thereafter, whichever is sooner, and shall be permanently retained thereafter. Any trees or plants shown on the approved scheme which, within a period of 5 years from the date of planting, die, are removed or become seriously damaged, diseased or dying shall be replaced during the next planting season with other trees or plants of a similar species and size, details of which shall have first been submitted to and approved in writing by the Local Planning Authority.

16. The development hereby permitted shall be constructed and finished in accordance with the approved details including the annotated finished colours for buildings and tanks.
17. No development (including site preparation, clearance or construction works) shall commence on site until details of the method of sewage disposal has been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.
18. No development (including site preparation, clearance or construction works) shall commence on site until details of the method of foul and surface water drainage, including calculations for surface water drainage of the site and a programme for implementation of those works, 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.
19. No works (including site preparation, clearance or construction works) shall commence on site until a Detailed Remediation Strategy is submitted to and approved in writing by the Local Planning Authority. The Detailed Remediation Strategy must be based on the capping, landfill gas extraction infrastructure and building protection measures and proposals contained within the:
 - RPS Remedial Strategy Report at Appendix 2.1 of the 1st addendum to the Environmental Statement dated December 2019;
 - RPS Report at Appendix 2.2 of the 1st addendum to the Environmental Statement dated December 2019 entitled “*Dargan Road Biogas Limited - Gas Extraction System*”; and
 - Letter from RPS to Belfast City Council, referenced IBR1061, dated 24 February 2020 whose subject was “*Dargan Road Biogas Limited Centralised Anaerobic Digestion (CAD) Plant - Planning Application Ref: LA04/2019/1540/F*”.

The Detailed Remediation Strategy must demonstrate how the identified pollutant linkages are to be demonstrably broken and that they no longer pose a potential risk to human health. In particular, it must provide final detail on:

- The capping systems to be installed;
- The gas protection measures to be installed in all buildings requiring gas protection, which must be compliant with BS 8485:2015+A1:2019 and Belfast City Council’s North Foreshore Developer’s Guidance Note;
- The hydrocarbon vapour protection membrane to be installed in all buildings requiring protection:
 - The gas abstraction system to be installed on the development site;
 - How the proposed remedial works are to be verified.

The development shall be carried out in accordance with the approved Detailed Remediation Strategy.

20. In order to demonstrate that the agreed remedial measures have been incorporated into the development, prior to its operation, a Verification Report shall be submitted

to and agreed in writing by the Local Planning Authority. The Verification Report must be in accordance with relevant Environmental Agency guidance, British Standards, Construction Industry Research and Information Association and Land Contamination: Risk Management (LCRM) guidance or successor publications. It must demonstrate that the mitigation measures outlined in the agreed Detailed Remediation Strategy have been implemented and have broken the relevant pollutant linkages and that the site no longer poses a potential risk to human health.

21. If during the development works, new contamination risks are encountered on the site that have not previously been identified, works must cease and the Local Planning Authority shall be immediately notified in writing. The new contamination shall be fully investigated in accordance with best practice and Land Contamination: Risk Management (LCRM) guidance or successor publication. In the event of unacceptable risks being identified, a further remediation strategy shall be submitted to and approved in writing by the Local Planning Authority. That further remediation strategy must be implemented and the CAD facility shall not be commissioned until a further Verification Report shall be submitted to and agreed in writing by the Local Planning Authority.
22. The development hereby permitted shall not become operational until the vehicular accesses have been constructed in accordance with Drawing no. 3239 – PL03 Proposed Site Layout Plan.
23. The development hereby permitted shall not become operational until hard surfaced areas have been constructed in accordance with Drawing no. 3239 – PL03 Proposed Site Layout Plan. No part of these hard surfaced areas shall be used for any purpose at any time other than for the parking and movement of vehicles.
24. The development hereby permitted shall not become operational until a minimum of 8 no. secure cycle parking spaces have been provided within the site. They shall be permanently retained as such.
25. The development hereby permitted shall not operate unless in accordance with the Travel Plan included as Appendix 4.1 of the 1st addendum to the Environmental Statement dated December 2019. The Site Operator shall provide those employed at the site will access to the Translink iLink Initiative and the Bike2Work Initiative or equivalent measures agreed in writing with DfI Roads.

This decision relates to:

3239 – PL01	Site Location Plan;
3239 – PL03	Proposed Site Layout Plan;
3239 – PL04	Proposed Site Drainage Plan;
3239 – PL05	Proposed Autotrack Plan;
3239 – PL06	Existing and proposed site sections;
3239 – PL07	Proposed Main Building, Pipe Bridges & Fire Water Tank floor plans, Carbon Filter and elevation;
3239 – PL08	Proposed Main Building Southern, Eastern & Western Elevations & Chemical Storage Tanks plan and elevations & Fire water tank elevations;

3239 – PL09	Proposed Buildings Northern elevation & Hot/cold recovery system and Fire pumphouse plans and elevations;
3239 – PL10	Biogas conditioning system Plant and tanks and Biogas flare Floor plans and elevations;
3239 – PL11	Proposed bund wall Floor plans and elevations;
3239 – PL12 Rev A	Proposed Digester Tanks, Buffer Tanks & Pump Rooms Floor plans and elevations;
3239 – PL13	Proposed Biogas Holder, Temperature Control System and AD Chemical Dosing Tank Floor plans and elevations;
3239 – PL14	Wastewater Treatment Plant, Tanks and Product Storage & MCC Building Floor plans and elevations;
3239 – PL15	Existing CHP's (<i>sic</i>) 1, 2 & 3, WEHB, Oil Store Switchgear Container and NIE Kiosk Floor plans and elevations;
3239 – PL16	Proposed gates, fence, Weighbridge, Weighbridge Kiosk & Smouldering Loads Bay Floor plans and elevations; and
Dwg.no: 6448-L-001 A	Proposed Landscape Works

COMMISSIONER JULIE DE-COURCEY

Note: The validity of this decision may be challenged by applying to the High Court for a judicial review. This must be done within three months of the date of the decision.

Attendance at Hearing

* Denotes participation by remote means

Belfast City Council: Ms D Kiley BL, instructed by Ms N Largey, Belfast City Council
Mr E Baker, Belfast City Council, Planning
Mr R Nolan, Belfast City Council, Planning
Ms N Largey, BCC Legal Services (observing only)

Third Party: Mr K Carlin, Carlin Planning *
Mr K Mc Kay, Giant's Park Belfast Ltd *
Mr G Kennedy, Giant's Park Belfast Ltd *
Mr G Hadley, Giant's Park Belfast Ltd *

Appellant: Mr S Beattie KC instructed by Clyde Shanks
Ms C Mc Parland, Clyde Shanks
Mr S Carr, Irwin Carr
Mr A Bunbury, Park Hood
Mr R Dougan, Vision Design
Mr T Bell, Clyde Shanks (observing only)
Mr S Hegarty, Dargan Road Biogas (observing only)
Mr R Agus, MRA Partnership
Mr P Hull, Flood Risk Consulting *
Mr J Mc Grath, RPS *
Ms D Mayes, Barton Wilmore *
Mr T Dearing, Savills *
Dr J O'Neill, James O'Neill Associates *
Mr T Bell, Clyde Shanks (observing only)
Mr S Hegarty, Dargan Road Biogas (observing only)

List Of Documents

Belfast City Council:	'LPA1'	Statement of Case (SoC)
	'LPA2'	Response to Appellant's SoC
	'LPA3'	Response to Objector's SoC
Third Party:	'TP1'	SoC by Giants Park Belfast Limited
Appellants:	'APP1'	SoC by Clyde Shanks Ltd
	'APP2'	Composite response to BCC's and TP's SoCs