

MINUTES OF EVIDENCE

taken before

The Joint Committee on the Rookery South (Resource Recovery Facility) Order 2011

on the

ROOKERY SOUTH (RESOURCE RECOVERY
FACILITY) ORDER 2011

Wednesday 12 December 2012

in Committee Room 2

Present:

Mr Brian Binley MP (Chair)
Lord Dear
Bill Esterson MP
Lord Faulkner of Worcester
Lord Geddes
Paul Uppal MP

Mr Alistair Lewis (of Sharpe Pritchard) appeared as Agent for Central Bedfordshire Council and Bedford Borough Council (Petitioners 36-39)

Ms Saira Kabir Sheikh appeared as Counsel on behalf of Central Bedfordshire Council and Bedford Borough Council (Petitioners 36-39)

Mr Andrew Williamson (of Walker Morris) appeared as Agent for Waste Recycling Group Limited, WRG Waste Services Limited and Anti-Waste Limited (Petitioner 35)

Mr Tim Mould QC appeared as Counsel on behalf of Covanta Rookery South Ltd (Applicant)

Mrs Alison Gorlov (of Winckworth Sherwood) appeared as Agent for Covanta Rookery South Ltd (Applicant)

Ordered at 9.01 am: That the Parties be called in.

3553. **CHAIR (MR BRIAN BINLEY MP):** Can I welcome you to the eighth substantive hearing on the petitions against the Rookery South (Resource Recovery Facility) Order 2001? Can I remind all of those people who perhaps have not been present before not only to switch off their telephones but to keep them in their pockets? It can be slightly distracting when people are working and business is proceeding. One of the members of the Committee needs to be freed by quarter to one, so as long as you have no objections—I am talking to counsel here—we will finish this morning at 12.45. I am told it may give you an opportunity to have a slightly bigger sausage sandwich, so I hope you enjoy that.

3554. Can I invite Mr Williamson to present the case for the petitioners? I assume you would like to call your first witness, and will you make sure they make clear who they are, as is normal?

3555. **MS KABIR SHEIKH:** Sir, if you do not mind, before Mr Williamson begins his case and so I do not interrupt it, you will remember that last time you raised two issues that you asked me to undertake, and I said I would do so. The first one related to asking the chief executive of Central Bedfordshire Council to look deeply into the matter of the wind turbine. The second related to the issue of Mary Collins: where she now is and why she left the Council's employment. I have undertaken to do that. I have here a letter that I would like to pass up to you. It is from the Council's monitoring officer. It is a fairly short letter addressed to you: "I refer to the above", which is the matter of the Marston Moretaine wind turbine, "and to the proceedings before your Committee on 5 December. The Council's chief executive has been informed of the position and of your request that he looks deeply into the points that you raised. The chief executive has asked me as the Council's

monitoring officer to investigate the processes relating to the determination of application CB10/013594, upon which he will report to you in due course. Given the nature of the matter and the need to contact former employees of the Council, a full report will not be available by 12 December. However, Ms Sheikh will be able to update you with any information the Council is able to assemble by then in the form of an interim report.”

3556. The chief executive of the Council will be writing to you. He is very much appraised of the matter and has taken it very seriously. I would like to pass up this letter so you have it.

3557. **CHAIR:** Ms Sheikh, can I thank you? I think you have been very diligent, and we are grateful.

3558. **MS KABIR SHEIKH:** You are welcome, sir. The other point is that I have in fact got an update for you.

3559. **CHAIR:** Would you like to deliver that verbally now?

3560. **MS KABIR SHEIKH:** I would like to do so; I am grateful. I am going to have passed round a note we have prepared. I do stress that these are interim findings because the chief executive’s monitoring officer is still looking into the matter more seriously and deeply. That involves looking at archive documents, microfiche and so forth, but this is the interim report to date.

3561. You will see that the first paragraph is the glossary and the initials there relate to the players, so to speak. AM is Alison Myers, the landscape officer, whose comments, as you know, were not reported. She remains in post. Ann Sameh was the planning officer for the Council who presented the application to the planning committee on 10 November 2010. She left the Council’s employment on 9 December 2010. CBC is Central Bedfordshire, and Mary Collins is the planning officer to whom the turbine application was assigned and who

also left the Council on 29 June 2011. MMAG is the Marston Moretaine Action Group, who also have a role here.

3562. By way of background, I just set out what I was tasked to do, and I have already explained where we are with that. I wish to update you, as the monitoring officer has pointed out in the letter. Paragraph 3 sets out the timeline of the application process and starts with the registration of the application. It makes clear that the applicant was Marston Vale Trust, who own and operate the forest centre that you visited.

3563. The first email from Alison Myers to Mary Collins on landscape issues was sent on 1 June 2010; the second email was sent on 18 July 2010, and that is the longer email we have seen previously. The 28 October was when the development management committee meeting was circulated the agenda and papers. On 4 November 2010 the Council began a restructuring process in respect of its development management services. On 8 November there was a development management committee chairman's briefing. On 9 November there was circulation of a late sheet to the committee by email. On 10 November the committee meeting itself took place to consider the application, and the late sheet was circulated to members in hard copy. On 9 December Ann Sameh left the Council's employment, and on 29 June 2011 Mary Collins left the Council's employment.

3564. The position as it stands with respect to Mary Collins, sir, is that she was the planning officer to whom the turbine case was assigned. Among the duties of a council planning officer is collation of all representations made in respect of individual planning applications. She prepares the main report to the committee that considers applications that are not to be determined under delegated powers.

3565. Mary Collins began her employment with Mid-Bedfordshire District Council, the predecessor to Central Bedfordshire Council prior to the reorganisation, in 1984. On 4 November 2010, following a decision to restructure the development management

department, the Council began the 90-day formal consultation process on the restructuring and reselection procedures. The consultation document is attached at appendix A. I hope the appendices have also been passed to you. You will see there that the consultation document sets out in full how the restructuring process was to be undertaken and the basis on which formal consultation was undertaken.

3566. I am asked to make the point that all normal procedures were followed. In summary, this document contains details that set out that the process involved consulting all of those employed in the development management department on the proposed restructuring, circulation of the final restructuring proposal following consultation, requesting applications from all members of staff interested in applying for employment in the restructured service, consideration of job applications and determination of which candidates were selected for posts and which for redundancy.

3567. On 30 March 2011 the head of development management, a person called Mr Andrew Davey, wrote to all members of staff confirming the conclusion of the process. Mary Collins was unsuccessful in her application for a post and she was therefore selected for redundancy. Mary Collins left her employment on 29 June 2011. Two other planning officers were also made compulsorily redundant and two others took voluntary redundancy.

3568. An email, which is at appendix B, was sent on behalf of Andrew Davey, head of development management, to those who had been unsuccessful—other than Mary Collins, they are redacted—and those who were successful.

3569. Therefore, the departure of Mary Collins was not related to the application for the turbine; it was not as a result of any disciplinary matter or dismissal on grounds of incompetence. The normal redundancy processes were followed to the letter.

3570. You highlighted a particular concern about my use of the phrase in the minutes, “I do not want to say too much about her departure.” At that time I was not fully apprised of

the circumstances of the situation set out above. I knew she had left the employment; I did not know whether she had been made redundant or dismissed.

3571. Attempts have been made to contact Mary Collins but to no avail. However, the Council does know that Mary Collins lives locally and is confident that it will be able to contact her. I understand she has set up her own consultancy, but the Council will confirm the details of that.

3572. As to the application itself and the conduct leading up to its determination, there was nothing unusual about the process and the actual stages undertaken. The application was received; the Council checked that all relevant rules had been complied with and the relevant fee paid, and, having done that, the application was registered on 27 April 2010. Following registration, the application was advertised in the local press and by site notices.

3573. Representations against the application were made by the following parish councils: Marston Moretaine; Hulcote and Salford and Lidlington. Eight individual letters of objection and two letters of support were received from neighbours, namely Covanta and an individual local resident and frequent user of the park.

3574. **CHAIR:** I apologise, Ms Sheikh. That raised a little amusement with my colleagues.

3575. **MS KABIR SHEIKH:** Yes; I can see that.

3576. Representations were also made by professional officers from CBC under the following disciplines: highways commented and gave recommended conditions, as did public protection; archaeology; community parks; and landscape, by virtue of the memorandum we have seen of 18 July 2010. I will deal with that later.

3577. There were also representations made by two telecoms companies on technical grounds, and other representations were made in respect of landscape and visual amenity by Natural England, Wildlife Trust and English Heritage, who were concerned about the setting

of heritage assets, including Ampthill Park House, Ampthill Park, Houghton House and Millbrook and Stewartby conservation areas, and the CPRE were also opposed.

3578. As to the committee report, which Mary Collins prepared, it concluded with a recommendation that the application be granted, subject to conditions. That report was included in the committee's agenda. The full report is at appendix C. I do not think we need turn to it because you have seen it previously.

3579. As would happen in all cases, the report summarised representations that had been made for and against the application, as mentioned above, but with one obvious exception. The representations of Alison Myers in relation to landscape were not dealt with properly.

(9.15 am)

3580. The section of the report that set out the comments of the Council's internal officers made no mention of Alison Myers' memorandum of 18 July. It did summarise the views of officers for highways, public protection, archaeology and community parks. Also, no mention was made of Alison Myers' memorandum in the section of the report headed "Landscape visual", which did summarise the views of Natural England, the Wildlife Trust, English Heritage and CPRE.

3581. The report listed 12 matters that were the main considerations of the application. They included the impact of the development on landscape character, and a section containing 17 paragraphs was devoted to the subject. The first eight paragraphs under the landscape section of the report dealt with the sensitivity of the area, which was described as "moderate". There was reference to the Mid-Bedfordshire landscape character assessment in relation to sensitivity; a description of the most visually sensitive areas of the vale; a description of the previous disturbance of the vale, and the character of the landscape was described as "highly fragmented"; a description of the development considerations set out in

Mid-Bedfordshire's landscape character assessment; and a brief description of the viewpoints and sensitivity from those points.

3582. The next two paragraphs under the landscape section of the report are words that appear to be taken verbatim from Alison Myers' memorandum of 18 July 2010: "The landscape impacts arising from the installation of a wind turbine involve primarily visual disruption, changes to landscape character and loss of tranquillity, which includes visual disturbance as well as noise. There is very little guidance available to help assess the appropriateness of a wind turbine or wind farm in its landscape setting. It is generally accepted that individuals have a personal response to wind turbines, but their general acceptability is greatly determined by the scale of the setting." It appears that the paragraphs were cut and pasted from Alison Myers' memorandum, if only because of the incorrect use of the apostrophe, which is in both. Two sentences from the memorandum are missing from the middle of the copied extract in which Alison Myers stated she was preparing guidance for the Council.

3583. In summary, the remaining seven paragraphs in the landscape section of the report say: "The turbine will punctuate the skyline but the physical structure and movement is not considered to detrimentally disrupt important landscape panoramas or distinctive countryside. The turbine will not detrimentally disrupt views of the Greensand Ridge or the clay farmland. Views from those vantage points will be distant. There will be views from the north from the Bedford bypass, but the Stewartby Chimneys are clearly visible and Cardington Sheds are clearly visible. They are enormous, dominating the skyline for miles around." It mentions the accompanying ZTV map—the zone of theoretical visibility—and says, "The tips of the blades can theoretically be seen from a neighbouring area of outstanding natural beauty." It describes the turbine, and concludes: "It is not considered to represent an overly intrusive feature in the landscape."

3584. In the important summary paragraph headed “Reasons for granting” it says: “The proposal would not impact detrimentally upon the surrounding landscape character.” Nowhere in the report is any mention made of the memorandum from Alison Myers dated 1 June or 18 July in the section where other council officers’ comments are noted, in the landscape section or elsewhere.

3585. The report does seem to cut and paste, as I have mentioned, two extracts from three short paragraphs, but it omits any reference to the remainder of the memorandum in which objections are made in respect of the detrimental impact of the turbine on the landscape. This omission is unusual and, as things stand currently, inexplicable. There is no doubt that reference should at least have been made to Alison Myers’ memorandum in the section of the report that set out the views of internal council officers, and it should have said there were objections from the council’s landscape officer in landscape terms. The landscape section should have set out the views of Alison Myers in more detail.

3586. Alison Myers has been contacted. Her recollection is that she submitted her first memorandum to Mary Collins on 1 June 2010, followed by the more detailed representation contained in her memorandum of 18 July 2010, which the Committee has seen but appears in appendix D again.

3587. Neither of these representations was included in Mary Collins’ report. Alison Myers’ recollection of the committee meeting is that the debate lasted about an hour, the first half of which was concerned with visual impact. Alison Myers recalls CPRE speaking at the committee and recommending that the application be refused, with Friends of the Earth speaking in favour of the turbine for renewable energy reasons.

3588. Alison Myers was very concerned that her representations had not been included in the planning report and has no explanation for this, other than that Mary Collins appeared to

take a different view from Alison Myers about landscape matters and had decided not to put Alison Myers' objections to the fore.

3589. As to the agenda for the committee meeting, the practice of the Council, which was followed in this case, was for it to be sent to members of the committee at least five clear working days before the meeting. This was done on 28 October 2010. Following standard practice and procedure, appended to the agenda was Mary Collins' report.

3590. As to the chairman's briefing and recollection of the committee proceedings, the practice of the Council for all planning committee meetings is to hold a preliminary meeting between the chairman of the committee and the planning officers who will be presenting the reports for the applications that are to be considered. The meeting is usually held on the Monday before the Wednesday on which the meeting takes place.

3591. Such a meeting did take place on this occasion. These meetings are informal and not minuted; they provide the officers with an opportunity to bring to the attention of the chairman any issues of note arising in the applications. The chairman has been contacted and spoken to. While he can recall the committee meeting, he cannot recall the briefing. The chairman confirms that, had he been informed at the briefing that Alison Myers' representations had been omitted from the agenda, he would have required them to be included on the late sheet. This appears to be the case in this instance.

3592. The chairman's recollections of the committee meeting are not detailed, but he does recall the tied vote and his exercising a casting vote. He recalls being marginally in favour of approving the application rather than refusing it, his decision being based on national planning advice on such matters relevant at the time. He cannot comment on whether the vote would have been different had Alison Myers' representations been included in the main report, but the vote was extremely close and he says it may have made a difference.

3593. As for the late sheet, some time between circulation of the agenda and the meeting itself it became obvious that Alison Myers' comments had not been properly included in the report. This is evidenced by the fact that Alison Myers' comments were included on the late sheet prepared for the committee. The late sheet set out Alison Myers' memorandum in its entirety including the objections of MMAG, which I will deal with later. The late sheet is appended at appendix E.

3594. It might be worth turning to the late sheet. That late sheet was sent to the councillors, and I will explain when it was sent. If you look over the page, you see that each item before the committee had a late sheet and additional comments, or not, and we find the wind turbine application at item 9. There are comments from Entec and Alison Myers reproduced in full under the heading "Marston Vale Wind Turbine". We have seen these comments, but here they are reproduced.

3595. Over the page, we also have reproduced the Marston Moretaine Action Group's comments on page 7. We have additional comments from Entec reproduced here.

3596. In terms of what happened then, in accordance with normal practice the late sheet was circulated by email to the committee members on the day before the meeting. Copies of it were handed to members at the meeting. It is standard practice for a late sheet to be prepared in respect of every development management meeting of the council, and there are almost always late documents to be submitted. However, it is unusual for an officer's comments to be submitted in this way when they have been submitted to the case officer in good time before.

3597. It can therefore be said with confidence that the views of Alison Myers were before the committee at the meeting, albeit they were not presented to the committee with the agenda in the form of the report, and they were presented for the first time the day before the meeting rather than the week before.

3598. As for the meeting and the minutes, it is not the practice of the Council to record development management committee meetings or take a verbatim note. The recollections of the chairman and Alison Myers are included in the paragraphs I have already dealt with.

3599. It should be noted that Mary Collins was not present at the committee meeting, and, as I have already mentioned, Ann Sameh had taken over the role of presenting the report to the committee. Minutes are prepared by the Council's committee services. The Committee has already seen the formal minutes, which are very brief.

3600. On day five I referred to some lengthier minutes, and the relevant extracts from that document are appended at appendix F. All that appendix F does is include the contents of the late sheet effectively with the resolution. I am instructed that that is the way of getting the late sheet comments on to the minutes.

3601. The minutes append the comments of Entec and also English Heritage, and there is the cut and paste of Alison Myers' comments in full. They also set out the objections of MMAG. It is standard practice to set out in full in the minutes any representations received that are contained in a late sheet rather than in the report. This again shows that the comments of the landscape officer were before the committee.

3602. In terms of the action group, during preparation of this note it was discovered that its objections were also not submitted with the agenda but were contained in the late sheet. I have already taken you to those. Therefore, they were given to committee members the day before the meeting and at the meeting itself, rather than a week in advance.

3603. This raised a complaint. One of the questions asked by Lord Dear or Mr Esterson earlier was whether complaints had been made. This did raise a complaint from the action group by letter to the then leader of the Council, Mrs Turner. That was followed by the attached response from Mary Collins. I think we need to go to that in appendices G, H and I. Appendix G is the letter from Stuart Long on behalf of the Marston Moretaine Action

Group. He writes to the leader of the Council asking her to examine the planning process leading up to and culminating in the planning committee meeting that led to approval of the turbine by the chair's casting vote. He points out that it became apparent to that group that its formal submission of objection through the council's own internet-based consultation system had not been received. Subsequently, they discovered that individual submissions had also not been received. They raised this with the council's department, the planning department duty officer and then Mary Collins on 9 November, which was the day before the meeting. He says: "I am aware that they hurriedly asked for and accepted a summary of our objections. I am also aware that they then included it on the papers the following day. I am sorry, but this is, surely, not effective consultation nor democracy in action. Councillors cannot be expected to receive information at the meeting and have time to digest it and consider it."

3604. The action group went on to say: "It is the view of the action group that it was poor governance to allow councillors to proceed to a discussion and decision when objections submitted in good time were either provided on the day or never included, and the Council's internet consultation process failed, and as such the Council has opted to make a decision knowing that objections have been raised but lost by the Council." Mr Long goes on to say: "We hope you will investigate this unfortunate sequence of events," and he sends goodwill to the leader.

3605. The response to that letter is contained in appendix H, which is a letter from Mary Collins. It seems that she was deputed to respond to this complaint. She writes on 15 December to Mr Long of the action group. She thanks him for the letter requesting the examination of the issue of the non-receipt of the comments sent electronically. She says she understands that the comments were made online through the portal; that the records

show they did receive a number of comments online with regard to this application; and Mary Collins says, “We have no records of a submission from yourself.”

3606. She then quotes from the information and system support technician. She says that she has been advised that “any comments made online are first pushed from the website into an external server before then pushing from the server into our gateway, which administrative staff would then accept into the specific application that they relate to. A recent check of the gateway shows no outstanding comments for this application. Therefore, we can confirm that we never received these comments at Central Bedfordshire Council. The only explanation we can offer at this stage is that the comments were never fully submitted.” She sets out the process, which involves a number of stages, for example entering the comments and getting them ready for submission, with an acknowledgement page and then confirmation that the submission has been completed. The technician says: “If someone were to close the web before receiving the acknowledgement page, the comments would not be submitted. At this stage, this is the only explanation we can offer as to why the comments were not received.”

(9.30 am)

3607. Mary Collins goes on to say: “We may need to carry out further investigations and ask Plantech, who provide the server, to run a search of their servers to see if they ever received your comments. We can also check whether there were any problems with the ICT infrastructure at either Plantech or Central Bedfordshire. Please are you able to confirm the date on which the comments were lodged online?”

3608. Up to that point the trail goes cold; there is nothing further from the group. There is, however, a blog posting mentioning the issue, which is also relevant, on the action group’s website. That is at appendix I. That makes comments about Covanta’s role. You see their grievance. They raise the point that questions are being asked about the committee and

how it came to approve a planning application in the Millennium Country Park. They were concerned that democracy had failed because a number of objections had been registered online with the Council, which they say were mysteriously lost. They make the point about the knife-edge vote, and the fact someone did not turn up until after the vote. They talk about various concerns raised by the action group and various councillors who raised those concerns. They note the fact that there were two letters of support, one from Covanta, who proposed to set up the Forest of Marston Vale trust fund. Generally, they are concerned about the Forest Centre adopting a neutral stance over the Covanta incinerator. They complain about the Millennium Country Park being keen to chase the next fast buck, as they put it. They raised general concerns in relation to the operations of the Council when the Covanta incinerator was to be considered. They were generally not pleased that the Council had dealt with the turbine application in the way it did, and they were keen to ensure that the same did not happen when the waste facility was considered in due course.

3609. In light of that, and as I stressed earlier, it is an interim note and there will be deeper investigation. The conclusions we can draw at this stage are that Alison Myers set out her objections to the application in the memo of 18 July to Mary Collins. Mary Collins did not set out those objections in her report to the committee. This was a mistake. The committee did have the views of Alison Myers before it when it made its decision. They were set out in full in the late sheet. It is usual practice for there to be a late sheet at every planning meeting, and there is no way of knowing whether the development management committee's decision would have been different if Alison Myers' recommendations had been included in Mary Collins' report.

3610. **CHAIR:** Thank you, Ms Sheikh. That is a very full and comprehensive explanation. I am very grateful you have said that the chief executive will be writing to us, and maybe we shall understand via Mary Collins why this matter was missed, because clearly it is important

not only to ourselves but to people in the area, quite frankly. I have no questions and will ask my Committee if they do. We will thank you for that. We await with interest the letters that you say will be coming to us, and we can proceed with Mr Williamson's first witness in support of the petition.

3611. **LORD DEAR:** Could I interpose and tender my apologies for coming in a little late. There were signalling problems on the tube that caused that.

3612. **CHAIR:** Would the chief executive also write to British Rail and complain?

3613. **MS KABIR SHEIKH:** I will make sure he does. Sir, I hope this has gone some way to indicate how seriously the Council is taking the points that you have made.

3614. **CHAIR:** Personally, I am very grateful and hopeful that we have done the people of the area and the Council a bit of a favour in having them look at their procedures. Right, Mr Williamson.

3615. **MR WILLIAMSON:** I propose to conduct this by making a short opening statement and then calling Mr Leeson.

3616. Petition 35 seeks the amendment of the development control order by the deletion of compulsory purchase powers generally and/or in respect of the special land in the petitioner's ownership. It is the exercise of these powers that is the cause of these proceedings.

3617. The 2008 Act requires that there must be a compelling case in the public interest before this aspect of the order is confirmed. Covanta acknowledge that different tests are applicable as between the grant of planning permission and compulsory purchase but rely upon the same evidence for both.

3618. There is an overlap between the two spheres but please do not confuse or merge the two. Crucially, the role of alternatives in the permissive regime of planning is entirely

different from that in the invasive regime of compulsory purchase. In the former there is no general obligation to consider alternatives, whereas in the latter there is.

3619. It is easy to see why. Planning permission simply grants rights to operators; it does not guarantee delivery of any scheme. It can be argued that it may be better to have more permissions than would be built. This encourages the operation of the market, which is central to national policy on waste. It improves the chances of delivery of adequate capacity, and indeed that is Covanta's case; that is what Mr Mould is saying to you.

3620. Compulsory purchase is very different. The use of compulsory purchase in the waste industry is rare. There are no bespoke powers available to this sector generally. Although the 2008 Act is now available to the waste industry, this is only via the vanguard of electricity generation, and then only for the largest schemes. It is not available for county-scale schemes. I am using that terminology in the light of previous use of it; that is, 200,000 to 300,000 tonnes, or less than 300,000 tonnes. Although the powers now exist for a handful of cases, there is no policy encouraging the use of CPO powers in the waste industry. Indeed, the opposite is true. The Government's policy is to encourage free market competition and for the state to intervene only when necessary "where there are clear market failures and barriers". That is a quote from the recent Review of Waste Policy 2011.

3621. Before compulsory purchase can be sanctioned, both the law and policy require an investigation of two questions: firstly, whether the public interest benefit served by a particular scheme could be secured by less intrusive means, i.e. could you do it without the use of CPO powers? Secondly, if not, do those benefits compellingly outweigh the harms?

3622. Paragraph 20 of the guidance on compulsory acquisition that accompanies the Act confirms in respect of the first question that all reasonable alternatives to compulsory purchase must be explored.

3623. It is agreed that the proper approach to the issue of alternatives is set out in national policy EN1 at paragraph 4.4.3 on page 49. Covanta set that out in their alternative sites report. This policy requires that alternatives should be judged against the test of whether there is a realistic prospect of achieving the same scale of capacity in the same time period as a promoted scheme. Keep your eye on the words “realistic prospect”.

3624. The test is further elaborated in the same paragraph by explaining that the corollary of the “realistic prospect” test is that proposals that are vague or inchoate can be excluded, so keep your eyes on “realistic prospect”, “take account of”, “vague or inchoate” and “dismissed”. That is what the advice says.

3625. Note that the test applies to proposals rather than schemes that are already in existence. Put simply, the advice is that weight must attach to alternatives that are realistic prospects, but where proposals are not fully formed or developed they should be dismissed.

3626. Axiomatic to this policy approach is the need for a judgment about the likelihood of the Rookery scheme itself proceeding and, if so, when. A number of members of the Committee raised that question earlier, and I hope that is a topic that we will be able to explore throughout the case.

3627. The Infrastructure Planning Commission expressly adopted the approach just described. However, despite almost 200 pages of the petitioners’ evidence and a week-long hearing—Mr Leeson and I presented that to the IPC—their findings are described within a single sentence in paragraph 7.94 of the statement of reasons. They simply say this: “We are of the view that there are no alternative sites to Rookery South in terms of delivery and times scales.” Again, keep your eyes on the words “delivery” and “time scales”. That was the essence of their finding.

3628. No reasons are given for dismissing your petitioners’ objections. No finding is made as to the likelihood of the scheme itself proceeding, nor the timing of its delivery. No

explanation is offered as to why the alternatives identified by the petitioners were considered unrealistic.

3629. Mr Leeson will present evidence to this Committee that is broadly the same as the case he put to the IPC but brought up to date. With the benefit of some hindsight, you will see—it is about 18 months since we appeared before the IPC—he was largely right.

3630. We submit that schemes that either have planning permission or are in the planning process are no more uncertain than the Rookery proposals themselves; indeed, the evidence points decisively to several of them being more certain.

3631. An important context to the consideration of the alternatives is the scale of need. The need for new energy infrastructure is indeed pressing. It is this point that justifies the approach in national policy that generally applicants are not required to demonstrate need for new generation capacity. That prescription is applied to the whole class of energy generating infrastructure. This is what I shall describe as the general or generic need.

3632. Both Covanta and the IPC placed considerable weight on the general need case. They are wrong to do so in the context of compulsory purchase and where the fuel source, and thus the potential generating capacity, is finite. National policy is quite different where waste is the fuel source, in that EN3 at paragraphs 2.5.6 to 2.5.8 recognises that recovery targets and waste management capacity are relevant considerations.

3633. Why are they relevant? The Government acknowledge that waste is not only finite but is becoming a diminishing resource. Therefore, the need for facilities fuelled by it is necessarily going to be limited. The scope for energy-from-waste facilities is a small subset of the whole class of generating stations that may meet the general need for capacity. This limitation by type of fuel is further restricted by geography.

3634. The overlap with waste policy requires consideration of the distances over which waste should be transported and the effect of any new energy-from-waste development on

local plans and targets. Covanta recognised this important principle by defining their own catchment area from the outset.

3635. All of the environmental impact assessments were carried out on the assumption that the fuel source for this plant would emanate from this proposed catchment, which still extends across five shire counties. This is why the evidence of all the parties, both before this Committee and the IPC, have concentrated upon the relevant arisings of residual waste in the catchment area, which is waste that would be landfilled if energy recovery capacity was not provided.

3636. Mr Leeson will present evidence on the marked reduction in residual waste arisings at the national level and in the catchment area driven by the policy of successive governments to discourage the landfilling of waste by the use of the landfill tax escalator. That has had a profound impact on the industry.

3637. The principal difference between the parties relates to the future estimates for the amount of commercial and industrial waste that is sent to landfill. There are small differences on MSW, as you will have seen going back to Mr Owen's evidence, but the big difference between the parties is in the production of commercial and industrial waste—C&I waste. Again, that is something on which you will have to keep your eyes focussed.

3638. Mr Leeson stands apart from both Covanta and the Councils in this respect. He is right to do so, and he will explain why. It is common ground between the parties that the only legitimate fuel source for this scheme is waste that may be diverted from landfill, so it is the most up-to-date information regarding this waste on which Mr Leeson will focus. The petitioners are themselves one of the largest owners and operators of landfills in the United Kingdom and own several assets within the catchment. They do, therefore, have some knowledge of the topic. John Plant will present evidence that supports Mr Leeson's

conclusions. From Mr Leeson you will get the sorts of statistics that are publicly available, and from Mr Plant you will get some information from the company.

3639. Overall, the petitioners set out to demonstrate that the dwindling amount of suitable fuel within the catchment, together with the presence of a considerable number of realistic alternatives, suggests that no compelling case in the public interest can be made out. Covanta's claim that the need is so great that compulsory purchase can be justified, even if there are realistic alternatives—that is paragraph 6.4.18 of the statement of reasons—is grossly misplaced. It is only if your findings are contrary to this that you would need to go on to consider the harms to the petitioners and any wider harms that would occur as a result of the scheme. In the balance at this stage are all the planning harms that form the basis of the councils' petitions and their general objection.

(9.45 am)

3640. In the interests of brevity, we adopt the councils' general points on harmful impacts without repeating the evidence. That is the line we took before the IPC. It is not that it is not part of our case, because in the balancing of harms for a compelling case, you have to have regard to those things as well; it is just that we would have been repeating a lot of evidence and we just thought it unnecessary. Do not forget that the IPC themselves concluded that the scheme would result in a number of harms, including conflict with the development plan, the landscape impacts, obviously large increases in HGV movements, a conflict with part of EN3, some adverse effects on the Millennium Country Park and the potential for pollution in nearby watercourses, but you have got the IPC summary of those things as well.

3641. Covanta have been consistently dismissive about the proposed interference with private property and its anti-competitive effects. They describe them in their statement of

reasons as being of relatively little weight. I am sure you are going to hear that from Mr Mould in due course.

3642. They are wrong to characterise the harms in this way for the following three reasons. Firstly, the right to peaceful enjoyment of property is a fundamental right in article I of the first protocol of the Human Rights Act, but, more importantly, Parliament protected such rights for hundreds of years before the convention. This is something Parliament has taken pretty seriously for a very long time.

3643. Secondly, among the land and rights being acquired is a restrictive covenant specifically designed to protect a proposal such as that now being brought forward in Elstow South. The covenant is a legally binding promise made between major players in the industry not that long ago specifically regulating activity on the Rookery site for the benefit of Elstow. Covanta are asking for your help to break that promise. Without help, they would become bound by its terms upon acquisition of the site. However, their own site selection process identified and dismissed 12 potentially suitable alternative sites because of what they saw as difficulties with site acquisition. It was mentioned as a feature in about 24, but for 12 it is the only reason for dismissing them.

3644. No explanation has yet been offered as to why what was important in those cases is not also important here. There is a wider public interest in upholding legally binding promises. There is a specific benefit to the waste industry in upholding agreements that encourage land transactions in the marketplace. If you cannot impose a covenant and have it stand, it will obviously have an effect.

3645. Thirdly, it is important to preserve free competition in the marketplace. National policy in the waste sector has been led by free markets since the privatisation of the industry in the 1990s. That was when we sold all the local authority waste in the LAWDCs and companies like my clients grew considerably in the early 1990s and the 2000s. That has all

been done through a privatisation agenda. National policy on waste—PPS10—encourages this competitiveness. The Electricity Directive has the specific objective of securing a level playing field as between large and small electricity generating schemes, which extends to Rookery as well as county-size schemes. Article 7 of the Directive requires that member states shall have enabling procedures that do not discriminate between large and small schemes. The article is aimed at decision-making, and we suggest that the exercise of compulsory purchase powers in favour of a large scheme at Rookery, at the potential expense of smaller county-scale schemes, would contravene the objective of this Directive.

3646. Finally from me in opening, it is worth noting that quite a lot has changed since the hearings before the IPC. You might not think so, but when you hear Mr Leeson's evidence you will see that that is the case. There is more information on arisings, some very recent, and good progress has been made on reducing the amount of waste being landfilled, as well as the delivery of alternatives. A number of the alternatives have moved further forward. Elstow is now a firm proposal, and there is more cause to doubt Covanta's claim—their unique selling point, if you like, to the IPC—that they would bring forward the Rookery scheme as a merchant facility without the benefit of long-term local authority contracts. That is really the essence of Mr Mould's case—that USP of "We'll deliver this." We say there is more cause to doubt that. Mr Leeson and Mr Plant will explain why these factors should persuade you to accept this petition for amendment. I call Mr Leeson firstly.

3647. I ask for Mr Leeson's exhibits to be handed out while he is getting into the chair. There is also a documents list to which I intend to refer. When putting this together I included PPS10, the companion guide and the 2011 review. It was so heavy to carry down with me I just left it, because I notice they are in the CD list. I had to bring these down from Yorkshire on the train, and it would have been that much extra thickness. Most of

these documents are already somewhere before you, but we have tried to identify extracts that we might want to take you to during the course of presenting our case.

3648. **CHAIR:** We sympathise with your problem.

3649. **MR WILLIAMSON:** Mr Leeson, while those things are being handed out, I wonder whether you would first tell the Committee who you are and explain briefly your relevant qualifications and experience.

3650. **MR LEESON:** My name is John Joseph Leeson. I have a first degree in geology and a masters degree in engineering geology, both some years ago. I am a chartered geologist and a fellow of the Geological Society. I work for a company called SLR Consulting Ltd, and have done so for approximately half my career. In the first half of my career I worked in industry in what was called the Ready-Mixed Concrete Group—RMC Group plc—which has now been taken over by a Mexican company. In that company I started work as a geologist and then progressed to become the UK development manager in charge of developing all of the company's quarry assets. I was responsible for a team of planners, geologists, landscape architects and so on who sought to get planning permission to develop quarries. Part of my role included looking at after-use of sites. In those days—I am talking about the 1980s and the first half of the 1990s—very often that meant looking at some quarries as potential landfill sites. That was what led me to get more involved in the waste industry.

3651. In 1995 I left RMC to join a start-up company in the UK, which has now become SLR Consulting. We have grown that company from four of us, and we now employ almost 1,000 people, about 300 in the UK, and we have overseas subsidiaries. We are an employee controlled British company, and we are still very much involved in the waste and minerals industries, and we also do a lot of work in the energy, infrastructure and development sectors.

3652. Over the past 15 years we have seen a marked change in our workload in the business. At first, we were predominantly working on landfill schemes, both getting planning consent for them and doing the hard engineering, producing landfill designs and getting them quality assured. That was the core of our business. That work has been dropping off steadily as the amount of waste going to landfill has been dropping. The last planning application we did for a landfill was about four or five years ago.

3653. At the same time, we have seen an increase in the amount of work associated with waste recycling and waste recovery schemes like the scheme we are discussing today: an energy recovery scheme.

3654. Initially, my workload has involved looking at and directing planning applications for landfills, and, more recently, directing applications for large energy recovery schemes. At the same time, I have been involved in giving strategic advice to bodies such as Defra. SLR produced a report back in 2005 called *Lessons Learned from Europe*. Defra wanted us to find out from our colleagues in the waste industry in Europe how Europeans had managed at that stage to have much higher recycling levels and much lower rates of waste going to landfill. We looked at 10 European countries and reported back to Defra in terms of lessons that we as a country could learn from our colleagues in Europe.

3655. I have also been responsible for writing guidance for the Environment Agency, advising them on the introduction into the UK of the Landfill Directive, and writing guidance on landfill risk assessment and the restoration of landfills.

3656. **CHAIR:** Can I say that we fully respect your professional credibility?

3657. **MR LEESON:** I was just about to stop. I do not want to take it any further.

3658. **MR WILLIAMSON:** I ask you to pick up your exhibits, Mr Leeson. On page 1 of the first one you summarise briefly the point about the need for the Rookery Resource Recovery Facility. Perhaps you could take us to the highlights of this.

3659. **MR LEESON:** I am afraid that waste is one of these industries that is bedevilled by acronyms. The National Policy Statement, NPS, and the overarching statement on energy in the UK, NPS ENI, recognise that energy-from-waste schemes have a role to play in providing part of our future energy supplies, but also recognise that unusually there is a dual role here. Paragraph 3.4.3 of ENI explains that the principal purpose of the combustion of waste is to reduce the amount of waste going to landfill. That is in accordance with the waste hierarchy, which I will discuss in a minute. At the same time, as well as moving waste from landfill, it is to recover energy from that waste, which could be expressed as either electricity or heat, or both in a combined heat and power scheme.

3660. At the heart of our case is the next statement: only waste that can be recovered from landfill and can be removed from the landfill stream is waste that should go to an energy recovery facility. I will explain that in a minute. That goes to the heart of our case. In terms of looking at fuel supplies for an energy-from-waste scheme, whether it is this or indeed any other scheme, one looks at the fuel source. The fuel source is only waste that is going to landfill at the moment. When we are looking at need, we have to consider that from two perspectives: there is the waste management perspective and also energy generation.

3661. With regard to the latter, energy generation, the overarching national strategy on energy reports that there is a presumption in favour of new energy infrastructure, so that is an important starting point, but it then goes on to say in paragraph 2.1.2 that energy infrastructure is needed at both large and small scale.

3662. **MR WILLIAMSON:** What do you interpret the words “small scale” to mean in that context?

3663. **MR LEESON:** I think it is quite clear, because that paragraph goes on to set out that large-scale infrastructure is national infrastructure projects; that is, projects which produce

more than 50 MW of electricity. Therefore, the Rookery scheme, which, if it is producing electricity, can produce 55 MW when fully fuelled, would be regarded as a national infrastructure project. When Mr Romans was giving evidence, he talked about county-scale facilities. I think Mr Williamson mentioned that in his introduction. These would be smaller than 50 MW; they would be the small-scale infrastructure that is mentioned in that paragraph of ENI.

3664. **MR WILLIAMSON:** Would it be fair to say that the policy is trying to encourage both large- and small-scale schemes?

3665. **MR LEESON:** Yes. Basically, government policy is that we need both large- and small-scale energy infrastructure, and there are considerable fiscal benefits in terms of the feed-in tariffs and so on that support small-scale energy production, both what we might have on our own houses, in terms of photovoltaic or solar thermal panels, right up to county-scale urban waste schemes, so there is a spectrum of energy supplies that the Government are trying to encourage right across. There is no distinction in government policy between large and small scale. We need them all.

(10.00 am)

3666. **CHAIR:** Might I interrupt, Mr Williamson? Is it not true that, when we talk about small waste-to-energy units, we are talking about small onsite, mostly, anaerobic units?

3667. **MR LEESON:** Anaerobic digestion units would fall into that category. A large-scale scheme in this context would be highly unlikely; one producing 50 MW would be enormous.

3668. **CHAIR:** Of course it would, but these are mostly attached to food-producing sites. They devour food waste in order to produce energy, do they not?

3669. **MR LEESON:** Yes. Some of the supermarket chains have built their own anaerobic digestion plants. Virtually every energy-from-waste plant operating in the UK at present, so lots of the plants that take municipal waste, would be regarded as small scale in the context

of the National Policy Statement, which sets the threshold at 50 MW. The vast majority of energy-from-waste plants currently produce a maximum of 20 MW to 30 MW, so they are regarded as small scale.

3670. **CHAIR:** I am grateful for that. I now understand it a little more.

3671. **MR WILLIAMSON:** You go on on page 1 of the exhibit to deal with the issue of the fuel source being finite. This is an important point, and perhaps you could try to make that point to members of the Committee.

3672. **MR LEESON:** At the outset, clearly it is no part of our case that we do not need additional energy supplies. I just point out that Mr Plant will be able to talk about this in more detail. FCC is the largest producer of energy-from-landfill sites in the UK in terms of landfill gas. It is pursuing wind power schemes on some of its landfills and energy-from-waste schemes, as Mr Plant will explain.

3673. There is a general presumption in favour of energy development, but we have this issue, which is particular and peculiar to the waste market, where the resource is finite, and indeed the Government are acknowledging that the fuel source is effectively diminishing. We could suggest that all fuel sources, say, gas, coal and oil—we talk of peak oil and peak coal—might be finite, but in the context of the recent announcement by the Government that they want to develop 30 gas-fired power stations, clearly gas is a finite resource. The Government are assuming there that human ingenuity will bring gas to our shores in the form of liquid natural gas in tankers; we have got enhanced recovery in the North Sea; and clearly there is potential for shale gas, which the Government seem to be more favourable towards. We have a finite resource there, but human ingenuity is enhancing the supply of that resource. We have exactly the opposite with waste. Human ingenuity is decreasing the amount of waste that we have available as fuel. We have very opposite tensions.

3674. Our view is that, if that diminishing resource can be fully exploited for the energy that is available in the waste resource using market forces, without recourse to state aid, there is not a compelling case in this instance for the use of compulsory purchase powers.

3675. **MR WILLIAMSON:** I take it that when you use the phrase “state aid”, you mean to include the use of compulsory purchase powers.

3676. **MR LEESON:** Yes.

3677. **MR WILLIAMSON:** That is assistance from the state to take the petitioners’ property interests from them.

3678. **MR LEESON:** That is correct. The phrase “state aid” comes from the Government’s June 2011 Review of Waste Policy. They specifically say that they will use state aid, as they call it, only if there is evidence of market failure.

3679. **LORD GEDDES:** Are you going to explain to us later why the source of waste energy is diminishing? That seems to be the key to what you are saying.

3680. **MR LEESON:** Yes, my Lord; it is indeed. We will address that point.

3681. **MR WILLIAMSON:** Perhaps we can continue to page 2 of your exhibit. You have got the waste hierarchy. We do not need to spend too much time on that. Members of the Committee have seen this previously. Perhaps you could just make a brief point about it, looking at the area in that inverted pyramid as being the source of fuel for an energy-from-waste facility. Is that the bit that is labelled “disposal” at the bottom of the pyramid?

3682. **MR LEESON:** Yes. This goes to the question that Lord Geddes has just raised. The fuel source that energy-from-waste plants seek to exploit is the waste that is currently being landfilled, or indeed being incinerated without energy recovery. In the UK we do not really have incineration without energy recovery anymore. We used to have things called destructors in some cities, which literally burnt waste. They are no more. But if we had such facilities, they would be below energy from waste, which is regarded as recovery.

3683. The main point here is that there has been a lot of focus on improvements in recycling and so on. The key driver these days, which to a degree goes to the heart of Lord Geddes' question, is to reduce the amount of waste we produce. This is a priority order. The first thing we should be doing is preventing waste being generated. This is a significant change. We have an obligation under the Waste Framework Directive to produce, peculiarly in one year's time from today, on 12 December 2013, a national waste prevention programme and submit it to Europe. This is a programme under the Waste Framework Directive that will describe how we as a country will reduce the amount of waste and prevent waste rather than start to worry about recycling and so on. We still need to worry about that, but the focus is now moving much more towards waste prevention rather than waste recycling. That is a very important change.

3684. The Government's waste resources action programme was set up about 10 years ago. Initially, it was about using waste as a resource and recycling it. Their focus over the past few years has changed completely towards waste reduction, so they are working with industry, such as the food industry, to reduce the amount of waste they create before they consider recycling it and recovering it.

3685. **MR WILLIAMSON:** And these are examples of human ingenuity that you spoke of earlier; these are the steps that are being taken to try to go in this direction?

3686. **MR LEESON:** Yes. It has been driven both by Europe but also by market forces. Waste is a wasted resource and a waste of opportunity, and business is very much signed up to that. The WRAP programme I mentioned earlier—the waste resource action programme—signed up 53 companies under the Courtauld commitment to reduce waste in the food and catering industry, which is our biggest manufacturing industry. Every household name you would recognise—Tate & Lyle, Tesco, Asda—all signed up to that protocol in 2010.

3687. **MR WILLIAMSON:** The final bullet point in the right-hand column is clearly relevant; it is about knowing how much you get from a particular catchment and why that is important.

3688. **MR LEESON:** The way we have calculated the requirement for energy recovery capacity is predicated on the waste that is going to landfill. The advantage of doing this, as we will demonstrate, is that we can use very much up-to-date information about how much waste is being landfilled today. We can look at trends that have been affecting that, and that allows us to look for a relatively short period into the future. Long-term forecasts are always slightly dangerous. There was a forecast 10 years ago that waste would carry on increasing with GDP, but we are seeing a very different trend today.

3689. **MR WILLIAMSON:** Just before that, I think it is right that this is the same approach Covanta adopt in their evidence; it is just that there are different figures, particularly for C&I waste.

3690. **MR LEESON:** Covanta explicitly accepted, as one would expect them to, that it is only from landfilled waste that they seek to recover fuel for the Rookery facility. That is set out in their third written representation. I do not know whether the Committee wants to go to that. It is in our tab, but I do not think that is between us.

3691. **MR WILLIAMSON:** Let us see if there are any questions. I do not think we need to go into it now.

3692. **CHAIR:** I assume Mr Mould will be talking about that particular matter too, so we are happy to leave it there.

3693. **MR WILLIAMSON:** Let us go to some of the pretty startling graphs on page 3. Perhaps you could just explain what the graph and table show and the source of the information.

3694. **MR LEESON:** This is a graph that we have prepared. Looking at the right-hand column, this graph is prepared using data produced by the Government's Office for National Statistics. These data relate to the amount of waste that is being landfilled on which tax is paid. As the Committee is probably aware, the landfill tax was introduced in the Finance Act in 1996. It set two rates of tax, the higher rate of tax for what is called active waste, which in those days was £7 per tonne, and a lower rate of tax for what is called inactive waste, which then was £2 per tonne, so there was a difference of three and a half times. Active wastes are those that can degrade either physically or chemically, so clearly wastes that burn are active wastes, but equally wastes that can leach, if water passes through them, would be regarded as active wastes. Inactive wastes by definition effectively include inert wastes, but some other wastes that are regarded under European legislation as non-hazardous wastes are regarded by the taxman as inactive. For instance, pulverised fuel ash produced by power stations is regarded as inactive waste on which the lower rate of tax is paid.

3695. This graph is showing us the plot of the amount of active waste going to landfill. We can see the data in the second column on the right-hand side for the standard rate of tax. This started out in 1996. It was an incomplete year, which was why it started out at 13 million tonnes, but in the first full year tax was collected from 50.3 million tonnes.

3696. Over the early part of the past decade that stayed broadly similar to about 50 million tonnes. The green line shown on the graph relates to the right-hand axis, and that shows the rate of landfill tax levied at the time for active waste. It started out at £7 per tonne. It increased gradually by £1 per tonne per year up until the middle part of the past decade. I think there was a realisation that at that rate of tax it was not really encouraging a change in behaviour. The Government introduced an escalator at £3 per tonne. We can see the uptake in about 2004. More recently, the Government produced another escalator and the tax is now rising at £8 per tonne per year. This year for every tonne of active waste

disposed of the tax rate is £64. Next year it will be £72 and it will rise to £80. The Chancellor has confirmed that it will not drop below £80 per tonne.

3697. **MR WILLIAMSON:** It may even go beyond that. We do not know.

3698. **MR LEESON:** It might. The Environment, Food and Rural Affairs Committee has recommended that it continues to rise until the end of the decade.

3699. **MR WILLIAMSON:** So there is a recommendation from that Committee.

3700. **CHAIR:** Mr Williamson, this place continues to seek extra ways of taxation, so I am happy to believe that.

3701. **MR WILLIAMSON:** Indeed. But your graph obviously should have gone to £80 per tonne in 2013-14.

3702. **MR LEESON:** It should go up to £80 per tonne. You are quite right. What it shows is that from about 10 years ago, or the early part of the past decade, we started to see a reduction in the amount of active waste being landfilled. That reduction clearly started in the first half of the past decade before the recession. It continued throughout the recession in 2008 and 2009. It might be argued that the rate of change increased, but, most importantly, the amount of active waste being landfilled has continued to drop, even when we came out of recession. We may not be in a period of GDP growth, but we do not have GDP contractions as we had during the recession. Clearly, we have a phenomenon that is not related to recessionary pressures, which was the case being put to me 18 months ago.

3703. **MR WILLIAMSON:** Mr Phillips asked you questions in cross-examination, saying, "Look, Mr Leeson, we're in the worst recession most of us have known for a very long time. Surely, this trend line is simply reflecting that." Your response to that is what?

3704. **MR LEESON:** My response at the time was that I did not think it was, but now, with the benefit of hindsight, we have effectively two more years of data, so we can see that this trend has continued to the present day. Last year the whole of the UK, not just England,

landfilled just over 20 million tonnes of active waste. If we look at the table on the right-hand side, the central column showing the lower rate of tax is quite interesting. This is very often regarded as the rate of tax that is applicable to the construction industry, for instance. A lot of construction and demolition waste is taxed at the lower rate.

(10.15 am)

3705. **MR WILLIAMSON:** That is the £2.50?

3706. **MR LEESON:** Yes. That rate was £2 and it rose to £2.50, but effectively the lower rate of tax has remained unchanged for the past 15 years. We can see that a typical 12 million tonnes or 13 million tonnes in the middle part of the past decade dropped during the recession to 7.6 million tonnes and then 6.8 million tonnes, but after the recession the construction and demolition inactive waste deposits have rebounded. I think we can see a recessionary effect there for inactive wastes, where the landfill tax is not such a disincentive to disposal, whereas for the active rate of tax we can see a clear effect on both businesses and local authorities of a very clear government policy to carry on raising tax. It is very obvious, if you are a business or a local authority councillor, that the tax burden will continue to rise and you can predict its effect on your council taxpayers or your business.

3707. **MR WILLIAMSON:** Obviously, you act for more than just this petitioner; you act for a lot of players in the industry. To give your own personal view, how dramatic an effect has the landfill tax escalator had on the industry?

3708. **MR LEESON:** As I said, when initially it was set at £7 per tonne, the industry was, like all industries when facing a tax, concerned. Typical landfill gate fees at that period would have been in the order of £15 to £25 per tonne, so £7, while it was a large percentage, was not overwhelming. When you are faced with the prospect of an £80 per tonne gate tax on top of, say, a £20 gate fee, you are raising the cost of disposal to £100 a tonne. It clearly has had a big effect on the investment plans of the waste industry in the UK. We are not doing

any landfill work other than some engineering work. Waste is still being landfilled, but no one is developing new landfills. As a country we still have quite a large land bank, as it is called, of waste disposal void. All of the work in the industry that we and our competitors are doing is to do with recycling and recovery projects.

3709. **LORD FAULKNER:** How much of the decline in the amount of landfill over the past three years do you ascribe to illegal dumping and contractors avoiding payment of the tax?

3710. **MR LEESON:** That is a very good question. There was a big concern when the tax rate was accelerated that fly tipping, or illegal dumping, would become rife. Thankfully, the evidence is that that has not happened. There have been some notable cases where HMRC has looked at the use of wastes as engineering materials and wastes in landfills were being used for building roads. HMRC decided that that was not an engineering activity but a disposal activity. However, that was to do with inactive rather than active wastes. I do not think there is any suggestion I have seen from any Defra documentation that waste is escaping the system in any appreciable quantities.

3711. **MR WILLIAMSON:** We have probably covered the information on that sheet. You then go on to deal with what types of waste we are landfilling. You set out the position of municipal solid waste on the left-hand side, and then commercial and industrial waste on the right. Let us deal with both. As to municipal solid waste, there is not a lot of difference between anybody about MSW in this case, so let us not spend too much time on that. The dispute centres primarily on the right-hand side.

3712. **MR LEESON:** That is correct. We are very fortunate. We have quarterly statistics produced by Defra and by the devolved governments on the amount of municipal waste that is generated and how that is managed. Therefore, we have very up-to-date landfill statistics for the amount of municipal waste that is landfilled throughout the UK. That really arises

because we have an obligation under the Landfill Directive to reduce the amount of biodegradable municipal waste being landfilled, so the Government's focus certainly over the past 10 years since the Directive was introduced has been very much on achieving those targets.

3713. The data on commercial and industrial waste are more sparse, partly for logistical reasons. We have about 247 waste disposal authorities in the UK. These are county councils or unitary authorities, so it is quite easy to collect data from them. We have literally hundreds of thousands of waste-generating businesses, and it is much harder to collect data from commercial and industrial waste producers.

3714. Therefore, in order to be able to plan for waste management, the Government have commissioned studies on the amount of commercial and industrial waste being produced. The first of these, post the Landfill Directive, was carried out by the Environment Agency.

3715. That related to data from 1998-99. That was then updated in 2002-03. Then we had a hiatus.

3716. **MR WILLIAMSON:** Let us make a note. On the graph showing commercial and industrial waste, we can see the 2002-03 data. That is based on survey.

3717. **MR LEESON:** Yes. I should stress that this is for England.

3718. **MR WILLIAMSON:** You and I were both promoting appeals, were we not, in the 2000s having to rely upon that data?

3719. **MR LEESON:** Yes, absolutely.

3720. **MR WILLIAMSON:** That was what we put forward, because there was not anything better for quite a few years. I know that you and I did at least a couple of cases on that point, but there was a survey at that time. Just explain what the 4, 6 and 8 figures are. On what are they based?

3721. **MR LEESON:** For the Committee's benefit, maybe I could just jump ahead. There was a survey in 2002-03 and also a national survey carried out by a consultant company in 2009, so there was a gap from 2002-03 to 2009. The 2009 data were not released until well into 2011, so there was a long gap when people in the industry felt that a lot was happening in terms of waste to landfill being reduced, but we did not have any hard and fast data.

3722. In 2011 Defra produced a report looking at forward trends in waste. To do that they also looked behind them to see what had happened. They had the three data points from the surveys: 1998-99, 2002-03 and 2009. They interpolated the amount of commercial and industrial waste being produced to arrive at those three bars for 2004, 2006 and 2008.

3723. **MR WILLIAMSON:** So they were projections?

3724. **MR LEESON:** They were backward-looking projections looking at the business population as far as I understand it. I think it demonstrates the problem that the industry has faced, in that we knew there was a lot of commercial and industrial waste out there but, until the 2009 survey was completed and reported in 2011, there was not a lot of information to go on.

3725. **MR WILLIAMSON:** To be clear about it, those projections by Defra for 2004, 2006 and 2008 were included as part of Covanta's work, but the more recent survey was not published until after the proposals were formulated. Is that your understanding?

3726. **MR LEESON:** As far as I am aware, those interpolations for 2004, 2006 and 2008 were not available until this report was produced in June 2011. In the interim period between 2002-03 and 2011, various regional bodies, notably in the North West, attempted themselves to quantify the amount of commercial and industrial waste available, because there was considerable disquiet that we were trying to plan almost in the dark for waste facilities. Therefore, various regional bodies did do that. The East of England region, which is obviously relevant to this case, commissioned a report looking at commercial and

industrial waste arisings in 2006-07. That work was then extended throughout the rest of England in a fashion. There were attempts to fill in these gaps, but the first comprehensive survey we had available was really the 2009 survey.

3727. **MR WILLIAMSON:** If we can go over the page, how much of that C&I waste is being landfilled?

3728. **MR LEESON:** As Mr Williamson has mentioned, we do not really have anything between the parties in the municipal waste field, because it is very well reported and understood. Local authorities issue contracts for certain amounts of waste, so we know how much is out there by and large.

3729. To get a better quantification of how much commercial and industrial waste we have to deal with—how much is being landfilled and could be diverted—we have had to manipulate the data available to us. The first thing we can do is look to see how much municipal waste is landfilled in the UK by gathering data from Defra and the three devolved governments. They all publish data over various periods. It is quarterly in England; it is annual in Scotland and Wales; and it is quarterly in Northern Ireland. We can get hold of that information and aggregate it. The first graph shows the results of that and how much municipal solid waste, or MSW—I am afraid it is another acronym—is being landfilled in the UK. We can see a very steady decline from about 27 million tonnes to 12 million tonnes in the past year.

3730. One thing I should point out to the Committee is that, for its own reasons, Scotland publishes its data on waste about a year behind other governments. To produce the figure for 2011-12 I have looked at the raw data for England, Wales and Northern Ireland and taken the trend for those three governments and applied it to the Scottish data for 2010-11. I think that overstates the reduction in Scotland, so it is a conservative assumption. It acts on the commercial and industrial waste figures, which I will talk about in a minute. That is

just so the Committee is aware how I have done it. Clearly, the volume of waste produced in Scotland is a very small proportion of the overall UK waste tonnage.

3731. To work out how much active commercial and industrial waste is being landfilled, we have simply deducted those municipal solid waste figures from the landfill tax data for active waste deposition. In doing that, we have made a very small adjustment. Municipal solid waste, by and large, is active waste; it degrades in our bins, in landfill sites and so on. About 2% of it is regarded as inactive waste. Rubble and some types of street sweepings are regarded as inactive, so I have made a small adjustment for that to be absolutely accurate about how much active C&I waste has been produced. Making that small reduction in the amount of MSW that is landfilled increases the amount of active waste, so I am trying to be scrupulously fair in doing that.

3732. **MR WILLIAMSON:** You go over the page to active C&I waste.

3733. **MR LEESON:** Yes. We have deducted the blue MSW from the total to come out with the orange active C&I wastes. On page 6 the result of that is the graph here, which is for the whole of the UK. It shows that in the past 10 years the amount of active C&I waste that we deposit has dropped from about 22 million tonnes to about 8.4 million tonnes in the past financial year, 2011-12.

(10.30 am)

3734. Just so we are clear, I stress that this is active commercial and industrial waste. Inactive wastes, such as waste from power stations and some of our chemical industries, are excluded, but these are clearly wastes that, by the very fact they are inactive, will not burn and are not suitable as fuel for an energy-from-waste plant, so it is entirely relevant that you look at the active fraction of commercial and industrial waste. We have a 63% reduction in the amount of active waste being landfilled in the UK. This reduction started well before the recession. We can see from this that it might have accelerated during the recession, but it

has continued since the recession. We are still seeing a downward trend. Over the past 10 years there has been a 10.4% reduction per annum in the amount of active commercial and industrial waste going to landfill.

3735. **MR WILLIAMSON:** Are there any figures for 2012-13?

3736. **MR LEESON:** HMRC reports landfill tax data on a quarterly basis. In the last week we had the latest information from HMRC. That reports the first two quarters of this financial year, so the first half of 2012-13. That suggests about an 11% reduction compared with the first half of 2011-12, so we are seeing this trend continue right up until literally a couple of months ago.

3737. **MR WILLIAMSON:** Since you wrote this, there has been a bit more data.

3738. **MR LEESON:** Since we did this.

3739. **MR WILLIAMSON:** And that shows the same thing?

3740. **MR LEESON:** The trend seems to be continuing at the moment, yes.

3741. **MR WILLIAMSON:** You then say in the bullet point that it is only from this you could fuel an EfW. Obviously, those figures relate to the UK. We now need to go on to look at the catchment area.

3742. **MR LEESON:** Yes. We have the figure of 8.4 million tonnes last year for the whole of the UK, the active commercial and industrial waste being landfilled. We have to get a sense of the scale of this fuel source in the catchment area. Individual businesses do not, unfortunately—or maybe fortunately for them in terms of red tape—produce individual data on how much waste they produce. We have to approach this using other information that is in the public domain. There are two main ways of doing this. One is to look at the population data for the UK, which is obviously, again, produced by the Office for National Statistics, and the other is to look at the business population data, i.e. in terms of VAT-registered businesses. That is reported down to local-authority level. Within each

local authority we actually know the number of VAT-registered businesses that are present. We can then express that as a proportion of the number of VAT-registered businesses in the UK. Looking at the chart on the right-hand side, we can see that 7.2% of the UK's VAT-registered businesses are actually registered within the catchment area and it accounts for about 6.3% of the UK's population. It suggests that business activity is perhaps slightly more buoyant than in other parts of the UK. To put this in context, there are 3.9 million people in the catchment area out of the total UK population. This approach of using these surrogates to estimate—and it is only an estimate—commercial and industrial waste arisings has been followed in various regional strategies. It was followed by Defra in that backward-looking set of projections. It is an approach that has some merit.

3743. **MR WILLIAMSON:** Yes, I was going to say, Mr Leeson, lawyers—and maybe some of the members of the Committee—get twitchy when they see the word “assume”. How safe an assumption is that? How common is that in a methodology in terms of this sort of evidence that is put to various bodies?

3744. **MR LEESON:** There is a fantastic passage in PPS10, the guidance, which is still in force, on waste; it says to avoid spurious precision. The moment you start saying that there are 405,632 tonnes in a certain area using these sorts of assumptions, it is spurious precision. It is over-precise. We must acknowledge that we do not know. We are looking for a sense of the scale of the provision that is required—whether it is 2 million tonnes, 1.5 million tonnes, 1 million tonnes or 0.5 million tonnes. I think being over-precise is inadvisable but, as I said, this approach of using VAT-registered businesses has some pedigree. It has been used before. If one compares data on waste arisings at regional level with VAT-registered businesses, you certainly see a very close correlation. It has been looked at.

3745. What we have done is taken the larger of those two figures, the 7.2%, and applied that to the 8.4 million tonnes of active waste arisings, and that comes out with a total arisings of commercial and industrial waste in the catchment area that was sent to landfill last year of just over 600,000 tonnes. I think I would hold on to the 600,000 tonnes figure. Even the 5,000 tonnes might arguably be spurious precision, but that is the sort of order of magnitude we are talking about.

3746. **MR WILLIAMSON:** It is about 600,000 tonnes.

3747. **MR LEESON:** It is about 600,000 tonnes. That is based on this way of working out active commercial/industrial waste being generated and then sent to landfill. Obviously, this trend of active commercial and industrial waste going to landfill is certainly continuing this year. If it were to continue for another two years until the tax reaches its projected rate of £80 per tonne in 2014, this would have the effect of reducing the amount of active C&I waste businesses generate and send to landfill in the catchment area to 450,000 tonnes. These 10% per year reductions that we are seeing are having a significant impact on the amount of fuel available for these energy-from-waste plants.

3748. **LORD GEDDES:** Mr Leeson, you have been repeatedly telling us about “sent to landfill”. Do you mean literally that or does that include any of this waste that goes to regeneration plants?

3749. **MR LEESON:** My Lord, these data are all based on waste that is being sent to landfill in the last year, so it is all waste that is being sent to landfill. It might have gone through a recycling process to remove some recyclates, but this is waste that is going to landfill and on which this higher rate of tax is paid.

3750. **LORD GEDDES:** None of the figures you have been giving us are going to regeneration plants?

3751. **MR LEESON:** Not currently, no. This is the fuel source of the future, effectively, for these plants.

3752. **LORD DEAR:** If I may, the consideration is that in the future some of that can be harvested for power generation.

3753. **MR LEESON:** Do you mean waste that is actually being landfilled currently?

3754. **LORD DEAR:** Yes.

3755. **MR LEESON:** Yes. This is called landfill mining, my Lord. It has been talked about for a long time. We are occasionally asked to consider its potential. The issues revolving around that relate to the fact that, in terms of the energy value of waste that is placed in landfill, about 62% of that waste is biodegradable, my Lord. That is waste that, as you put it in the landfill, starts to degrade and produce methane. These days, thankfully, landfill sites are well-engineered and capped. The methane is pulled out of the sites and is used to generate electricity. As we are generating landfill gas out of landfills, we are effectively reducing very considerably the fuel value of the residual waste that is in them. There is that issue. The fuel value is decreasing.

3756. The other side of the equation is that waste in landfills start to degrade and produce methane when they are wet. If you have a landfill that is so hermetically sealed that it is bone dry, the waste in it will not degrade. Waste in landfills does wet up. If one drills into a landfill, which for our pains we do a lot of—putting in gas extraction systems and monitoring equipment—the waste that comes out is saturated and degrading. The waste itself as a fuel has gone from something that is dry and sortable to a saturated, almost homogenous material.

3757. **LORD DEAR:** Would that be like compost?

3758. **MR LEESON:** It is on the way to that. There are varying degrees, obviously. With the newer waste on top, one can sometimes pick out a piece of newspaper. When

you get to the bottom of the pile, you are literally dealing with a brown, sludgy mass, from which a lot of the fuel value is gone. In terms of any remaining value, you are obviously dealing with a saturated material. If there is an interest in landfill mining, it tends to be to get at particular easy-to-recover materials. Some inert landfills have been mined to recover rubble, which is quite easy to screen and produce secondary aggregates out of, but certainly at the moment there are no landfill-mining projects that we are aware of. As I say, we work for all of the major landfill companies in the UK, so I do not think it will be a credible fuel source in the future.

3759. **MR WILLIAMSON:** I think it has been the odd topic at a conference or two, Mr Leeson, has it not?

3760. **MR LEESON:** It is one of those things one talks about. We should never say never. My view would be that if we do mine landfills it will be to get at recyclable materials, particularly metals. We now recycle some old coal tips in the country, where we could not get at the fine coal. People process the whole tip to get at, say, 8% of the coal. I can maybe see landfills being mined to get at metals or, say, hard construction materials or even dense plastics. I cannot see them being mined to produce a fuel source, though, my Lord.

3761. **CHAIR:** The main thrust of the point you are making is that you had data available that was not available to Covanta, and consequently that data showed there would be less available than Covanta were projecting. Is that it in a nutshell, as it were?

3762. **MR WILLIAMSON:** Yes.

3763. **CHAIR:** Good, I am grateful. Thank you.

3764. **MR WILLIAMSON:** It is whether it was available. It was not referred to in their material. It was not something that was put before the IPC by them. Clearly, it is a matter that we have always maintained. You will hear from Mr Plant about the actual input.

3765. **CHAIR:** I understand. That is the absolute essence of what you are telling us this morning. I am grateful.

3766. **MR WILLIAMSON:** Yes. It is the quality of the data and the date of it.

3767. **MR LEESON:** On that point, Mr Chairman, can I just say something? When Covanta's application was made, this 2009 survey set of data was not available.

3768. **CHAIR:** You have made that point. I understand it.

3769. **MR LEESON:** Sorry, there is a secondary point. Just to be absolutely clear, so we are not misleading you, Sir, my understanding is that when that report was produced in 2011, Covanta produced an addendum to their need assessment, which reduced the amount of waste they projected would be available. I think, to be fair to them, they would say they have taken account of this.

3770. **CHAIR:** I am sure Mr Mould will be as fair to them as he possibly can be.

3771. **MR WILLIAMSON:** Indeed. It is about the quality of that data and whether it is—

3772. **CHAIR:** I understand. Thank you very much. I am trying to make the point that I do think your information is reasonably well understood by members of the Committee. You might, therefore, be able to progress a little more quickly.

3773. **MR WILLIAMSON:** Yes, we will do that. Just to take one small point regarding the 450,000 tonnes, Mr Leeson, at the bottom of page 7, I know you are going to go on to do more calculations, but is that 450,000 inherent in your subsequent calculation or have you relied on the 600,000 tonnes.

3774. **MR LEESON:** I have relied on the 600,000.

3775. **MR WILLIAMSON:** So there is no projection into the future in what is about to follow.

3776. **MR LEESON:** Sir, the final thing we have to do—obviously, pressing on as fast as we can—is look at the nature of the active waste that is being landfilled. As well as including wastes that are eminently suitable for energy from waste, it will include wastes such as food and agricultural wastes, as well as wastes that by their very nature—such as chemical wastes or sludges—would not be suitable for energy recovery. We have made an assessment. The charts on the left-hand side show the output from this 2009 study, which was available in May 2011. In the third column they show the waste types. You can see that, out of the 48 million tonnes of commercial and industrial waste, there are several waste types. When we look at what was actually being landfilled, we can calculate that about 61% of that tonnage of active waste would have been suitable for energy-from-waste recovery. Significantly, about 14% might also be suitable for energy-from-waste recovery. I think the Government is now telling us that should be prioritised towards being used for anaerobic digestion to produce energy in that fashion. The government review of waste policy last year suggests that is a more appropriate use for those completely organic wastes.

(10.45 am)

3777. **MR WILLIAMSON:** That is for the 14.3%. It will be pushed by the review towards AD.

3778. **MR LEESON:** When we apply the 61% figure to the 600,000 tonnes that we calculated were going from the catchment area to landfill in 2011, that suggests around 370,000 tonnes of suitable commercial industrial waste, non-metallic waste, was landfilled that could have been dealt with or treated in a waste recovery facility like an energy-from-waste plant. Again, to be absolutely fair, there is some additional animal and vegetable waste that one could burn, but the Government has suggested that should go to AD—anaerobic digestion.

3779. **MR WILLIAMSON:** You refer to table 30 of the Jacobs report, but 28, 29 and 30 can be read together. They are in the bound documents; I will not take you to them now, but the tables are there. Let us have a quick look at the catchment area. I think members of the Committee have seen this before.

3780. **MR LEESON:** Yes, this is very similar to something Mr Romans produced on the first day.

3781. **MR WILLIAMSON:** Let us take this quickly. I think members will remember the original project BEaR catchment. That is shown in blue.

3782. **MR LEESON:** To make sure everybody remembers, BEaR was the Bedfordshire Energy and Recycling project. Its catchment was the old county of Bedfordshire and Luton—the area edged in blue—and the Rookery site was selected by the BEaR project as a potential site for an energy-from-waste or energy recovery plant for that BEaR project. As Covanta explained, they were aware of that. That was one of the things that led them to that site. They have drawn this larger catchment area edged in red, which includes these five shire counties. As Mr Romans did, I have highlighted for your benefit the green counties where the long-term contracts for municipal waste disposal have either been let or are at the point in the process of having a preferred bidder that is not Covanta. The three pink areas—Northamptonshire, Bedford and Luton—are areas from which municipal solid waste might still be available. Regarding Windsor and Maidenhead in the south, as I understand it, Covanta already have a contract with that council.

3783. **MR WILLIAMSON:** Let us move quickly over to page 10: how much remaining waste there is in the catchment area that would be suitable for the facility. Perhaps you could take us through this quickly.

3784. **MR LEESON:** What we have here on the right-hand side is a simple bar graph. The top elements relate to municipal waste, so we have the Windsor and Maidenhead

contract in yellow. There are the three potential municipal contracts from Luton, Bedford and Northamptonshire. As we heard the other day, Northamptonshire at the moment is in the process of actually letting that contract. For the Committee's information, it is actually being let as three separate contracts for three geographical parts of Northamptonshire, so it is quite possible that three different entities might win parts of that total waste stream. The Council is also seeking bids for the whole contract or for any combination. The poor old tenderers must submit seven separate bids for that contract if they want to win part or all of it. Luton's waste is tied up, as Mr Plant will explain, until 2016. Bedford has just concluded a contract with another waste-management company to send municipal waste down to London, just down the river here, to something called the Frog Island Waste Management Facility, where mechanical and biological treatment is carried out. That is an interim contract to carry the Council forwards after this BEaR contract fell to bits. A few years ago, when the Council was split into unitary councils, Bedford decided to seek this interim solution.

3785. The green block there is Cambridgeshire. There is another acronym, RDF, which means refuse-derived fuel. That is fuel that comes out of a plant that treats waste either mechanically or biologically to remove recyclates and produce a homogenised fuel. Importantly, the fuel is still a waste. It cannot be combusted in a conventional boiler. It must go to an energy-from-waste plant. The RDF might become available. Clearly, the company that actually operates mechanical and biological treatment plant in Cambridgeshire is one of the major waste-management companies operating in the UK now. It might have designs itself to use that waste as a fuel in its own energy-from-waste plant, but, at the moment, that is not clear.

3786. **MR WILLIAMSON:** You have shown that as being available.

3787. **MR LEESON:** We have added that as being potentially available. Finally, at the bottom, in the salmon-coloured area, we have the commercial and industrial waste arising in the catchment area. This is the suitable fraction of that active waste. That makes a total of just over 700,000 tonnes of waste that one might look at as being potentially available today. The important ifs are that this assumes that all three of the Northamptonshire contracts are won, as well as Bedford and Luton and, indeed, the refuse-derived fuel, the RDF, from Cambridgeshire is available—and also that this multitude of supplies of commercial and industrial waste, which is produced across the five shire countries, could also be attracted to one point within those five shire counties.

3788. **MR WILLIAMSON:** How likely are those “if” statements in your judgment? There is an “if” in the first paragraph and one in the last paragraph.

3789. **MR LEESON:** We have looked at the history of waste companies tendering for municipal-waste contracts. We now have almost 10 years’ history of this in the UK. Defra has a waste-infrastructure development programme to help this process through. On its website it basically publishes which contracts are being let and to whom. Two companies have each secured 25% of those contracts. The other major waste companies—there are about 10 of them—have secured two or three each. The best success rate to date in companies tendering for municipal contracts is about 25%

3790. **LORD FAULKNER:** Regarding this 25%, if you are a waste company and you are bidding, do you have a one-in-four chance of winning?

3791. **MR LEESON:** No, my Lord. That is the best rate. Mr Plant will be able to speak much more knowledgeably than I because he is actually involved in this process. Most companies that we work for on these bid processes would say at the outset they have maybe a one-in-six chance. That is the commercial judgment they might make, but Mr Plant will be able to speak much more knowledgeably than I can on that.

3792. **CHAIR:** Mr Williamson, I really am grateful for all of this information, but right at the bottom of my mind lies the fact that we are talking about, at the end of the day, what is a commercial decision in this respect. Of course, we are knowledgeable of the fact that your petitioner is a commercial competitor. We must weigh that balance. I just wonder how helpful this is. I am sure they are totally benevolent and totally concerned about the environment and the whole of their society. I am trying to impute the fact that there is any wicked deed going on here, but I am concerned that we are straying into areas that are commercial areas. I wonder if we could move along in that respect.

3793. **MR WILLIAMSON:** I understand that, sir; with respect, the case is based upon a need. There needs to be a compelling need and therefore there needs to be an examination of the issues.

3794. **CHAIR:** I think we understand that. I think we are well aware of it.

3795. **MR WILLIAMSON:** Let us move on, please. On Page 11 you have tried to explain the differences between Covanta's approach and your approach. It is a summary.

3796. **MR LEESON:** That is absolutely right. I will not waste the Committee's time; I am sure they can read this at their leisure. Fundamentally, however, our approach is based on looking at active waste that is being deposited in landfill, which is the fuel source. With respect, regarding your question, Mr Binley, the issue goes to what the alternatives are for dealing with this fuel source. To understand the alternatives, I suppose one has to quantify the source, which is the approach I have taken, sir. The approach the councils have taken, which Mr Romans presented to you—and, indeed, the approach taken by Covanta—is to look at forecasts that were made in the process of preparing waste local plans. These are plans that are fed down from regional plans, the regional waste strategies and the regional spatial strategy documents. They tried to forecast the amount of waste we will be producing as a society and to apportion those waste arisings into their constituent sub-

regions, i.e. the waste-planning authorities. That information was plugged into the waste planning documents, some of which are still going through the process. Unfortunately, the baseline data for those were generated in the middle part or even the early part of the past decade, so they were based on much higher growth figures for waste and did not take account of the trends that I have just been showing to you.

3797. **MR WILLIAMSON:** Let me just point one point to you, Mr Leeson, because, again, Mr Phillips at the IPC said to you, “Look, I see the point you are making, but inherent in our fears is a 65% recycling rate. From where we are today that is a pretty good aspiration.” I do not know whether you remember that line of questioning; you may get it from Mr Mould shortly. However, locked into Covanta’s approach is that assumption—that aspiration, if you like. What is your view about that? It is an important issue.

3798. **MR LEESON:** There are two issues. The 65% recycling rate or the diversion-from-landfill rate must be compared with the fact that in 2009 the amount of commercial and industrial waste landfilled was 31% of what was arising. There was already a higher landfill-diversion rate back in 2009, when the pressure of the landfill tax was still being applied, so a more conservative assumption should have been taken. The fundamental thing, which underlines both the approach taken by the councils and by Covanta, is that there was an assumption made back in these regional documents that waste would carry on rising and that, as a society, we would keep producing waste in tandem with GDP growth.

3799. **MR WILLIAMSON:** You can see that from the need assessments in the Covanta documents. If you look at the graphs at the back, the boxes, you will see that the graphs are all pointing upwards. There are two colour bands; just spend a minute to have a look at those. I think that is the point you are making, Mr Leeson; is that right?

3800. **MR LEESON:** Yes. If the Committee would like to see that, I could take them to it.

3801. **CHAIR:** Lord Faulkner, would you like to see this?

3802. **LORD FAULKNER:** I would like to see it, if you could take us to it.

3803. **MR LEESON:** Yes, my Lord. We must turn to the bundle of documents produced by Covanta originally, my Lord. These are the Covanta key documents.

3804. **MR WILLIAMSON:** Yes, both the need assessment and the need-assessment addendum are 2 and 3.

3805. **MR LEESON:** That is correct.

3806. **LORD DEAR:** Which tab is this?

3807. **MR LEESON:** It is tab 2, my Lord.

3808. **MR WILLIAMSON:** That was the addendum you were referring to. It is tabs 2 and 3 of the documents, but it is tab 2 we are looking at.

3809. **MR LEESON:** It is right at the back of tab 2, my Lord. It is numbered in handwriting.

3810. **LORD DEAR:** It is 138, is it?

3811. **MR LEESON:** You are there before me. Absolutely. It is from page 134 onwards.

3812. **MR WILLIAMSON:** It is those coloured graphs at the back with the unique pagination, from 134 onwards.

3813. **MR LEESON:** These graphs express the view as to the amount of commercial and industrial waste that would be produced. That is the top line. In Bedfordshire it is going from 350,000 tonnes to almost 500,000 tonnes over the period to 2048. A fraction of that—it is not actually 35%; for some reason it is 36.5%—has been assumed to be waste that would be available for an energy-from-waste plant. All the evidence shows that we do not have this level of waste growth.

3814. **MR WILLIAMSON:** This is a simple visual representation; I do not know whether you need to go through it in any more detail. I do not know whether Lord Faulkner would require you to explain it more.

3815. **LORD GEDDES:** Mr Leeson, would it be fair to say that not only are you challenging that growth but you are telling us it is going in the opposite direction.

3816. **MR LEESON:** That appears to me, sir, to be the case.

3817. **LORD GEDDES:** Thank you.

3818. **LORD FAULKNER:** Just so that I am absolutely clear—and I do think I have got this—you are saying that these growth forecasts in the Covanta document are unrealistically ambitious and the likelihood is that the graph will be going in the opposite direction.

3819. **MR LEESON:** Yes, my Lord, that is the evidence.

3820. **MR WILLIAMSON:** Visually, that is it in a nutshell in terms of that big difference. You can study them; you will see there are some interesting little glitches along the way, but generally that is the picture.

3821. **MR LEESON:** In a nutshell, rather than relying on forecasts, we rely on landfill tax data from the present.

3822. **MR WILLIAMSON:** Mr Plant will come along and give you information about what is happening to their UK landfills, which reflects this.

3823. **MR LEESON:** Moving swiftly on, if the Committee is ready, could we turn to page 12?

3824. **CHAIR:** May I ask one very brief question of your expert witness, Mr Williamson? It is well known, I think, that in this area of activity tax avoidance is a sizeable problem. How do you relate to that in connection with the figures that you are projecting?

3825. **MR LEESON:** Do you mean, sir, people avoiding paying landfill tax?

3826. **CHAIR:** That is exactly what tax avoidance is.

3827. **MR LEESON:** I am sorry. I suppose what I meant to say was whether you therefore meant waste escaping the system. Clearly, people do try to avoid taxes; one would be foolish to suggest that we live in a utopia where that does not take place. However, if one is indulging in that sort of level of illegal activity, one clearly therefore is not going to want to pay high gate fees at an energy-from-waste plant. If you can dump it in a farmer's field, I am afraid you will seek to avoid either paying landfill tax at the landfill gate or a gate fee at a very new facility.

3828. **CHAIR:** In Northamptonshire, we have had at least one—and I think there was one in Buckinghamshire—golf course where very sizable amounts of waste were deposited, which did not qualify for landfill tax.

3829. **MR LEESON:** That is right.

3830. **CHAIR:** That is the sort of avoidance that I am talking about.

3831. **MR WILLIAMSON:** Mr Leeson, it is not evasion, which is the illegal activity.

3832. **CHAIR:** It is evasion, actually, but never mind.

(11.00 am)

3833. **MR WILLIAMSON:** Sorry. It is a topical conversation in other areas of tax at the moment, is it not? However, in terms of avoidance, I think we have had a couple of schemes go to HMRC on whether or not you can classify material being deposited as waste or not. Certainly, agricultural improvement schemes are the other thing. People sometimes try to say it is an agricultural improvement scheme, whereas in fact some part of that might be what we would call traditional landfilling—but they generally relate to inert.

3834. **CHAIR:** I had one only a mile and a half from my home. I was horrified by the whole situation, quite frankly.

3835. **MR WILLIAMSON:** I have a golf course scheme like that; the issue is whether it is inert or not.

3836. **CHAIR:** It is still there. Not one shot has ever been played on it. That is my concern.

3837. **MR LEESON:** Yes, sir. The point you raise is absolutely right. In that graph I mentioned there is an exempt category, which includes things such as large mounds being built next to a motorway, which you will see as you drive around the country. They are ostensibly there to screen noise from people's properties, but they were done under tax-exempt schemes. People did seek to avoid paying landfill tax on inert wastes that were deposited. Golf courses were one of the favourite ones and the other main one was actually using wastes for engineering in landfill sites. We had some very nicely engineered roads in landfill sites. Two years ago, HMRC considerably tightened up what is called the qualifying order in terms of what wastes qualify or do not qualify for landfill tax. I actually had a meeting with HMRC and BIS to do with this very issue with a client of mine. They said, "We will keep regulating until we squeeze this out." I think they are aware these games have been played in the past. Golf courses are a good example.

3838. **CHAIR:** The question I am asking is about there being no estimate. You may tell me—and I am perfectly happy to believe you—this is minimal.

3839. **MR LEESON:** In terms of inert waste, construction and demolition waste, this was a large tonnage, sir. There is not a major problem that anyone at Defra or anywhere else has suggested in terms of putrescible, biodegradable or active wastes.

3840. **MR WILLIAMSON:** The point really is not that this type of scheme has happened; I am involved in a couple of other schemes where we are arguing about it. Since you cannot now put wood in inert waste, this has made it even more sensitive—but this does not relate to waste that would be relevant to going to an EfW, does it, Mr Leeson?

3841. **MR LEESON:** That is exactly the point.

3842. **CHAIR:** The point I am making is that there was no control over what went in there at all. It could be toxic waste, quite frankly. There is a concern here. If you are telling me, with all your expertise, that this is a minimal consideration in terms of projection, I am happy to accept that from you as a professional.

3843. **MR LEESON:** Sir, that is my advice to you.

3844. **CHAIR:** Okay, thank you.

3845. **MR WILLIAMSON:** Leastwise not to the scheme we are talking about today.

3846. **CHAIR:** I am not suggesting that.

3847. **MR WILLIAMSON:** That would be putrescible. I think the Agency would look much more aggressively at putrescible waste being dumped on a golf course.

3848. **CHAIR:** Thank you. I am grateful for your assistance.

3849. **MR WILLIAMSON:** We have got this rather fetching colour scheme on page 12. We have some interesting shapes: triangles and squares and what have you. Can you just briefly explain that?

3850. **MR LEESON:** This is the other side of the equation, which relates to why we have actually tried to assess the amount of waste being produced in the catchment area. This is the supply of capacity, i.e. the other side of the supply-and-demand equation. What we have here are two icons, a triangular one and a square one. The difference between the two is the square icons relate to sites that are associated with a municipal-waste contract. For instance, in Buckinghamshire, in the bottom left-hand corner, we have the Greatmoor energy-from-waste site, which my clients are developing. That is associated with a contract for the recovery of energy from waste from Buckinghamshire. Just outside and further to the west, we have the site at Ardley in Oxfordshire. In Hertfordshire we have a site at New Barnfield, which is again associated with the contract that has been issued to one of FCC's competitors, Veolia, for the development of an energy-from-waste scheme there. We have

five sites in and around the catchment area that are intrinsically related to municipal-waste contracts. The triangular icons relate to sites that might be regarded as merchant facilities, obviously including the Rookery Resource Recovery Facility in the centre of the catchment area, as well as other sites scattered across the catchment area. Mr Romans produced something rather similar, but I think it went further afield. What we can see here are sites at various stages through the planning process. There are those such as Twinwoods in Bedford and Ardley in Oxfordshire where they are actively under construction. You can see Ardley from the M40. There are cranes all over the site. It is a very large construction project.

3851. **MR WILLIAMSON:** Let us just be clear. Later on, you refer to Twinwoods; in fact, there are two Twinwoods. We will subsequently refer to a Secretary of State's decision about an appeal. In fact, Mr Leeson and I did that appeal.

3852. **CHAIR:** To clarify, when you talk about two Twinwoods, you are not talking about the old RAF ace establishment, are you?

3853. **MR WILLIAMSON:** No.

3854. **CHAIR:** That is north of that—the airport.

3855. **MR WILLIAMSON:** It is. I know the site and it is on the industrial estate, where Red Bull have their Formula 1 facility.

3856. **MR LEESON:** It is the old defence research establishment site.

3857. **CHAIR:** Thank you.

3858. **MR WILLIAMSON:** It is called Twinwoods there and it is called Twinwoods later. When I first read it, I just wanted to be clear that they are actually two separate sites. This one actually is the Twinwoods that is not the subject of the appeal decision later, is it?

3859. **MR LEESON:** No, this is the one discussed by Mr Romans the other week. Equally, we have other sites in yellow, which are sites that already have the benefit of planning consent.

3860. **MR WILLIAMSON:** Let us be clear about this, because though the Calvert site has planning permission, there has been a judicial review against that planning permission. Mr Plant will bring you up to date with where we are with that in due course.

3861. **CHAIR:** Can I just check the site, which I think is the Desborough site, which you have as Magnetic Park? Am I right?

3862. **MR LEESON:** That is correct, sir, yes.

3863. **CHAIR:** I notice you say “submitted but not yet determined”. I thought that was determined two or three weeks ago.

3864. **MR LEESON:** I did realise, sir, that we had not updated this. I am afraid I apologise for that. That is my understanding as well. A resolution to grant has been reached; I am not sure whether a Section 106 has been signed.

3865. **CHAIR:** I understand. Thank you.

3866. **MR LEESON:** It is clearly advancing through the process.

3867. **MR WILLIAMSON:** That is our understanding.

3868. **LORD GEDDES:** Before we go any further, back to the squares, you have instanced Ardley, Greatmoor and New Barnfield. I think you mentioned New Barnfield. What about Thorn Turn and Old Wolverton?

3869. **MR LEESON:** Thank you, my Lord. I hope I am not trying to confuse matters, but you will see that the square is shown with both purple and green ornamentation. Those sites are both allocated in their local waste plan documents for waste recovery facilities. They are also sites associated with well-progressed tenders for municipal contracts. In Milton Keynes—very recently, I think, within the last month—AmeyCespa have been

identified as the preferred bidder. Our understanding is that they are about to submit a planning application for what is called an advanced thermal treatment facility. So the Committee is aware, that is a subspecies of energy-from-waste plant, where the waste is gasified first. It is heated to create a gas and the gas is burned to create energy. It is not what one would call a mass-burn site like, say, the Rookery facility, the Calvert Greatmoor facility or the Ardley facility. These ATT facilities, like the one you mentioned at Desborough, sir, are of a smaller scale. Quite often they tend to get developed at around the level of 80,000 to 120,000 tonnes per annum.

3870. **CHAIR:** I thought one was larger than that.

3871. **MR LEESON:** Desborough, I think, is 96,000 tonnes.

3872. **CHAIR:** I am corrected; thank you.

3873. **MR LEESON:** There is always an exception to these things, and the one exception, which, again, was mentioned by Mr Romans, is that the site in Peterborough, which is called PREL. You can see there are two sites there. There is a square site at Peterborough, which is associated with the contract for dealing with Peterborough's municipal waste. That contract is now in the process of being let to a company called Viridor, who are a British waste-management company. They will develop a small advanced thermal treatment facility of around 85,000 tonnes. The PREL facility, which is very close to it—a matter of two kilometres away—already has the benefit of planning consent, as Mr Romans confirmed. That site has a capacity of about 600,000 tonnes, but is planned to be an advanced thermal treatment facility. One of the advantages of these ATT facilities is that they can be built in a modular fashion. That would be the largest advanced thermal treatment facility in the UK by far if it goes ahead, but, as I say, they can be built in a modular fashion.

3874. To come back to Lord Geddes' question, that is why the Thorn Turn and Old Wolverton sites are shown. They are both associated with contracts that are in the process of being let. The bidders who are identified as preferred bidders have both said they will progress facilities on those sites as identified by the authority to which they are tendering.

3875. **MR WILLIAMSON:** Is there a likelihood that those schemes will come forward?

3876. **MR LEESON:** Yes. In my experience particularly, schemes where there is an underlying anchor tonnage of contracted municipal waste do go ahead. As we all know, the planning system has its effect on these and nothing can be guaranteed, but there is a high probability that those sites identified with a square ornament will progress to full development.

3877. **MR WILLIAMSON:** Let us not go over all of these, over the page, one by one; it would just take far too long, but you have got a summary of the sites and there is some text. No doubt if there are questions, you will be asked about it. Are there any corrections or updates for this since you produced it?

3878. **MR LEESON:** There are no corrections. The key thing I have tried to do in the fourth column is identify what I call the merchant capacity. That is a phrase the industry uses. A merchant facility is one that does not really have contracts; it trades in the marketplace. Where one has a contract with a municipal-waste authority to deal with their waste, it clearly takes precedence. These might be 20- to 25-year contracts, as Mr Plant will describe. What I have done is identify not the full capacity, because part of it is obviously contracted, but the capacity that remains after the contracted municipal waste has been dealt with. This is the capacity that is left to the operator to effectively use to process either other municipal wastes that it might be successful in bidding for, such as, say, Luton or Bedford, or, indeed, this volume of commercial and industrial waste. That merchant capacity

is very important. That, effectively, is the alternative or the set of alternatives to the Rookery scheme.

3879. **MR WILLIAMSON:** That was helpful, Mr Leeson. You then obviously go on to compare supply with demand.

3880. **MR LEESON:** Yes. When looking at alternatives, we have the bar chart you will remember from earlier on, on the left-hand side, i.e. the potential waste availability if various contracts are won and if all commercial and industrial waste can be obtained. Set against that, this purely relates to the catchment area. Mr Romans expanded his search slightly outside the catchment area. At the moment, I have just confined it to the catchment area. What I have done is indicated the key at the bottom. There are two keys.

3881. **MR WILLIAMSON:** They are a fetching rainbow of colours, but they are not the same. You have to apply the left-hand key to the left-hand column, do you?

3882. **MR LEESON:** That is correct. The left-hand key relates to the waste availability column.

3883. **MR WILLIAMSON:** I was thinking the yellows were the same and they are not.

3884. **MR LEESON:** They looked very different on the screen, I am afraid.

3885. **MR WILLIAMSON:** It was a good idea at the time, was it?

3886. **MR LEESON:** It seemed a good idea at the time, yes.

3887. **MR WILLIAMSON:** Anyway, that explains it.

3888. **MR LEESON:** That explains it. Between existing capacity available at some facilities, capacity in construction, consent to capacity and so on, we can see the build-up to about 1.3 million tonnes of potential capacity in the catchment area to deal with this 0.7 million tonnes of remaining waste. As I say, we have not double-counted capacity. The big chunk there is Calvert, at the bottom. That is just the merchant capacity that is available after the contracted waste from Buckinghamshire has been dealt with.

(11.15 am)

3889. **MR WILLIAMSON:** These are net figures.

3890. **MR LEESON:** These are net figures. That is how we have produced that graph. Importantly, when one looks at the merchant capacity at those five sites associated with municipal contracts, it comes to between 500,000 and 600,000 tonnes. There is a significant amount of merchant capacity that will be delivered with these facilities associated with these anchor municipal contracts. This really then brings us to the nub of the case on alternatives.

3891. **MR WILLIAMSON:** Just before you go on, if you are looking at that graph and talking about market failure, Government policy says we will intervene if there is market failure. What does that graph say to you about whether or not the market is in fact failing in this catchment in your expert opinion?

3892. **MR LEESON:** There are two sides to it. One key market factor is the success of the waste industry and, indeed, everyone in reducing the amount of waste we produce and send to landfill. That side of the market is working well. The landfill tax is encouraging significant changes in the market. The other side is the supply side, in terms of supply of facilities. I think it is a common refrain that we would all like the planning system to work better. However, the planning system here is delivering sites with consent; it is allocating sites; and it is providing sites for the industry to develop. For instance, Northamptonshire has allocated three major sites for waste-recovery facilities. There are sites being allocated in other plans. In addition to that, the industry—as at the site at Desborough, which Mr Binley mentioned—is bringing forward additional sites. There is appetite in the industry to promote sites, to develop them and to tender for contracts. I do not think this could really be construed as market failure.

3893. **CHAIR:** Can I come in there? It might be construed as commercial failure. There are an awful lot of businesses that are pitching to get into this particular market. I

fully accept your information. I am in no way questioning it—that is not my job—nor am I questioning your figures. However, I do see a great differential between a lot of people applying to build these sorts of sites and a diminishing opportunity to make money out of it. How would you answer that particular question?

3894. **MR LEESON:** It is a very interesting question. I must say that one of the fundamental problems the industry has dealt with is the lack of data. I am continuously brought in front of people who want to develop energy-from-waste plants. Very often, external developers and fund managers come in who are told that the UK is a ripe area where there now are proactive Government policies in favour of energy-from-waste developments. I was told recently that there was scope in Britain for 200 energy-from-waste plants. This was told to me by an investor who thought he had identified a wonderful site to invest in. Our consistent message to the industry has been that the amount of waste that is available is reducing. There has, unfortunately, been a tendency to overestimate the amount of waste available.

3895. **LORD FAULKNER:** Could I follow up that?

3896. **CHAIR:** My Lord, I apologise.

3897. **LORD FAULKNER:** If I could, I would like to follow on from your question. Taking that answer, could I ask you, if you were advising Covanta on how to make this facility viable, where would you advise them to get their waste from?

3898. **MR LEESON:** Do you mean if I were being asked that question today?

3899. **LORD FAULKNER:** Yes.

3900. **MR LEESON:** Does that mean it prejudices that it would be at the current scale?

3901. **LORD FAULKNER:** Yes. Let us assume the Committee were to agree to allow the project to go ahead on the basis that it has been put to them. You are arguing—very

convincingly, in my view—that there is not a supply of waste in what has been stated as the catchment area for this plant. Where would it come from?

3902. **MR LEESON:** You would have to go further afield, my Lord, clearly. When one looks at the UK, we are moving from a position of very heavy reliance on landfill to a radical change in the industry, where energy-from-waste plants finally are being developed. This is why we did the project for Defra. Defra was very worried that nothing was happening. Our advice to Defra was that we had to have very clear signals from above, from the national level, as to what was to happen. I am not saying that is what made them suggest to the Treasury they should put landfill tax up for a second, but clearly this very significant signal from the Treasury, going back several years, has suggested that waste being landfilled will be very uncompetitive. It has encouraged a lot of energy-from-waste plants to come forward. What it means is that if you build a very large plant, one must look further afield. There is a recent case in Cheshire of a consent granted by the Secretary of State for a similarly sized facility to this. The concept there is to rail the waste out of London to Cheshire.

3903. **LORD FAULKNER:** Take it by rail from London to Cheshire?

3904. **MR LEESON:** That is correct.

3905. **LORD FAULKNER:** Thank you.

3906. **CHAIR:** Sorry, we will have Lord Dear first and then Lord Geddes. I apologise.

3907. **LORD DEAR:** A good point was made in the thrust of the question that has just been posed. Were Covanta to be allowed to build the facility, it would be very large. On the economies of scale, one would imagine they would be able to charge less per load than a small operator. That is a fairly obvious market application. You would then be in direct competition, presumably—or your clients would—with a very large and cheaper facility. You would be disadvantaged to that extent. Would that be the nub of what you are saying?

It becomes then a commercial application. That is assuming—we have clearly not made our minds up—that Covanta were to be allowed to go forward.

3908. **MR LEESON:** If this facility were to be developed, absolutely. It would be a straight commercial competition between operators of similar facilities.

3909. **LORD DEAR:** Waste Recycling Group Ltd and others of a similar size would be potentially disadvantaged, in that they would be facing somebody offering a cheaper service than they could.

3910. **MR LEESON:** That presumes, my Lord, that it would be cheaper. I think Mr Plant would be somewhat better placed than I would be to talk about those commercial matters. There are other factors one must take into account. Basically, in respect of the revenue streams for these facilities, the fundamental revenue stream is the gate price, but the facility operators obviously sell the electricity. In some circumstances—this explains the interest in these gasification facilities—they can get renewable obligation certificates as well, which can help defray the inherent higher costs. There are other complicating factors. Obviously, if one can sell or use the heat, that has benefit as well. Obviously, one of the biggest costs relating to the management of waste, if you are the customer, is transport. Transport costs are rising all the time. A smaller facility located closer to the source of waste might have a higher gate fee, but transport costs must be borne in mind.

3911. **LORD DEAR:** I appreciate that. However, am I right in thinking that, in raw terms, a very large facility with the economies of scale would, to some extent, disadvantage the smaller competitor who does not have those advantages of economies of scale?

3912. **MR LEESON:** If indeed economies of scale do occur, that might be the case.

3913. **LORD DEAR:** Going back to Lord Faulkner's question and with the same assumptions, if Covanta then had to go further afield, would they not run into the same problems in other areas sourcing material?

3914. **MR LEESON:** I think that is absolutely correct, my Lord. For instance, the PREL facility in Peterborough is right on the boundary of their catchment area. Clearly, the developers of that facility will intend to source large volumes of waste themselves. The Ardley facility in Oxfordshire is outside the catchment area—only by a matter of kilometres. That facility has significant surplus capacity. It is being built now; the developer will be seeking to compete in the marketplace. I do not think we can characterise the situation in the UK anymore as one where nothing is happening. There is a great deal of activity in this sphere. Significant capacity is being built and developed as we speak, and there is still some capacity coming through the planning arena.

3915. When one looks at what has happened on the continent, the reason we were sent by Defra to the continent is that they had by and large delivered and built a lot of facilities. What you have now in places like Germany and Holland is overcapacity in the market, which is why, as I think Mr Romans mentioned, waste is being exported from the UK, from Tilbury docks, to the continent, because they have surplus capacity.

3916. **LORD DEAR:** Presumably that is because they can do it cheaper than here.

3917. **MR LEESON:** When you are operating a facility, if you have built it and invested your money and have taken, say, 75% of its capacity, taking those marginal tonnes extra—even at, say, €40 a tonne—is arguably good business because you are generating electricity and so on.

3918. **CHAIR:** I think Mr Uppal has a question and we then need to move on.

3919. **MR UPPAL:** I was going to ask this question at the end, but the debate has moved on a bit. This might be an opportune time to ask this. Covanta are a commercial entity. We have seen a wide discrepancy in terms of their projections and the figures you have presented here. In your personal opinion, what do you think Covanta's thinking is here? They are no fools, particularly on this. They will be privy to the same data as well. In

your personal opinion, what do you think their objectives are here? You said this was the nub of the matter. If this is a declining area and there are only so many resources they can draw on, are you inferring—this is why I wanted to ask you directly—that they are trying to corner the market on this?

3920. **MR LEESON:** That is not a phrase I would necessarily want to use, sir. I think we see this in certain areas of development. If a very large consent is granted—I used this phrase at the IPC compulsory purchase hearings—such as the Rookery consent, it could have a chilling effect on the market. It could discourage planning authorities from granting consent for smaller-scale facilities. We see a direct example of that. Mr Williamson mentioned Twinwoods. We pursued an application for a 120,000 tonne per annum energy-from-waste plant, one of these advanced thermal treatment facilities, on the business park at Twinwoods. Arguably it was a county-sized facility. This was in Bedfordshire.

3921. **MR WILLIAMSON:** That was for a different client.

3922. **MR LEESON:** This was for a different client. The application was refused and we ended up at a public inquiry in May of last year, I think. The Secretary of State recovered the decision; the inspector accepted the need case. She asked me about the effect of the Covanta scheme, because obviously it was in her mind as well. When the Secretary of State looked at it he accepted all of the inspector's conclusions about landscape and traffic and other issues, but he felt that the existence of the Rookery scheme meant that the Twinwoods scheme was not required. He dismissed the appeal. That is, I think, a classic example of the effect a large consent like this could have. That would mean that, potentially, applicants coming forward with schemes might find it harder to get consent, which then might favour a large scheme being able to, in the long term, access waste that these other facilities might have accepted. As I say, I am not a commercial person. I would like to stress that. Mr Plant is one.

(11.30 am)

3923. **CHAIR:** I was about to say that I am sure Mr Mould will cross-examine on these issues. I am sure further information will come to light. Mr Williamson, I think we are drawing close to your conclusion with this witness, are we not?

3924. **MR WILLIAMSON:** We are not far off, sir. There are a couple of small points. Can I pick up one point—it is a tangential point—in response to Lord Dear’s question about the competitive effect? Have your clients objected to the grant of planning permission in this case?

3925. **MR LEESON:** No. FCC have not objected to the grant of planning consent.

3926. **MR WILLIAMSON:** They do not object to that; they do not object to the planning aspects of the DCO. It is in relation to CPO matters in terms of interfering with the level playing field that FCC objects.

3927. **CHAIR:** I think we have understood that.

3928. **MR WILLIAMSON:** Let us go on quickly to pick up on any final points. Obviously, you have referred to ENI on page 15. We have been through 4.4.3. I mentioned it in my opening; we probably do not need to repeat it. The key phrases are “realistic prospect” of a proposal and that proposals which are “vague or inchoate” should be dismissed. That is the test you have applied, is it, Mr Leeson?

3929. **MR LEESON:** That is correct, yes.

3930. **MR WILLIAMSON:** I think the IPC also accepted that approach, although they did not go on to explain themselves as to why the proposals were vague or inchoate or were not realistic prospects. Is that right?

3931. **MR LEESON:** I think that is right. The IPC basically concluded that there were no realistic alternatives to the Rookery scheme. We consider that we have demonstrated that there are a number of alternatives.

3932. **MR WILLIAMSON:** In the right-hand column you have mentioned the Twinwoods decision that you and I were involved in, but you also mention another decision, which, obviously, Covanta know about because it was their scheme. Could you just briefly tell us the relevance of that? It is a similar point.

3933. **MR LEESON:** This was another scheme in Cheshire. At the moment, Cheshire is a bit of a hotbed of energy-from-waste activity. There are several large consents. The largest energy-from-waste plant in the UK is being constructed as we speak in Cheshire. Covanta pursued an application at Middlewich in Cheshire on a site associated with chemical manufacturing activity. I think the intention was to use the energy there. Unfortunately, the Secretary of State dismissed the appeal that Covanta mounted, taking into regard both the capacity that is being built but also consented capacity. I think there is a consistent approach when looking at alternatives that one looks at both existing facilities and facilities that are progressing through the planning process.

3934. **MR WILLIAMSON:** That is in connection with granting planning permission, Mr Leeson. Is it the Secretary of State's position in these two appeals that he is taking into account capacity not yet built?

3935. **MR LEESON:** In those two appeals, the Secretary of State took into account exactly that: capacity that was not active or even being constructed.

3936. **MR WILLIAMSON:** Finally, we can probably take most of your summary as read. Basically, there is not enough waste and there are too many alternatives.

3937. **MR LEESON:** That is right. It goes back to the point that, when one considers how much waste is available as fuel and you consider the alternative ways of recovering energy from that waste, only if there were a severe mismatch, in that there were insufficient capacity to recover energy coming forward, would there be a market failure. It is only in

those circumstances that I feel the Government would have to intervene by granting CPO powers.

3938. **MR WILLIAMSON:** That is all, Mr Leeson, unless there is anything else you wish to bring to the Committee's attention.

3939. **MR LEESON:** I have nothing more to add.

3940. **MR WILLIAMSON:** Thank you very much.

3941. **CHAIR:** My apologies, I was slightly distracted. Does anyone have any questions unanswered? Thank you very much for your help. Mr Mould, do you wish to cross-examine.

3942. **MR MOULD QC:** Thank you very much. Good morning, Mr Leeson.

3943. **MR LEESON:** Good morning.

3944. **MR MOULD QC:** I have some questions for you. Can we turn back to your exhibit I, please, page I? Here you set the scene for your evidence by referring to National Policy Statement I. That is right, is it not?

3945. **MR LEESON:** That is correct

3946. **MR MOULD QC:** That is a convenient place to start because we remind ourselves that the subject matter of the Committee's consideration is a new power station. That is right, is it not?

3947. **MR LEESON:** It is regarded as a new power station, but it has the dual purpose of recovering energy from waste and removing waste from landfill.

3948. **MR MOULD QC:** It is a power station that will generate electricity to a level of capacity that brings it within the scope of national policy on the development of nationally significant new power stations. That is right, is it not?

3949. **MR LEESON:** Yes, it is above the 50 MW threshold.

3950. **MR MOULD QC:** That national policy is set out in ENI.

3951. **MR LEESON:** That is correct—as is the need for both small- and large-scale infrastructure.

3952. **MR MOULD QC:** I was corrected last week, quite properly, by my Lord, Lord Faulkner, who reminded us that not only has this national policy the approval of the House of Commons but it has the approval of the House of Lords.

3953. **MR LEESON:** I believe that to be the case.

3954. **MR MOULD QC:** We proceed on the basis—at least solid in this understanding—that this is a policy statement that represents the shared views and aspirations of Her Majesty’s Government and of both Houses of Parliament.

3955. **MR LEESON:** I think that is manifestly clear.

3956. **MR MOULD QC:** Thank you very much. You have referred the Committee to a paragraph in that National Policy Statement that deals with the category of power station that is proposed for authorisation in this case—that is, one that is fuelled by waste. That is right, is it not?

3957. **MR LEESON:** That is absolutely right.

3958. **MR MOULD QC:** I want you just to remind the Committee of the overarching policy of the National Policy Statement in relation to the degree of need for new nationally significant power station development overall. For that purpose, can I just read into the record two or three very short paragraphs? This is to remind the Committee—who will have this at the back of their minds—of the policy that they have endorsed in relation to this. Paragraph 3.1.1, on page 16, states, “The UK needs all the types of energy infrastructure covered by this NPS in order to achieve energy security at the same time as dramatically reducing greenhouse gas emissions.” That is the fundamental policy driver that lies behind this Committee’s deliberations, is it not?

3959. **MR LEESON:** That, as Mr Williamson referred to, is the general case for new energy infrastructure.

3960. **MR MOULD QC:** Would you answer my question, please?

3961. **MR LEESON:** I thought I had.

3962. **MR MOULD QC:** Is it the fundamental policy driver that lies behind this Committee's deliberations?

3963. **MR LEESON:** It is the fundamental policy driver behind the UK's energy policy that we need as much additional energy-generating capacity as possible. That must take account of the fuel source availability.

3964. **MR MOULD QC:** Paragraph 3.1.2 states, "It is for industry to propose new energy infrastructure projects within the strategic framework set by Government. The Government does not consider it appropriate for planning policy to set targets for or limits on different technologies." Our proposal is completely consistent with that approach, is it not?

3965. **MR LEESON:** I am sorry; could you read that back to me?

3966. **MR MOULD QC:** I will break it down into two questions.

3967. **MR LEESON:** That would be helpful.

3968. **MR MOULD QC:** The first part is, "It is for industry to propose new energy infrastructure projects within the strategic framework set by Government." That is what we have done, is it not?

3969. **MR LEESON:** It is for industry to bring these forward—correct.

3970. **MR MOULD QC:** That is what we have done, is it not?

3971. **MR LEESON:** That is what you have done.

3972. **MR MOULD QC:** "The Government does not consider it appropriate for planning policy to set targets for or limits on different technologies." It is on that basis we

bring forward a scheme for a major new power station that is fuelled by waste. That is consistent with the Government's policy, is it not?

3973. **MR LEESON:** The first part is; the second part is not.

3974. **MR MOULD QC:** Why?

3975. **MR LEESON:** The Government's policy clearly says in EN3 that you have to take account of the effect of the development on waste plans and targets in the area.

3976. **MR MOULD QC:** We will look at that in a moment.

3977. **MR LEESON:** That is my answer.

3978. **MR MOULD QC:** You may not agree with the way in which we have done so, but we have clearly taken account of that factor, have we not?

3979. **MR LEESON:** You have taken account of the overall, general need for energy generation capacity in the country. You have not taken account of the availability of waste fuel.

3980. **MR MOULD QC:** We have taken account of it; you think we have misjudged the position. That is a different issue. We have taken account of it, Mr Leeson, have we not?

3981. **MR LEESON:** You have taken account of some out-of-date projections of the amount of waste available. One of the key things one has to do, which National Policy Statement EN3 tells us, is to take account of the effects of the proposals on the plans of the authorities within which the site is hosted. To put it simply, if this was a gas-fired power station, we would not be here today because, as I said earlier, human ingenuity will produce gas for the foreseeable future. What we have is a waste-fuelled power station. It is a very special set of circumstances.

3982. **MR MOULD QC:** Paragraph 3.1.3 says that, "The IPC"—in this case we substitute the Committee—"should therefore assess all applications for development consent for the types of infrastructure covered by the energy NPSs on the basis that"—this

is the important part—"the Government has demonstrated that there is a need for those types of infrastructure and that the scale and urgency of that need is as described for each of them in this document." We take our lead from the Government both as to the need for this infrastructure and the scale and urgency of that need, as expressed in this policy statement. Would you accept that?

3983. **MR LEESON:** I would accept that if there were an inexhaustible supply of waste. Clearly, one would need as many energy-from-waste facilities as possible if we could produce waste to order. The fact is that we are doing exactly the opposite. We are diminishing the fuel resource. That is recognised by the Government, which is exactly why, in NPS EN3, which carries equal weight to that of EN1, as far as I am aware, the Government says to take account of that fact.

3984. **MR MOULD QC:** We then turn to paragraph 3.4 in this document, page 26, and we see the role that renewable and low-carbon energy—including energy-from-waste power stations—have in the Government's thinking, as supported by Parliament, in providing that security of supply that is the overarching policy. It is from paragraph 3.4.3 in the context of that component of supply that you quote the passage that you do on page 1 of your exhibit. That is right, is it not?

3985. **MR LEESON:** That is correct. As I have said, this is a special case: this is the only fuel resource the Government is saying is finite and diminishing. It says only waste that cannot be reused or recycled and would otherwise go to landfill should be used for energy recovery. It is clearly recognising that we have a special set of circumstances here.

3986. **MR MOULD QC:** We do not propose this facility on any other basis, do we? We propose only to fuel this plant from waste that would otherwise go to landfill. That is right, is it not?

3987. **MR LEESON:** I indicated that earlier, yes.

3988. **MR MOULD QC:** In that sense, we are consistent with that special approach, which you say the Government has vouchsafed in the passage that you quote on page 1 of your exhibit.

3989. **MR LEESON:** That would be correct if one did not then have to consider—because we are in a CPO case, not a planning case—the need for all alternatives to be considered.

3990. **MR MOULD QC:** We are also told in the passage you quote that we should be in accordance with the waste hierarchy in seeking to fuel our power station from waste arisings. That is right, is it not?

3991. **MR LEESON:** That is correct.

3992. **MR MOULD QC:** Yes. We can turn, I think, to page 2. You remind the Committee forcibly that it should turn its face against any proposal that would have the effect of dragging waste down to the bottom of the hierarchy—that is to say, would have the effect of encouraging or facilitating the disposal of waste to landfill. You remind them of that forcibly, do you not?

3993. **MR LEESON:** That is the thrust of the hierarchy, absolutely.

3994. **MR MOULD QC:** The corollary to that is this: any development that would have the opposite effect—that is, of discouraging or diverting waste away from landfill—is something that ought to be given full support. That is right, is it not?

3995. **MR LEESON:** It should be given full consideration, absolutely.

3996. **MR MOULD QC:** I said full support, Mr Leeson.

3997. **MR LEESON:** It can only be given full support when one has taken account of the effect it has on waste plans and targets in other areas, because that is what EN3 says, which deals specifically with renewable energy and energy from waste.

3998. **MR MOULD QC:** We are dealing with the waste hierarchy here; it is a question of general approach. As a matter of general approach, any development that has the effect of diverting waste up the hierarchy from landfill should enjoy full support, should it not?

3999. **MR LEESON:** In principle, yes.

4000. **MR MOULD QC:** Yes. That is the proposed purpose of the facility at Rookery South, is it not—to divert waste away from landfill? That is why we have focussed on the available waste that would otherwise go to landfill.

4001. **MR LEESON:** Yes, for the record, there was a hearing to do with residual waste, and we accepted that it was not part of our case that this facility would encourage waste to move down the hierarchy.

4002. **MR MOULD QC:** Your clients are proposing to develop a waste facility nearby that has the benefit of a restriction over the Rookery South site. That is right, is it not? It is Elstow South.

4003. **MR LEESON:** That is correct, yes.

4004. **MR MOULD QC:** The purpose of your petition is to invite the Committee to intercede in your favour so as to enable you to enforce that restriction and so prevent the operation of the Rookery South scheme. That is right, is it not?

4005. **MR LEESON:** I believe that is the thrust of the petition, yes.

4006. **MR MOULD QC:** You do that speaking on behalf of a petitioner who has made a planning application to develop a landfill facility at Elstow South. That is right, is it not?

(11.45 am)

4007. **MR LEESON:** Yes. I think we must put this into a clear context. The Elstow application—which Mr Plant will describe in some detail to you, if the Committee so wishes—is what is called a mechanical and biological treatment facility. It will treat waste to remove recyclate, to send the organic fraction to an on-site anaerobic digestion plant, to

send the combustible fraction to the Calvert facility, which is being developed in Buckinghamshire, and to send what is effectively the inactive fraction of the waste to the on-site landfill in very small quantities. The Government accepts that there will always be a need for small amounts of residual landfill for waste that cannot be recovered. It is in that context and that context only that WRG—or FCC, as we should call them now—are promoting that scheme.

4008. **MR MOULD QC:** My understanding—you may not be able to confirm this—is that the proposed development at Elstow South that your clients have before the planning committee at Central Bedfordshire Council is on the basis that 44,000 tonnes per annum of waste will be deposited at that site to landfill in the event that planning permission is granted and the scheme is brought into operation? Can you confirm that?

4009. **MR LEESON:** I cannot confirm those exact figures. As I explained, Mr Plant will talk in detail about them. There is a significant fraction of waste, as I have already demonstrated, that is not recoverable. The Government has accepted that residual landfill will be with us in the long term. That is what we are talking about. The Council accepts that and has made provision in its local plan for residual landfill. You are not suggesting, I would imagine, that you would burn waste that has no calorific value.

4010. **MR MOULD QC:** Mr Leeson, your client also operates a number of existing landfill sites in the locality, does it not—Stewartby, Bletchley and Calvert?

4011. **MR LEESON:** That is correct.

4012. **MR MOULD QC:** Each of those takes significant amounts of residual waste to landfill.

4013. **MR LEESON:** At present, yes, that is correct.

4014. **MR MOULD QC:** I have the figures we have here. At Stewartby, 334,000 tonnes per annum goes to landfill. Can you confirm that?

4015. **MR LEESON:** I cannot; Mr Plant will be able to.

4016. **MR MOULD QC:** At Bletchley, 477,000 tonnes per annum goes to landfill. Can you confirm that?

4017. **MR LEESON:** As I have explained, I do not have those figures.

4018. **MR MOULD QC:** At Calvert, 569,000 tonnes per annum goes to landfill. Is it the same answer?

4019. **MR LEESON:** I am sure you got those from the Environment Agency; I am quite prepared to accept they are correct.

4020. **MR MOULD QC:** We are in a situation where you are asking the Committee to intercede to prevent us from developing and operating a waste-recovery facility that, if permitted to proceed, would in principle provide an alternative destination for wastes that your client currently landfills in the local area; it would provide a destination that is higher up the waste hierarchy than landfill. That is the position, is it not?

4021. **MR LEESON:** That is how it would appear on the face of it. Calvert, for instance, is a rail-connected landfill, which takes containerised waste from West London. That is outside your catchment area. The other significant fact to bear in mind is that last year in England—rather than England and Wales—31% of the waste going to non-hazardous landfills was construction and demolition waste. Because the volumes of active waste are dropping so rapidly, what is happening is that landfill operators are basically allowing lower-value construction and demolition waste to come. 31% of what you have just talked about there may well be construction and demolition waste.

4022. **MR MOULD QC:** Whatever the precise figures may be, it comes to this: you are asking the Committee to intercede so as to frustrate the realisation of the very policy of taking waste up the hierarchy that you assert on page 2 of your exhibit as being central to

national, local and regional waste disposal policy thinking in this country. That is what it comes to, Mr Leeson.

4023. **MR LEESON:** What we are asking the Committee to do is let the market decide. At the moment, the market is providing facilities, as I have demonstrated.

4024. **MR MOULD QC:** You are not asking the Committee to allow the market to decide; you are doing quite the opposite. You are asking the Committee to allow you to prevent Covanta entering the market so as to provide a facility that will enable the waste that your client currently disposes to landfill to be disposed of in a more environmentally acceptable way. That is the position, is it not, Mr Leeson?

4025. **MR LEESON:** There are plenty of alternatives available that Covanta could have adopted.

4026. **MR MOULD QC:** Could you answer my question, please?

4027. **MR LEESON:** I think the answer is no.

4028. **MR MOULD QC:** I see.

4029. **LORD GEDDES:** I wonder if we could find out—I am not sure who will answer this—of the figures you have produced, Mr Mould, what percentage of that tonnage would be suitable for the Covanta plant?

4030. **MR MOULD QC:** I will try to find that out for you, my Lord. I cannot answer that question now, but it is clearly something the Committee will be interested in. Someone will bring me a note and I will give you the information. You will appreciate, however, my Lord, that my point is one of principle.

4031. **MR WILLIAMSON:** Mr Plant will be able to explain that figure for you.

4032. **MR MOULD QC:** Can we take this point, please, Mr Leeson, while the Committee have it in mind? You very laudably expressed concerns about the extent to which Covanta, if allowed to enter the market, might have a chilling effect—in that it might

make it less likely that other, smaller scale schemes would come forward into the market. We of course need to bear in mind, do we not, that your client is one of the largest waste disposal operators in the United Kingdom? That is right, is it not?

4033. **MR LEESON:** They are certainly one of the market leaders, yes.

4034. **MR MOULD QC:** Their parent company is a waste disposal operator and management operator of international scale, is it not, FCC?

4035. **MR LEESON:** Yes. Mr Plant will explain more, but they have operations in Spain that I am aware of, certainly.

4036. **MR MOULD QC:** The reason why that is important is this: this is a petition for amendment. That is right, is it not?

4037. **MR LEESON:** That is correct.

4038. **MR MOULD QC:** The amendments that you seek are to exclude not any old body, any old person, but WRG from the reach of the compulsory-purchase powers that would otherwise be conferred upon Covanta by the Development Consent Order. That is the position, is it not?

4039. **MR LEESON:** That is, in my understanding, how the petition is drafted from WRG's perspective.

4040. **MR MOULD QC:** I noticed the way Mr Williamson put it at the start of his opening, when he suggested that there was a more general intention here in relation to restricting compulsory-purchase powers, but, in fact, on the basis of the petition for amendment, that is incorrect. Your petition for amendment is simply and solely concerned to absolve WRG and its parent company, FCC, from the powers of compulsory acquisition that would otherwise be available to Covanta if this order were to be made.

4041. **MR LEESON:** To a degree, I suspect this is bordering on a legal point. My understanding is what you have said is correct: FCC's petition relates to the rights that it

holds, rather than the rights that the councils hold. The councils have presented their petition to the Committee. I think my understanding—Mr Williamson might be able to explain more—is that our petition relates to the restrictive covenants that FCC hold.

4042. **MR WILLIAMSON:** Just to be clear, because I do not wish to be misquoted, my opening statement said, “Compulsory purchase powers generally and/or in respect of the special land in the petitioner’s ownership.” The qualification about in their ownership applies to both cases.

4043. **CHAIR:** Mr Williamson, I think you will have the opportunity to come back after Mr Mould has finished his cross-examination. We are grateful for your trying to help us, but I think we need to allow the process to continue.

4044. **MR MOULD QC:** Forgive me if I labour a point, but it is an important point of perspective, in my submission, for the Committee. It comes to this: any suggestion that the purpose of this petition for amendment is to address the maintenance of a free market or some sort of state-funded or state-sponsored distortion of the market is solely focussed on protecting WRG’s position in the market. That is right, is it not?

4045. **MR LEESON:** Sorry, could you repeat that to me?

4046. **MR MOULD QC:** I will put it in a different way. Because the petition for amendment is solely concerned to absolve WRG from the powers of compulsory purchase that would otherwise be available to Covanta, inescapably, insofar as the order would affect—or distort as you put it—the operation of the market, your purpose is simply to protect WRG’s position in the market. That is right, is it not?

4047. **MR LEESON:** Clearly, we are here today representing WRG, or FCC, but, as I have explained, this effect has ramifications for other players in the industry.

4048. **MR MOULD QC:** Not insofar as the operation of the Development Consent Order is concerned and the purpose of your petition for amendment. That must follow, must it not?

4049. **MR LEESON:** The petition for amendment has clearly been made by FCC to protect its long-held interest. As I explained, the effects of the DCO—and, indeed, the granted CPO powers—could have implications for other players in the industry.

4050. **MR MOULD QC:** As between WRG and Covanta, just to pick up on my Lord, Lord Dear's, point, surely it is in the public interest that the market should have a new entrant at that level of operation, which provides the opportunity, at least, as Lord Dear put to you, to secure an overall reduction in price that might be payable by waste generators over that which they pay at the present time. Is that not in the public interest?

4051. **MR LEESON:** If that were to happen, that might be the case, but at the moment we have no guarantee before us whatsoever that Covanta, if this order were granted, would develop the facility to the scale and to the timescales that are envisaged. There is no guarantee whatsoever.

4052. **MR MOULD QC:** They certainly will not develop it if your petition for amendment is given effect, will they?

4053. **MR LEESON:** That is absolutely right.

4054. **MR MOULD QC:** That makes my point, does it not?

4055. **MR LEESON:** I do not think it does, no. The Committee has to consider the realistic possibility of this being delivered when it considers the realistic possibility of the alternatives being delivered.

4056. **MR MOULD QC:** If the Committee thinks that it would be, in principle, a good thing for a new entrant to come into the market in competition with WRG, if there was

some prospect that it might have the overall effect of reducing prices payable by waste generators, that is something that you would in principle support, is it not?

4057. **MR LEESON:** If the Committee were to consider that, yes, but there are, as I have demonstrated already, probably 10 major players in the UK waste market. There are many smaller players. Several of them have invested a lot of time and effort in pursuing facilities in the catchment area and getting consents for them.

4058. **LORD FAULKNER:** I have one point, Mr Leeson. Mr Mould is making a great point about the cost at the gate, as it were, of waste at a larger facility. Would you say that there was a wider cost imposed on the community if one of the consequences of building the Covanta plant was that the waste that at present travels by rail to Calvert or Stewartby is transferred to the roads instead?

4059. **MR LEESON:** A socioeconomic cost rather than an economic cost could be argued, yes. That is not really our case, with respect, though, my Lord. I think our case is much simpler. Waste does routinely travel to energy-from-waste plants by road; some of the larger facilities do have rail connections.

4060. **LORD FAULKNER:** However, your Calvert facility is entirely rail served.

4061. **MR LEESON:** The Calvert landfill is rail served; that is correct.

4062. **LORD FAULKNER:** You run the Stewartby facility, as well.

4063. **MR LEESON:** The Stewartby facility has now closed, my Lord. That is a landfill in Bedfordshire but that is now closed.

4064. **LORD FAULKNER:** That is closed. Okay.

4065. **MR MOULD QC:** Just to be clear, as regards Calvert, there is an existing component of that site, is there not? Am I right?

4066. **MR LEESON:** The existing landfill.

4067. **MR MOULD QC:** Is that served by rail?

4068. **MR LEESON:** It is served by rail.

4069. **MR MOULD QC:** Recently, planning permission has been granted for a further facility at Calvert.

4070. **MR LEESON:** Planning consent has been granted for a 300,000 tonne per annum energy-from-waste plant.

4071. **MR MOULD QC:** Just to clarify the position, has that been granted on the basis that it should be rail-served?

4072. **MR LEESON:** No. That has been granted to serve Buckinghamshire. One of the issues with rail, which Covanta's document explains very lucidly, is that moving waste short distances by rail very often is not economic and sometimes is not associated with any environmental benefits.

(12.00 pm)

4073. **MR MOULD QC:** We have been consistently making the point to this Committee that whether it is feasible to serve a power station that is fuelled by waste by rail involves a series of difficult questions, including where the waste is going to come from. That is right, is it not?

4074. **MR LEESON:** That is right. Waste is dispersed, as I explained; it comes from many sources. Sometimes, putting waste on rail is difficult.

4075. **MR MOULD QC:** You are not surprised that our position at the moment is that we cannot proceed on the basis of a rail-served facility, but we are fully committed to reviewing the prospects for a rail-served facility on a regular basis at and following the grant of development consent. That is a perfectly sensible and understandable position for us to take, is it not, on that issue?

4076. **MR LEESON:** I think that is a rational position. It is one that other waste operators might seek to promote.

4077. **MR MOULD QC:** Thank you very much indeed. Can I please just pursue my questions with you? I wanted to pick up with you, please—I hope in a very brief way—the issue of the finite resource. For that purpose, can we please just turn to the key documents file? We dipped into it earlier on. If I could ask the Committee very kindly to turn to tab 19, I just want to see what the current position of the Government is in relation to this. This is an extract from Defra’s *Government Review of Waste Policy in England 2011*. It would be helpful, I think, if you would have open in front of you also your page 3. Now, Mr Leeson, this is an extract, as I say, from Defra’s most recent waste policy review in 2011. That is right, is it not?

4078. **MR LEESON:** That is right: June 2011.

4079. **MR MOULD QC:** We have produced a short section under the heading, “Renewable Energy From Waste”. The Committee has seen this before, so I will not take too much time on this, but in 213 Defra set out the headline figures for waste recovery, landfill of waste and the proportion of waste arisings in both the local authority, the municipal market, and in the C&I market that was recovered for energy generation and that was disposed of in other ways, for example landfill. That is right, is it not?

4080. **MR LEESON:** Yes, they relate to the 2009 survey.

4081. **MR MOULD QC:** We have got the figure for landfilling for municipal; it is 46.9%. We can work out the figure, the largest part of which will have gone to landfill from C&I, because it is the balance that is left over from 52% plus 2%, so it is around 46% of overall C&I waste.

4082. **MR LEESON:** I am afraid it is not, actually. It is very confusing; I will accept that. If this is an important point, I can take the Committee through it.

4083. **MR MOULD QC:** What would you say is broad component of the C&I that is left over from, in this paragraph, that which went to landfill.

4084. **MR LEESON:** It is the figure I gave evidence on earlier; it is 30.1%.

4085. **MR MOULD QC:** For the purposes of the question I am content to proceed on that basis. 30% went to landfill. If every single tonne of that waste was taken further up the hierarchy, would that be something you would support?

4086. **MR LEESON:** Absolutely, yes.

4087. **MR MOULD QC:** The Government's position in relation to opportunity, if you like, is set out in 214, is it not? "Energy recovery is an excellent use of many wastes that cannot be recycled and could otherwise go to landfill. It can contribute secure, renewable energy to UK demand for transport," and so on. We have dealt with that; it is set out in the ENI policy. This is the key point, insofar as the finite resource is concerned: "Our horizon-scanning work up to 2020, and beyond to 2030 and 2050, indicates that even with the expected improvements in prevention, re-use and recycling, sufficient residual waste feedstock will be available through diversion from landfill to support significant growth in this area"—that is to say, energy recovery—"without conflicting with the drive to move waste further up the hierarchy. Maximising the potential for growth in continuous generation available from energy from waste will require both better use of the available residual waste and development of high efficiency flexible infrastructure." I have two points. First of all, the Government's position in its most recent expression of policy and targets is that there is sufficient feedstock, looking as far forward as 2050, to support the continuing rolling-out of power stations that are fuelled by waste. That is their position, is it not?

4088. **MR LEESON:** Yes. They set this out in paragraph 215. It effectively talks about a trebling of capacity.

4089. **MR MOULD QC:** Yes. That can be taken, for today's purposes, as expressing the Government's national target for energy-from-waste power generation, insofar as its most recent expression of that is concerned. That is right, is it not?

4090. **MR LEESON:** No, we must be very careful. The Government has made it clear that there is not a target. There are targets for wind, for hydroelectric—for everything. For waste, the Government says in its policy review that basically the aim is not to get as much waste as possible into energy-from-waste facilities; it is to do as much as possible with waste before it goes to energy-from-waste facilities. There is not a target, as such. They have said, based on the capacity forecast, there appears to be the need to treble the capacity that is available. The figures I presented on page 3 acknowledge that last year in the UK we still landfilled 20 million tonnes of active waste, not all of which, clearly, will be combustible. However, it is from that diminishing resource that the Government thinks we might be able to treble our capacity. The market is currently providing that. That is happening all around us. Facilities are being built; alternatives are there. That is the clear point.

4091. **MR MOULD QC:** The Government's position is at the bottom of paragraph 214. "Maximising the potential for growth in continuous generation ... will require both better use of the available residual waste and development of high efficiency flexible infrastructure." It wants to see more facilities coming into the market in order to, as is clear from this document and ENI, expand power generation from this particular low-carbon and renewable resource. That is the position, is it not?

4092. **MR LEESON:** What they also say—I am afraid I cannot find—

4093. **MR MOULD QC:** Can you agree with that before you move on?

4094. **MR LEESON:** No, because what the Government says is quite clear. The Government says that there is not a target for this resource. The fuel resource is diminishing. What it says is where the fuel exists, we should recover energy from it, but we clearly should not create waste as a fuel. We should diminish the amount of waste that is available but where it exists, where it is combustible and can be diverted from landfill, energy-from-waste use is an excellent use of it. That is clearly supported by both me as a

professional and, indeed, by my clients. What the Government is not saying is that we can divorce ourselves from the reality of the market; whereas I have demonstrated quite clearly, using the Government's own figures, the amount of waste available is dropping very steeply.

4095. **MR MOULD QC:** There is 20 million tonnes of waste nationally in 2011-12 available to divert from landfill.

4096. **MR LEESON:** That arguably needs to be diverted from landfill, yes.

4097. **MR MOULD QC:** That is your figure on page 3, is it not?

4098. **MR LEESON:** That is correct.

4099. **MR MOULD QC:** You qualify it by saying it "arguably needs to be". We know that, if it exists, it needs to go somewhere else—or at least that is the idea.

4100. **MR LEESON:** No, the Government has basically said that landfill is the last resort. It accepts that there are wastes that are difficult to recover and will continue to go to landfill, but the majority of that waste should be recovered. Not all of that waste will be combustible. I am dealing with recovery projects that maybe make waste into aggregates, etc. Not all of that waste will be combustible.

4101. **CHAIR:** Lord Dear, I think you would like to ask a question.

4102. **LORD DEAR:** I have one question to Mr Mould on whether you will explore this point. I thought we had been listening at some length earlier on in the proceedings this morning to the fact that the source of waste was going to diminish. There will be less and less waste for facilities like this—or any facility—to deal with. If you are going to deal with the point, I am happy to leave it with you; if not, I pose it as a question. I see in paragraph 214 of the Government paper already—I will not go through it all for the record—"Our horizon-scanning work up to ... 2050 ... indicates, even with the expected improvements ... sufficient residual waste feedstock will be available through diversion from landfill to support significant growth in this area." Now, unless I have got hold of the point completely

erroneously, what we have heard so far is in direct conflict with what the Government is saying.

4103. **MR MOULD QC:** Yes, that is my point.

4104. **LORD DEAR:** Thank you.

4105. **MR LEESON:** Sorry, can I respond to that, Mr Chairman?

4106. **CHAIR:** I think you can respond, but to the question.

4107. **MR MOULD QC:** I put that point to you, I think.

4108. **MR LEESON:** The point is clearly acknowledged. The Government have said the capacity between now and 2020 will treble. That is on the UK level. If there is sufficient capacity in the planning system—with consented development and those being built—there is no need then to exercise compulsory-purchase powers to promote another site—to promote surplus capacity.

4109. **MR MOULD QC:** You do not doubt the existence of the need—that is to say, the need to develop facilities as far as is feasible; that is your combustibility point—to divert waste to energy generation rather than to landfill. You do not doubt that, do you?

4110. **MR LEESON:** I have quantified that need in the catchment area.

4111. **MR MOULD QC:** But you do not doubt that need.

4112. **MR LEESON:** I do not doubt that, no, but I have quantified it.

4113. **MR MOULD QC:** No. You would therefore support the grant of planning permission for the Covanta scheme on that basis, would you not?

4114. **MR LEESON:** We have said that our clients would not object to the grant of planning consent.

4115. **MR MOULD QC:** What you say, therefore, is that there is no case for the acquisition of your clients' land in order to enable that planning permission to be built out in practice. That is your case, is it not?

4116. **MR LEESON:** The case is that there is not a compelling case in the public interest, because there are alternatives available.

4117. **MR MOULD QC:** Let us focus on this. There is not a compelling case in the public interest for the Committee to allow Covanta compulsory purchase powers to acquire your client's land for that purpose. That is the case, is it not?

4118. **MR LEESON:** That is a potential narrow legal point. I am not a lawyer, but, as I understand it—I am not trying to avoid the issue; there is maybe a legal thing that is above my head—the petition as drafted relates purely to FCC's land.

4119. **MR MOULD QC:** That is why I put it to you. You understand that. So I am right. Your position is not the absence of some compelling need in some general sense to justify compulsory purchase; it is, "Please intervene on our behalf, because we say there is not a sufficient need to allow Covanta to acquire our land, in order to build out this development," which, in general terms, you say you support.

4120. **MR LEESON:** I have not said I support it. Saying one would not object to something is not the same as supporting it. There is a very big difference.

4121. **MR MOULD QC:** Thank you for picking me up on that.

4122. **CHAIR:** Could you just stop? Sorry, I am now being slightly confused by the witness, too.

4123. **MR LEESON:** I am sorry, sir.

4124. **CHAIR:** As I understand it, if you had a general point about need, you could have opposed planning permission. Let me finish my question. You could have opposed planning permission, but you are not opposing planning permission, as you have rightly said; you are simply opposing the compulsory purchase order on land you own. Does that not mean your argument cannot be about the greater need or otherwise, but must be specifically about the

issue of your clients not wanting their land to be compulsorily purchased? Or am I missing the point?

4125. **MR LEESON:** I speak from the disadvantage of being a consultant.

4126. **CHAIR:** I am only a politician; I am much lower down the esteem scale than you. Let us not go there.

4127. **MR LEESON:** In general, sir, and you will be able to ask Mr Plant this, in my experience—I worked, as I said, for 15 years in the minerals industry on a lot waste projects as well as minerals projects—the industry does not object to applications made by other companies, because otherwise there would be chaos. I was going to say bun-fight, but there would be chaos if one were objecting to other applications, and that is not done.

4128. **CHAIR:** Forgive me; I do need to clarify this point in my own mind. What you are telling me is that you have a nice little arrangement where one company does oppose the planning applications of another company, perhaps in case they might need to apply for planning permission and would not like that opposed. What you are doing is not arguing against the need on a national basis—or you would have opposed the planning permission. You are specifically arguing against the particular compulsory sale of land owned by the company. That is the position that we are in, is it not?

(12.15 pm)

4129. **MR LEESON:** That is—

4130. **CHAIR:** That is what I wanted to establish. Thank you.

4131. **MR MOULD QC:** I would like, if I may, to remind the Committee of the extent and nature of the land owned by the company that this petition is seeking to protect. Do you have a copy of the statement of agreed facts?

4132. **MR LEESON:** Yes, I think I do.

4133. **MR MOULD QC:** Sir, I think the Committee have copies of the statement of agreed facts.

4134. **LORD FAULKNER:** You will need to steer us towards it.

4135. **MR MOULD QC:** It is a freestanding document. My Lord, it is a freestanding document. If your Lordship would wish to put away this file, I think that might make things easier. I can deal with the point orally and give you the references; then the Committee will be able to see this later on, I am sure.

4136. **CHAIR:** Thank you, Mr Mould.

4137. **MR MOULD QC:** Just to remind ourselves, could you turn to—if you have it, Mr Leeson—paragraphs 51 and 52, please?

4138. **MR LEESON:** Yes, I have that.

4139. **MR MOULD QC:** Basically, there are two—

4140. **CHAIR:** I think we are still looking, Mr Mould.

4141. **MR MOULD QC:** I am so sorry.

4142. **CHAIR:** Let us find the documents.

4143. **MR MOULD QC:** Also, if you have the petition in front of you, that might help.

4144. **CHAIR:** Is everybody okay? Do you have the petition, Lord Geddes?

4145. **LORD GEDDES:** I discovered last week that that was one document my bundle did not have. I looked very hard to find it and failed.

4146. **MR MOULD QC:** It is quite simple, this point. Sorry, that is a very inelegant way of expressing the point. It does not require the Committee to look at detailed provisions in the statement of facts for me to make the point.

4147. **CHAIR:** If you proceed, if we need to stop you if we do not have the document, we will be happy to do so.

4148. **MR MOULD QC:** For the record, the relevant interests are referred to in paragraphs 51 and 52 of the statement. Mr Leeson, you will be aware that the particular land interests held by WRG that are subject to compulsory purchase in this case are firstly the acquisition of a right to run electricity transmission cables through a parcel of land in the subsoil beneath the highway in Green Lane. That is the first requirement, is it not?

4149. **MR LEESON:** Clearly, I will have to accept that from you. I have not concerned myself with the detail of the compulsory purchase; Mr Plant has.

4150. **MR MOULD QC:** That is the position. You are aware that WRG have the right to enforce a contractual restriction over the use of the Rookery South site for waste management purposes, are you not?

4151. **MR LEESON:** I am aware of that.

4152. **MR MOULD QC:** That is the other land, or right in land, if you will, that the order, if permitted to proceed in its current form, would compulsorily acquire. I just wanted to ask you, picking up on the point that Mr Binley was on with you, it is right, is it not, that the Committee, in judging the case for upholding WRG's land ownership, as is your case under the petition, should remember the balance between need for compulsory acquisition and the objection to compulsory acquisition is whether we should be able to force WRG to allow us to run some electricity transmission cables through a little bit of subsoil that they happen to own beneath Green Lane? It is balancing that against the advantages that would come from the operation of this power station through generating a substantial quantity of renewable and low-carbon electricity. That is the balance that the Committee must consider, insofar as your client's case to them is concerned, is it not?

4153. **MR LEESON:** Sorry, that was a very long piece of advocacy. My understanding is that our case is there is a restrictive covenant, which your clients seek to extinguish. There are clear alternatives available to the Rookery site, some of which were rejected because of

land assembly issues. There is not a compelling case, as I have demonstrated, that there is a need for the facility.

4154. **MR MOULD QC:** Yes. I think we have explored the degree to which the restriction has effect to protect the wider market, as opposed to simply WRG's presence in the market. I think probably what I will do is leave over this line of questioning to the next witness, who I believe may be addressing the property issues more closely.

4155. **MR LEESON:** That is correct.

4156. **MR MOULD QC:** The only other point I want to explore with you is this. It relates to your point about waste catchment and the availability of feedstock. You have been consistent, in answering in my questions, in saying there is a special consideration insofar as nationally significant power station applications are concerned, which is this: we must make sure, firstly, that there is going to be enough fuel to keep the thing going, and you associated yourself explicitly with the councils' position. You said you have to make sure you do not jeopardise the local and sub-regional provisional facilities by granting a facility that through its scale, as it were, brings the realisation of local policies and so forth into jeopardy. That is your point, is it not?

4157. **MR LEESON:** We have direct experience of that, so I suppose that is why I brought it up.

4158. **MR MOULD QC:** You have appealed in that sense to what you understand to be the relevant provisions in the national policy, have you not?

4159. **MR LEESON:** Yes, in both NPS EN1 and EN3.

4160. **MR MOULD QC:** I just wanted to turn, please, to National Policy Statement EN3, which does deal specifically with this type of proposed power station. Could you turn, please, to paragraph 2.5.70?

4161. **MR LEESON:** Sorry, Mr Mould, but is this EN3?

4162. **MR MOULD QC:** EN3, yes. We are in the context of biomass, waste impact and management. This is the relevant section that gives the technology-specific guidance on how the planning decision-maker should approach that question—that is to say, the effect of a large-scale power station, fuelled by waste, on local planning policy targets and aspirations. It is in this section, is it not?

4163. **MR LEESON:** It is in this section, yes. That is right.

4164. **MR MOULD QC:** The approach that is vouchsafed is set out at 2.5.70 and I will read it into the record. For the IPC I will substitute the Committee, but what the document says is this, “The [Committee] should be satisfied, with reference to the relevant waste strategies and plans, that the proposed waste combustion generating station is in accordance with the waste hierarchy”—we have explored that, have we not?—“and of an appropriate type and scale so as not to prejudice the achievement of local or national waste management targets in England and local, regional or national waste management targets in Wales.” We are in England, so we can confine this question to two points. First of all, is this proposed waste-fuelled power station such as to prejudice two things: firstly, the achievement of local waste targets; and secondly the achievement of national waste targets? We can deal with the latter point very quickly, because you told the Committee that there are no national waste-management targets for energy-from-waste development in existence.

4165. **MR LEESON:** That is correct.

4166. **MR MOULD QC:** Ex hypothesi, we cannot prejudice them. You cannot prejudice that which does not exist, can you?

4167. **MR LEESON:** I think that is correct, yes.

4168. **MR MOULD QC:** We are only concerned with whether we prejudice local waste-management targets. Now, that is a matter that has been explored in the debate

between Mr Romans and me, and in the evidence Mr Romans has given to the Committee, is it not?

4169. **MR LEESON:** It was touched on, yes.

4170. **MR MOULD QC:** Mr Romans gave evidence as to, firstly, the targets that exist in the emerging core strategy for the Bedfordshire councils, did he not?

4171. **MR LEESON:** Yes, he talked about the various targets.

4172. **MR MOULD QC:** He also gave evidence as to the level of supply in terms of the feedstock for fuel and the level of existing operational and permitted capacity on the demand side. That is right, is it not, or have I got that the wrong way around? The demand is the waste arisings that are available—the residual waste that is available; the supply is the existing and, he says, the proposed. The Committee, if it is going to look at the issue that you ask it to, in accordance with the policy that Parliament has endorsed, should guide itself by what Mr Romans has said on that issue, should it not? He is speaking on behalf of the local planning authorities, who are responsible for the local targets. That is the source of information on that store, is it not?

4173. **MR LEESON:** Mr Romans speaks for the joint authority of Bedford Borough Council and Central Bedfordshire Council. There are other authorities clearly involved: Buckinghamshire, Northamptonshire, Milton Keynes, Luton and Herefordshire. There are a significant number of local authorities involved. If you refer to paragraph 2.5.69, which is the paragraph above, there is discussion of an “assessment of the conformity with the waste hierarchy and the effect on relevant waste plans”, and that “should be presented in a separate document to accompany the application to the IPC”. This is a point we made at the hearing last year. That separate document does not exist.

4174. **MR MOULD QC:** I did not ask you about paragraph 2.5.69, did I, Mr Leeson?

4175. **MR LEESON:** No, but I am just explaining—

4176. **MR MOULD QC:** Can we focus on the paragraph I did ask you about?

4177. **MR LEESON:** I think I have answered that. The applicant has not considered the effect on other plans. Mr Romans was speaking about the effect on the authorities for which he is a planning officer.

4178. **MR MOULD QC:** Mr Romans gave evidence to this Committee speaking as the senior waste planning policy officer for the local authorities in whose area this waste-fuelled power station is proposed to be located, did he not?

4179. **MR LEESON:** I am honestly not aware of that. If he has been delegated to do that, it is not my understanding.

4180. **MR MOULD QC:** I think I will ask the Committee to take notice of the fact that they heard Mr Romans tell them on whose behalf he gave his evidence.

4181. **CHAIR:** It is noted.

4182. **MR MOULD QC:** Thank you. He gave evidence on targets in the emerging core strategy, did he not?

4183. **MR LEESON:** In his core strategy, yes.

4184. **MR MOULD QC:** He also gave evidence on his assessment of the scale of demand— that is to say, the residual waste arisings that were available, if you like, to be diverted from landfill to waste recovery—did he not?

4185. **MR LEESON:** He repeated what was in his document, which, as I said earlier, was produced from an apportionment of requirements, which relate back to the regional spatial strategy, that relied on data from the middle part of the last decade, so it is out of date, quite frankly.

4186. **MR MOULD QC:** As far as his councils were concerned, the waste management and disposal authorities for the area within which our scheme is to be located, he gave

evidence, if you will, of the target that needs to be met so far as his councils' position was concerned, did he not?

4187. **MR LEESON:** When you say the target, is this the target for recovery capacity—

4188. **MR MOULD QC:** No, what you were talking about.

4189. **MR LEESON:** —or target for diversion from landfill?

4190. **MR MOULD QC:** Which is what you have been telling the Committee about—diversion from landfill.

4191. **MR LEESON:** Mr Romans spoke at some length about targets in his authority area, yes.

4192. **MR MOULD QC:** That was one of the target figures he gave, was it not—the overall figure, comprising municipal, commercial and industrial waste, that is there to be diverted from landfill?

(12.30 pm)

4193. **MR LEESON:** He did not say it was there to be diverted from landfill. They have an allocation.

4194. **MR MOULD QC:** Yes, a target.

4195. **MR LEESON:** They are setting allocations to provide sufficient sites to allow that volume of waste to be diverted. He is not saying and did not say that that is how much is arising.

4196. **MR MOULD QC:** What one person calls an allocation, another person calls a target. That is right, is it not?

4197. **MR LEESON:** No, I think they are very different. An allocation is something that might be available if required.

4198. **MR MOULD QC:** Mr Leeson, I will come to the point. Why should the Committee give weight to what you say about that matter, speaking not on behalf of the

responsible planning authority but speaking on behalf of a competitor to Covanta who are trying to protect their position in the market by relying on the restriction that you ask the Committee to retain? Why should the Committee give weight to what you say about it?

4199. **MR LEESON:** I can understand the stress that is created. The fact is that the information I have presented to the Committee today is based on up-to-date information about waste arisings and waste that is being landfilled. Unfortunately, because of the gestation period for local plans, they date back to the middle part of the last decade, when regional strategies were forecasting 3% growth per annum in waste. That is the problem. Unfortunately, the information coming to Mr Romans comes from that very long gestation. We have the benefit of much more up-to-date information about what is happening in the market.

4200. **MR MOULD QC:** You do not speak for the planning authorities, do you?

4201. **MR LEESON:** Obviously not, no.

4202. **MR MOULD QC:** You do not put forward local waste management targets, do you?

4203. **MR LEESON:** No, we do not propose those.

4204. **MR MOULD QC:** You are not producing evidence that falls within the scope of paragraph 2.5.70 of EN3, are you?

4205. **MR LEESON:** We are not suggesting that you should have regard to figures prepared, as you have said, by one of your competitors. However, what we are clearly showing is that the figures that the Council have produced—and that your consultants produced to produce the need argument—are out of date and inappropriate.

4206. **MR MOULD QC:** I am grateful for that, because you said we should not have regard to figures produced by one of our competitors, which is exactly the point I wanted to make.

4207. **MR LEESON:** You would not have known them, so you could not.

4208. **MR MOULD QC:** I just have one small point; this is my last question. It does require us to go back to the large file. You drew the Committee's attention to the need-assessment document in tab 2. Can we just turn to the addendum, please, in tab 3? This was a document submitted by Covanta to bring the Infrastructure Planning Commission up to date, as at February 2011, was it not?

4209. **MR LEESON:** Sorry, I have the wrong file.

4210. **MR MOULD QC:** My apologies. I am sorry.

4211. **MR LEESON:** No, that was me having two grey files. Is it tab 3?

4212. **MR MOULD QC:** Yes.

4213. **MR LEESON:** Yes.

4214. **MR MOULD QC:** You are familiar with this. You will have seen it.

4215. **MR LEESON:** Yes, I have seen this.

4216. **MR MOULD QC:** It was intended to do what I have just said, was it not?

4217. **MR LEESON:** This is what I alluded to, quite fairly. I did say that after the application was made, this study came out. Covanta sought to adjust the figures in their need case to take account of that.

4218. **MR MOULD QC:** I entirely understand. Please turn to page 143 in the pagination on the bottom right-hand corner.

4219. **MR LEESON:** Yes, I am there.

4220. **MR MOULD QC:** You will see at 1.4.6 a table is set out, table 3, showing revised residual commercial and industrial waste calculated in the waste catchment area. The source of that was Defra's C&I waste survey from December 2010. Do you see that?

4221. **MR LEESON:** It says revised from Defra waste survey.

4222. **MR MOULD QC:** That is the most up-to-date waste survey that Defra has produced, is it not?

4223. **MR LEESON:** It is the most up-to-date survey of C&I waste in England that Defra have produced; that is correct.

4224. **MR MOULD QC:** Thank you. Look at the figures set out. This comprises C&I waste arisings on Defra's survey, in its most recent report, arising in the councils that comprise our waste catchment area, does it not?

4225. **MR LEESON:** To be clear, that report does not quantify the sub-regional arisings of waste. It does not do that. As I understand it, what Covanta have done is, at the top of the page, estimated a 21% reduction in C&I waste arisings and applied that to the original calculations. The C&I report, so the Committee is aware, does not contain county- or unitary-council-level apportionments of waste. It contains regional apportionments. That data is from 2009. As Mr Mould says, that is the most recent available national survey. Clearly, however, as I have demonstrated, there has been a big change—even in the three years following that.

4226. **MR MOULD QC:** It is based on the most up-to-date Government figures in the Defra report. We have agreed that, have we not?

4227. **MR LEESON:** It is based on the most up-to-date C&I survey, but clearly there are much more up-to-date Government figures from the MSW statistics.

4228. **MR MOULD QC:** This is C&I, Mr Leeson.

4229. **MR LEESON:** Absolutely, but C&I is a component of total active waste being landfilled. I presented the Committee with data that is up to date within the last few months and data on MSW that is up to date within the last few months. That surely cannot be ignored.

4230. **MR MOULD QC:** Mr Leeson, we are putting this scheme forward as likely to derive a substantial proportion of its feedstock from commercial and industrial waste arisings. That is right, is it not?

4231. **MR LEESON:** That is absolutely correct.

4232. **MR MOULD QC:** This is a table that is concerned with commercial and industrial waste arisings, is it not?

4233. **MR LEESON:** It is, yes.

4234. **MR MOULD QC:** It is based upon the most recent survey carried out by the responsible Government Department in relation to that topic. That is right, is it not, Mr Leeson?

4235. **MR LEESON:** It is the most recent and it is already out of date.

4236. **MR MOULD QC:** The figure that is there set out, of 1,481,000, the total figure of C&I waste arisings for the councils within the catchment area, which is derived from that survey, is broadly consistent with the figure that was put forward by Mr Romans for the same component of waste arisings by the council in his evidence to this Committee, is it not?

4237. **MR LEESON:** The 1.48 million?

4238. **MR MOULD QC:** Yes.

4239. **MR LEESON:** It is, because it comes from the same genesis. My reading of this addendum is that the 1.48 million was the original assessment. The 1.232 million, in the third column, as I understand it, is the assessment based on a consideration of the C&I report.

4240. **MR MOULD QC:** Insofar as the author of this report has applied reduction factors to this figure in order to get to the total that is shown in that table, that is a desirable approach to take because it adds robustness to the residual figure of 1.481 million, does it

not? If you apply reduction factors, you are getting to a true residual waste figure, are you not?

4241. **MR LEESON:** No, I am afraid you have that completely wrong. The 1.48 million was the original; the 1.232 million, if I understand what the author of this addendum is saying, is the figure that takes account of the 2009 survey. I do not know what the case is, because in COV5, if members remember, there is this little diagram of the black plastic bag with waste in. This seems to have reverted back to the 1.48 million tonnes figure. We do not understand exactly what figure we are supposed to be dealing with.

4242. **MR MOULD QC:** I was asking you a question in relation to the comparison with Mr Romans' figure.

4243. **MR LEESON:** I am trying to respond to it.

4244. **MR MOULD QC:** Mr Romans' figure was of the order of 1.2 million for commercial and industrial waste arisings, was it not?

4245. **MR LEESON:** I cannot remember, if I am quite frank.

4246. **MR MOULD QC:** If I am right about that—and the Committee and others will check it—then the figure that you have corrected me on, the 1.2 million figure, is pretty consistent with the figure that Mr Romans has given in evidence to this Committee and that, as you will recall, I said we did not seek to challenge.

4247. **MR LEESON:** That was the point. You said you did not seek to challenge it. It is consistent; it comes from the same origin. It would be surprising if it was not.

4248. **MR MOULD QC:** But very much greater in scale than the figure that you, speaking on behalf of WRG, as a commercial competitor, put forward, which is something of the order of 600,000 to 700,000, is it not?

4249. **MR LEESON:** Let us get this right. The 600,000 to 700,000 includes MSW.

4250. **MR MOULD QC:** It is a smaller figure.

4251. **MR LEESON:** The figure is even starker. I am saying that in the catchment area there is about 370,000 tonnes.

4252. **MR MOULD QC:** You say there is 370,000 tonnes.

4253. **MR LEESON:** Absolutely, yes.

4254. **MR MOULD QC:** We have Mr Romans speaking as the planning authority's witness and us basing our figures on Defra's most recent survey's figures. Mr Romans is also taking account of those figures. We are broadly at around 1.2 million. You, speaking on behalf of a commercial competitor, are at a figure of 370,000. Is that the position?

4255. **MR LEESON:** That is correct. I am basing it on up-to-date data and a knowledge of what is happening in the marketplace.

4256. **MR MOULD QC:** If Covanta choose, against that background, to go into the market and build their facility, as the Chairman of the Committee put to you earlier, that is a commercial decision for Covanta, is it not?

4257. **MR LEESON:** That would be correct.

4258. **MR MOULD QC:** Thank you very much indeed, Mr Leeson.

4259. **CHAIR:** Thank you very much. I am going to draw this particular session to a close, but I do want to clarify in my own mind the differential between waste to energy and waste in its other forms, in relation to your map of the catchment area, page 12. As I understand it, in addition to Rookery South, there are only three other waste-to-energy sites in the catchment area. Is that correct? I mean on your map on page 12 of your particular submission.

4260. **MR LEESON:** These are all energy-from-waste plants, sir.

4261. **CHAIR:** Each one on here is an energy-from-waste plant.

4262. **MR LEESON:** Each one of those coloured points is either an energy-from-waste plant that is—

4263. **CHAIR:** That clarifies the position for me. Thank you.

4264. **MR LEESON:** Thank you, sir.

4265. **CHAIR:** In that case, we will now take an extra four minutes for our lunch. I shall close the session by saying, "Order, order". We reconvene at 2.00 pm this afternoon.

Public session adjourned at 12.41 pm

Ordered at 1.59 pm: That the Parties be called in.

4266. **CHAIR (MR BRIAN BINLEY MP):** I make my normal plea for telephones to be switched off and indeed not to be used. I understand, Mr Williamson, that you would like to re-examine just a couple of questions with Mr Leeson. Proceed.

4267. **MR WILLIAMSON:** Thank you very much, sir. Good afternoon, Mr Leeson. There are just a few points. You were asked questions by Mr Mould about the nature of the petition, and I realise at one point you were saying, "I'm not a lawyer," but I just want to ask you a specific point about the nature of that petition. You were asked whether you made it on behalf of your clients or on behalf of a more general argument, but were there any other waste operators affected by the Order?

4268. **MR LEESON:** Sorry, were there?

4269. **MR WILLIAMSON:** Were there or are there any other waste operators affected by the Compulsory Purchase Order?

4270. **MR LEESON:** As I indicated, in my view, there could be, and it could affect the wider market.

4271. **MR WILLIAMSON:** In terms of any parcel of land taken from anybody else other than FCC?

4272. **MR LEESON:** I am sorry; I misunderstood your question. As I understand it, no.

4273. **MR WILLIAMSON:** Could your clients have objected to the CPO on behalf of some other land ownership?

4274. **MR LEESON:** No.

4275. **MR WILLIAMSON:** Just bear with me; I am working on a red colour code for my re-examination questions.

4276. **CHAIR:** You could not change it to blue, could you?

4277. **MR WILLIAMSON:** Sorry, it is just an old habit. Black for in chief and red for cross-examination—or re-examination. A series of points were put to you about Mr Mould's client's figures and Mr Romans' evidence. I do not need you to turn up the individual extracts again. You were put the figures from the Defra study about the 1.2 million and the 1.4 million, but there was some spin on the question about motives. You were saying this was on behalf of a self-interested operator. As far as your evidence is concerned, has your evidence been affected by your clients' motives for objecting?

4278. **MR LEESON:** No, absolutely not. The evidence I have given is independent. It is backed up by independent government statistics, and it is consistent with the approach we have taken on other facilities for other clients.

4279. **MR WILLIAMSON:** Would motive be relevant to assessing whether or not there was a compelling case in the public interest, in terms of Covanta making out its case?

4280. **MR LEESON:** I am not fully aware of all the legal tests, but I cannot see that motive would go to that, no.

4281. **CHAIR:** Sorry, Mr Williamson, you must hear the sniggering. There is an amendment to the Planning Act 2008 being put before the House. Can we hurry along so that this is—?

4282. **MR WILLIAMSON:** BLIMEY, I DO NOT KNOW WHAT THAT IS. I ought to know what that is.

4283. **CHAIR:** I do not know what it is either.

4284. **MR WILLIAMSON:** I am afraid I do not.

4285. **CHAIR:** Do proceed.

4286. **MR WILLIAMSON:** THAT IS FORTUITOUS. Just a final point about the figures: you have obviously seen the way Mr Mould puts his case. He says there are no policies or

targets that support your position. What is your overall view, in final response, in terms of what weight you give to what figures?

4287. **MR LEESON:** My view is that we should give weight to the most up-to-date information, particularly when it is information that is produced, effectively, by Government bodies—by HMRC, by Defra and the devolved governments. In the data I have presented, you will recall a graph showing the amount of waste going to landfill dropping this year. That is really the most up-to-date information I can give this Committee, and I think that should carry considerable weight. I reiterate that the other forecasts that are being made are based on data that is well out of date now; the gathering of that data started in the middle part of the last decade.

4288. **MR WILLIAMSON:** SORRY, THERE was one final point I noticed from my red pen. You were put questions by Mr Mould at the beginning of his cross-examination about the key principles of ENI in paragraph 3.1.1. We do not need to turn it up; it is the key principles in the shaded box that he took you to. He was asking you to agree with them, which you did, certainly in part. Is the language at paragraph 4.4.3, in relation to looking at realistic alternatives when you have a legal obligation to consider alternatives, advice to be read consistent with 3.1.1 or is it somehow inconsistent with it?

4289. **MR LEESON:** No, I think they are clearly consistent. You have to look at alternatives. In the context of that paragraph Mr Williamson described, 4.4.3, it talks about “proposals”; it does not talk about operating capacity. It says that the IPC should have regard to proposals, and clearly that obviously, I would suggest, extends, with the greatest respect, to you now.

4290. **MR WILLIAMSON:** When dealing with a CPO in this case, which advice do you give the most weight to? Is it the general propositions in 3.1.1 or the advice in 4.4.3?

4291. **MR LEESON:** I do not think there is necessarily a tension or inconsistency between them. There is a general policy that we need as much energy infrastructure as possible, but when one is considering alternatives to schemes coming forward, one considers alternatives that are proposals and not just operating capacity, so there is a consistent flow there. The second statement, to a degree, qualifies the first, but they are not necessarily fully incompatible at all.

4292. **MR WILLIAMSON:** Thank you very much. That is it, sir. I have two other points, but I will put them in closing submissions.

4293. **CHAIR:** Thank you, Mr Leeson. You have a question, sorry, if you could hold on for a second.

4294. **LORD GEDDES:** I want to go back, if I may, to the Chairman's question just before lunch. Looking at page 12, which was your map of the catchment area, am I right in counting that there are six energy-from-waste plants either proposed or under construction over and above Rookery? I have found Goosey Lodge, Waterbeach, Twinwoods, Ardley, Greatmoor (Calvert) and New Barnfield. Is that correct?

4295. **MR LEESON:** To a degree, my lord, as I said to the Chairman, all of these are energy-from-waste facilities. Some are this special subset called advanced thermal treatment. That is an energy-from-waste facility, but it is treated slightly differently in the support it gets, in terms of renewables obligation certificates. It is a gasification facility, but they are all energy-from-waste facilities, my lord.

4296. **LORD GEDDES:** Are the ones that are marked EfW, to all intents and purposes, exactly the same system as the proposed Rookery South?

4297. **MR LEESON:** In technology, my lord, yes; they would be regarded as mass burn. That is the phrase used, as against advanced thermal.

4298. **LORD GEDDES:** Thank you. That is all I wanted to know.

4299. **CHAIR:** Just for your information, I am told that the amendment to the Act that involves us so much is a Ten Minute Rule Bill, so we need not bother too much about the thing being changed at this stage. Thank you very much, Mr Leeson. Mr Williamson, you would like to call your next witness.

4300. **MR WILLIAMSON:** Yes, Mr Plant, please. I will just hand out his exhibits whilst he is gaining his chair. Sorry; I am just asking for a bottle of water for the witness. I think we seem to have been drinking it up on this side of the room. Sorry, Mr Plant, can I ask you to introduce yourself to the Committee and to explain your experience and qualifications, relevant to this, albeit fairly briefly?

4301. **MR PLANT:** Thank you, Mr Williamson. My name is John Henry Plant. I hold a first degree in science and a masters in business administration. I am a member institute of the Chartered Institution of Wastes Management. I have been involved in the waste industry for over 20 years, in bidding for and developing waste management facilities, and for the last six years I have been involved with FCC Environment, leading a team that has been responsible for bidding and developing four facilities, some of which have been discussed here today. I will keep it fairly brief, because I think the Chair is keen to move on.

4302. **CHAIR:** I am keen to be brief.

4303. **MR WILLIAMSON:** Indeed. Let us then, Mr Plant, pick up your exhibits and turn to JP001. I think this is pretty self-explanatory, but you say FCC is one of the largest waste companies in the United Kingdom, and then you identify facilities within the catchment. There was a supplementary question, though, because earlier Mr Mould was asking Mr Leeson about some landfill input rates into some of your facilities. I do not know if you can help out with that.

4304. **MR PLANT:** Yes. If I may, if Mr Mould could just remind me of the sites and the tonnages that he was quoting, it might be easier to address.

4305. **MR WILLIAMSON:** I do not think we are allowed to ask him questions.

4306. **CHAIR:** Can we follow procedure? If you continue to cross-examine, Mr Williamson, Mr Mould will have his—

4307. **MR WILLIAMSON:** Yes. I think I made a note of 477 tonnes at Bletchley, 561 at Calvert and 334 against, I think, Stewartby, although my notes were going at a fair speed.

4308. **MR PLANT:** Okay, unfortunately those figures are incorrect. Stewartby is closed and there will be no further tonnage through Stewartby this year. Bletchley, in 2011-12, which is the latest year we have, dealt with 426,000 and Calvert dealt with 488,000. Bletchley is the site for a proposed development for a 200,000-tonne facility that will both have a MRF, a materials reclamation facility, and a transfer loading station. Calvert will be the site, as you have already heard, of the development of a 300,000-tonne energy-from-waste facility.

4309. **MR WILLIAMSON:** That is helpful. We can leave then JP001. You then set out at 2 the property transfer arrangements, and there is also a note from a legal officer in the company in the main bundle. Again, I am not going to ask anybody to turn it up; I am sure the Committee can look at that history and the details of the covenant. I am sure you will be advised by others in respect of that matter. I think this flowchart sort of shows what happened. Can you explain to us briefly how the covenant came about?

4310. **MR PLANT:** I will just restrict my comments here to the graphic—I have tried to simplify a very long document—which describes a series of transfers of property. The London Brick Company, during the 19th and 20th centuries, assembled large portions of land to support its clay-extraction and brick-making activities. As those declined, they actually began to move into landfill.

4311. London Brick was acquired in 1984 by the Hanson Trust, which then began to prepare the assets of London Brick in order to gain greater benefit from them. Importantly,

lands were transferred between two companies within London Brick, the London Brick Property Company Limited and British Agricultural Services Limited. The purpose of that was to push into one company's holding those pieces of land that were suitable for development, retaining lands that had operational activities in the other company, which was British Agricultural Services. In a complex transfer, which took place on 17 March, that was first effected. On the following day, London Brick Property sold various development lands, including Rookery, to a company known as St James. At the time, covenants were created, which I will come to in a bit more detail later. Subsequently, in March 1989, the assets associated with British Agricultural Services, which included Elstow, were acquired by Anti-Waste Limited. Sorry, I have gone down. On 31 January, Anti-Waste Limited acquired Elstow together with other land assets.

4312. The situation as of today is that Rookery belongs to O&H Q7, sometimes known as O&H Quickfire 7, which is still under the ownership of St James. We understand that Covanta has an option to lease or acquire that piece of land. Anti-Waste, which is an FCC Environment company now, owns Elstow, which has the benefit of the covenants. Do you want me to then describe the nature of the covenants?

4313. **MR WILLIAMSON:** No, I think we probably know what the covenants are and they can be examined, unless anybody is shaking their heads, which they are not.

4314. **CHAIR:** Does anybody wish to ask questions about them?

4315. **MR WILLIAMSON:** It has been before. It is in the petition.

4316. **CHAIR:** Can we, for the record, just repeat what they are very briefly?

4317. **MR PLANT:** Right, I will very briefly, if you bear with me, get to my notes.

4318. **MR WILLIAMSON:** Tab 14 in the bundle that we handed out this morning is a note from Grania Thompson, who is a legal officer of the company, and they are actually set out

in there. Can you just give us a brief bit of it? I do not want to read the lot out; it will take forever.

4319. **MR PLANT:** To paraphrase, basically the protected business that was to be subject to the benefit of the covenants related to landfill and related activities, which included commercial waste management. That was not restricted. It included disposal, waste processing, recycling, recovery, composting, waste minimisation, waste treatment activities—potentially every activity and certainly those which include those proposed by Covanta. The second covenant had the intention of restricting the actions of owners in seeking any amendments to the waste and minerals planning policies that might prejudice the others.

4320. **CHAIR:** Thank you. That is on the record and we are grateful.

(2.15 PM)

4321. **MR WILLIAMSON:** That is helpful. If we just turn over the page to 003, you have some brief information about Elstow. Again, could you perhaps just put on the record what you are proposing there?

4322. **MR PLANT:** We are proposing to build at Elstow a mechanical biological treatment facility—an anaerobic digestion facility—that will deal with organic waste, food waste and others. It will produce refuse-derived fuel (RDF), which will be sent to our Calvert energy-from-waste plant, which is a small plant in terms of the classifications that have been described earlier, but it will still generate 22 megawatts of electricity, which is sufficient to supply the needs of 36,000 homes.

4323. **MR WILLIAMSON:** 22 megawatts?

4324. **MR PLANT:** Yes, 22 megawatts of electricity. It is actually as efficient, if not more so, as the proposed regional reclamation facility of Calvert, with an RI coefficient, which measures its efficiency, of 0.77, in comparison with the RRF calculation of 0.68.

4325. **CHAIR:** Might I just interject and get you to define the period of time? Does it produce 22 megawatts an hour?

4326. **MR PLANT:** Yes.

4327. **CHAIR:** Thank you. It is so we just understand that.

4328. **MR PLANT:** The hour is generally dropped when people describe these. It is 22 megawatts an hour.

4329. **CHAIR:** I know it is, but for this case we need it in the record. Thank you.

4330. **MR PLANT:** Yes. It is a 22-megawatts-per-hour plant.

4331. **MR WILLIAMSON:** I am sorry to have to say it, but I am not sure if any members have been through the RI calculation before. You end up going through it at every public inquiry on an EfW.

4332. **MR PLANT:** Unfortunately, yes.

4333. **MR WILLIAMSON:** Just explain it simply.

4334. **MR PLANT:** It is a relatively complex calculation that defines the efficiency of the plant based upon the amount of energy that is exported in comparison with the amount of energy that is inputted into the plant, either in terms of fuel, secondary fuel, such as gas or oil, which are used to preheat the facility in order to generate steam, or electricity, which is actually used at periods of time when the plant is not operational and is not generating electricity—during start-up or close-down. It is quite a complex calculation, but the higher the score, the more efficient the plant is.

4335. **MR WILLIAMSON:** In fairness, that is part of an Annex to the Waste Framework Directive. The RI calculation is actually in the European Directive, which is why it has come to us. If you are not above 0.65, you do not qualify as recovery, do you, Mr Plant?

4336. **MR PLANT:** That is correct.

4337. **MR WILLIAMSON:** Every operator is trying to make the plant as efficient as possible. If you had good CHP, you would have quite a high figure—good combined heat and power. If you could use the heat, you would get the total efficiency up. That is right, is it not?

4338. **MR PLANT:** That is correct.

4339. **MR WILLIAMSON:** The point you are making is, in comparison, one of the points that was put forward by Covanta to the IPC, although not one they actually picked up on or found in their favour on, was this idea that bigger is more efficient in terms of the total energy. What you are doing is you are comparing the RI figure for Calvert with the RI figure for Rookery.

4340. **MR PLANT:** Yes. Those are two publicly quoted figures, which have been used in the planning applications.

4341. **MR WILLIAMSON:** Yes, so the point is that Calvert is at least as efficient if not greater.

4342. **MR PLANT:** At least as efficient as Rookery, yes, absolutely.

4343. **MR WILLIAMSON:** If you look at the calculations.

4344. **MR PLANT:** The important thing to stress is that we believe that Elstow will, in effect, give smaller waste operators access to pre-treatment facilities, which would have the effect of driving waste up the waste hierarchy, which is clearly something that the Government is keen on. It would take it out of recovery, in many cases, and move it into recycling.

4345. **MR WILLIAMSON:** Alright, that is helpful. Then you have some analysis of waste receipts to the company on the next exhibit, JP004.

4346. **MR PLANT:** Yes, I will not dwell upon this. The source of the information is actually taken from our management systems, and it is possible to analyse trends in waste

potentially at a much more detailed level than that which you would be able to do from nationally quoted figures. As well as contracted municipal solid waste, the figures include trade waste and waste associated with our own operations—waste which will never be released to a third party, because it is being used to sustain our business. The trade waste obviously includes commercial and industrial waste as well as construction and demolition waste, the proportions of which are increasing. The waste that is landfilled includes significant imports from London and the South East area; not all is from the catchment area. Nevertheless, the trends are consistent with those that Mr Leeson has reported to you.

4347. **CHAIR:** Forgive me; let me understand this. This is the waste that you are dealing with as a company in this area.

4348. **MR PLANT:** There are two lines shown here, Chairman. The blue line shows the waste within the catchment area of the facility. The red line shows the trend in terms of all other areas where we operate, excluding those within the catchment area. The green line shows the total of all waste that we have landfilled since 2007.

4349. **MR WILLIAMSON:** The point you are making is that you cannot rely on the totals for the catchment, because waste is coming from London, for example, by train, so you cannot compare the figures of Mr Leeson and Mr Romans with your figures, but what you can show is the trend.

4350. **MR PLANT:** You can show the trend. The fact that we are acknowledging that there is waste coming from outside the catchment area means that that would have to be discounted from any assessment of waste available within the catchment area, and would have the effect of reducing the available waste.

4351. **CHAIR:** The catchment area is a major growth area in its totality, is it not? I only look to Northamptonshire to know that to be a fact. Given that, do you include any of those figures in the projections that you are about to make?

4352. **MR PLANT:** No, this is based upon our trading activity.

4353. **CHAIR:** I did not mean this particular diagram. I am asking whether any of those increased waste production figures are included in the figures that you have given as a petition as a whole to this particular body, because the catchment area we are talking about is in, I repeat, a major growth area.

4354. **MR PLANT:** I recognise that, Chairman. No, we do not take those into account in our business planning, because they are clearly quite unsound and may or may not come to pass.

4355. **CHAIR:** I did not expect them to be absolutely accurate, of course, but they do matter.

4356. **MR PLANT:** I certainly would agree with you but, as a prudent and mature waste operator, we do not see it as appropriate to bring those into account.

4357. **CHAIR:** Thank you. I understand.

4358. **MR WILLIAMSON:** Then JP005 on the sources of waste again just gives further information.

4359. **MR PLANT:** Yes, this provides a breakdown in terms of the sources of waste rather than the origins of the waste. You will see that we have identified: municipal solid waste, which is waste that is derived from local authority contracts; trade waste, which is derived from commercial customers; and internal waste, which is waste associated with our own activities, which will include our own commercial activities together with municipal contracts that we operate outside the area but that actually bring waste in for disposal. I am sure you will appreciate that municipal solid waste and internal waste are potentially locked into long-term arrangements. We will come on to the municipal waste arrangements in due course, if necessary. Trade waste volumes to landfill, which includes construction and demolition, have dropped by 70% in the last five years.

4360. **CHAIR:** Can I come back, because these are the figures that I think can be misleading unless we totally understand what they are? We have had a recession. That impacts upon productivity and the production of waste. We have major growth that will happen at some stage over the next 15 to 20 years. That will impact upon the figures, too. I want to be absolutely clear that you have not taken the latter consideration into account, but you have clearly taken into account the impact of the recession.

4361. **MR PLANT:** Clearly the impact of the recession would be demonstrated within these figures, yes.

4362. **CHAIR:** Of course, thank you. But your view is that there are no projections in terms of growth, again, anywhere in your figures.

4363. **MR PLANT:** These are based upon—

4364. **CHAIR:** Not these figures again. I just want to confirm that particular point.

4365. **MR PLANT:** There are no projections of growth, as far as I am aware.

4366. **MR WILLIAMSON:** I understand that, Mr Plant, but the growth in population that is occurring within the catchment will have featured in Mr Leeson's figures, will it not?

4367. **MR PLANT:** I believe it will have done so, yes.

4368. **MR WILLIAMSON:** Which I think is continuing; the latest population figures were out yesterday, I think. We do not need to worry about MSW, because we are not too far apart from Covanta on that. It is really about the trade waste. What is the pattern of that compared with what Mr Leeson is saying, based on his statistics?

4369. **MR PLANT:** You can clearly see that there has been a decline. We were fortunate in the years 2010 and 2011, as a consequence of our adopting a very aggressive pricing strategy, to actually be able to bring in more waste in those two years than previously, but we are expecting—and it has already been demonstrated by figures from month 10, October, which were very close—that we will be very close to achieving the amounts that

are shown, which would represent a reduction of 222,000 tonnes from the previous year, 2012.

4370. **MR WILLIAMSON:** By this aggressive pricing, do you mean at the landfills you are charging lower gate fees?

4371. **MR PLANT:** We have reduced our gate fees in order to ensure that we are bringing waste into those facilities.

4372. **MR WILLIAMSON:** What type of waste is that?

4373. **MR PLANT:** That would be trade waste, which will be a mix of construction and demolition, and other active wastes, which might be suitable for burning.

4374. **MR WILLIAMSON:** Yes, but it would not all be suitable for energy from waste.

4375. **MR PLANT:** It would not all be suitable for energy from waste, because some of it is non-burnable, particularly the construction and demolition waste.

4376. **MR WILLIAMSON:** Indeed, I understand that. Let us move on to look at JP006, potential sources of MSW available to Covanta. I think there is probably reasonable agreement on this, but is there anything that we need to be highlighting to bring everybody up to date?

4377. **MR PLANT:** As I recall, Mr Leeson suggested that you might wish to understand what win rates were. In here, I suggest that they are typically lower than one in three. As an interested observer of what has happened in the marketplace, it is clear that some of our competitors that adopt different financing structures have achieved a much better win rate than others that have relied upon non-recourse finance. That is why I say one in three; that is the best people have achieved. A figure of one in six or one in seven was proposed. It is a very low rate if you are relying upon standard forms of finance in order to bring these projects forward, because the cost of debt is far higher.

4378. **MR WILLIAMSON:** I think we can take that as read. I do not think it is worth going through each individual one of those. At 07, you are making a general point by taking an extract off the internet. Can you briefly touch upon this? You do not need to read out most of it.

4379. **MR PLANT:** Clearly in my experience, working with many authorities, there is an aversion that is almost paranoiac with some authorities against the idea of mass-burn technology. It was clear in Milton Keynes' approach that they were not prepared to consider mass-burn incineration, only some form of advanced thermal treatment. It may well be that Luton and Bedford will adopt a similar approach, in terms of its choice of technology, for reasons that they see to be appropriate, which would mean that they would not choose to work with Covanta, which is bringing forward a mass-burn incinerator.

4380. **MR WILLIAMSON:** Not all of the contracts that might become available are likely to be seeking mass-burn incineration.

4381. **MR PLANT:** It is possible, without having spoken to authorities, which are clearly in procurement at this stage and will not reveal their views. It is difficult to assess.

4382. **CHAIR:** May I ask a question that is almost by the by, but relates to my initial question about waste companies, as a group, not opposing any of their colleagues' planning applications? Is that, in your experience, because there is a general concern amongst local government people about having something really rather unsavoury in their area? Is that why you get together? Is that why you have this sort of freemasonry of waste disposal?

4383. **MR PLANT:** I am not aware of any freemasonry.

4384. **CHAIR:** I am; I am a member, but never mind.

4385. **MR PLANT:** I certainly would not want to roll my trouser leg up with some of my colleagues from the waste industry.

4386. **CHAIR:** You have just insulted me and done me no good at all.

4387. **MR PLANT:** My apologies. The suggestion that we might challenge one another in terms of planning beggars belief, to be quite honest. It would be akin to Tesco challenging Sainsbury's and vice versa for every one of their new stores.

4388. **MR WILLIAMSON:** They do these days. They did not used to.

4389. **MR PLANT:** They do, but it would be improper—

4390. **CHAIR:** Start again, because that was not a good analogy.

4391. **MR PLANT:** To be clear, I said “for every one of their stores”.

4392. Turning to the point in question, we have sought effectively to challenge the use of CPOs, which has given the applicant, Covanta, the ability to overturn a longstanding hard contractual agreement, a promise between parties, which is relatively recent—the 1980s. It is not some arcane, very historic covenant, which requires us to erect iron railings at the front of our property and maintain them in perpetuity. It was put in for a very good reason, and that was to protect the interests of the owners of the land.

4393. **CHAIR:** I did not mean to draw any connection of that kind. I simply wanted to understand a little more, in the light of what you said about local planning attitudes, about whether that was one of the reasons why you tended to scratch each other's backs in terms of planning proposals.

(2.30 PM)

4394. **MR PLANT:** I have never had and am not aware of any discussions between us and competitors in relation to planning.

4395. **CHAIR:** I did not mean that either. You are missing my point deliberately. Now tell me.

4396. **MR PLANT:** We as a company have never challenged, to my knowledge, any planning application for a waste facility. It does not appear to be appropriate for us to do so.

4397. **CHAIR:** Okay, let us move on, Mr Williamson.

4398. **MR WILLIAMSON:** Sorry, fine; let us move on. Right, then look at 008, the assessment of commercial customer behaviours driving change. This just explains some of the reasons why the change that is happening rapidly in C&I waste is happening.

4399. **MR PLANT:** Yes, and I also think it will give an indication of what is likely to happen in the future. The 12 companies listed are a very significant part of our customer base. Overall, in the period between 2007 and the end of 2011, they represented 66% of the waste inflows into our sites in this area. As a consequence of the impact of landfill tax and them needing to provide different services to their customers in order to reduce their waste treatment bills, they have invested in many cases in what are quite large facilities. Many of them, where they already have facilities, either landfill or otherwise, have actually internalised their work, so we are now in a situation where waste that used to come to our facilities within the area is being driven for many miles to effectively the home base, where the operator has their own facilities to be able to treat or dispose of that waste. They have done that to protect their business, effectively.

4400. As a result of that, local operators—very small operators—become more significant, so there is no large contract hanging out there that represents low-hanging fruit that could be relied upon. Overall tonnage has dropped. As I said earlier, we have a business model that involves the building of transfer loading stations and treatment facilities that will support these smaller operators. In 2011, we have a situation where 62% of our waste is coming from local operators—these are generally small firms—whereas in 2007 75% of our waste came from national and regional companies. An example would be Powerday, and a national company would obviously be the likes of Shanks or Veolia. The shape of the markets has changed, and many of the large operators already have facilities that have enabled waste to move up the hierarchy away from disposal and, in fact, into the areas of recycling.

4401. **MR WILLIAMSON:** Some of the figures—we do not need to go through them—but Powerday, for example: 93,000 tonnes, 2007, down to nil.

4402. **MR PLANT:** You will see on the next exhibit, 09, I have taken from those that have a web presence just an image from their web pages. Powerday has a statement there: “100% recovery from waste.” They are effectively moving to zero waste to landfill for certain of their customers. This is a driver that we are seeing more and more within the industry. All of them talk about increasing recycling; all of them talk about sustainability and resource management. This is being driven by the fiscal and legal environment in which we sit.

4403. **CHAIR:** For my own interests, we have talked a lot about construction waste, which is not relevant to the process of waste to energy but it is relevant to the process of recycling aggregates. I assume then that these people are the people who are recycling aggregates.

4404. **MR PLANT:** They will be recycling a range of materials, Chairman. My observations, and these are only observations, are that on larger demolition and construction works, where there is a significant amount of feed stock, there is an economy of scale associated with that that makes it worthwhile to bring in what are large complex pieces of equipment. On smaller construction jobs—extensions, house demolitions—you have smaller quantities of waste, and therefore it is less likely that those will be recycled on site. Our transfer loading stations and materials reclamation facilities will provide the ability for that, if it is feasible to do so financially. At the moment, though, a lot of that waste is actually coming to landfill because it is the cheapest option available to them.

4405. **MR WILLIAMSON:** Do these give examples? Do they speak of “human ingenuity”, to use Mr Leeson’s phrase, as regards what is driving the process in terms of the amount of C&I waste that will be available in the future?

4406. **MR PLANT:** It is difficult to identify human ingenuity from a web presence, but it clearly shows the policies that underlie the current activities of those companies.

4407. **MR WILLIAMSON:** On 10, you are showing the extent of PFI support for waste projects, and I think you want to develop a point based on that. Just tell us briefly what this shows.

4408. **MR PLANT:** This is taken from a Defra document that shows the projects that have been supported through PFI credits, as part of the strategy that started in the 1990s, which involved the first two Pathfinder projects, PFI projects, on waste: the Isle of Wight, and Hereford and Worcester. It shows that, to date, based upon a programme that was revised as part of the 2010 Spending Review, it is expected that Defra will have contributed something in the region of £2 billion in support of 32 projects spread across the country.

4409. Lord Dear made a point earlier on about commercial considerations. Commercial considerations will obviously have an impact upon the realistic prospect of delivery of any waste scheme. There is commercial risk associated with waste projects and, under current procurement rules, those risks fall to the private sector, but the public sector is not fully isolated from these. I will come on to that in a moment. The commercial considerations that impact upon the realistic prospect of delivery relate to the availability of waste and the risk associated with the financing of projects, which is clearly going to be affected by people's view of the risk of delivery of the feed stock—the waste itself. Many of these projects have a reliance upon commercial and industrial waste.

4410. **MR WILLIAMSON:** Indeed, you go on, in JP011, to give an example of this.

4411. **MR PLANT:** Yes. In essence, the viability of these schemes could be affected in certain ways. I give two examples here; I could have brought others in. One is not a PFI project but is very close to the catchment area: Ardley. The other one is a PFI project. There are two reasons generally for the reliance on commercial waste: firstly, to increase

the volumes and to maintain the volumes that are going through the facilities so they run at optimal load because, if they are not running at optimal load, they will be incapable of generating the quantities of electricity or revenues that are expected of them—revenues that are required to repay the finances of those projects. Ardley has a capacity of 300,000 tonnes, but it will only be given a guarantee of around 100,000 tonnes from Oxfordshire County Council. That is in the public domain; that is also my understanding, because my team were one of the last two bidders involved in that process. The Ardley facility has reliance upon 200,000 tonnes of commercial and industrial waste.

4412. In Essex, which is a different process—it involves an MBT process to produce refuse-derived fuel—there is a reliance upon commercial and industrial waste to improve the quality of the feed stock, such that the quality of the refuse-derived fuel is such that it has a high enough calorific value for it to be seen to have value as a refuse-derived fuel by the users of that fuel. In both cases, there is reliance on commercial and industrial waste.

4413. If there is an economy of scale, which was suggested earlier on, and if, as I think Mr Romans had pointed out to him during cross-examination, it is feasible to transport waste many hundreds of miles to the proposed facility—and one would expect that that is both environmentally as well as economically sustainable, based upon that statement—there is a possibility that waste could be migrating away from these facilities that already exist, in which the local authorities and the Government have an interest in making sure that they work. The local authority interest is actually not simply in relation to PFI credits. Many of these projects have revenue-sharing provisions associated with excess revenue, which is linked to either the gate fee associated with commercial and industrial waste or to the electricity generated from those facilities. If the electricity revenues dropped, the authority would not gain the benefit. If the commercial and industrial revenues dropped, the authority would not gain the benefit.

4414. In a worst-case scenario, and these projects are being bid on very tight margins, the contracts could lose 20% to 25% of their revenue and they may fail. If they did fail, that would leave the authority hostage to fortune, potentially having to re-procure. That is not a simple task. Authorities regularly spend seven figures—seven-figure sums—on procuring these contracts. The concept of Rookery being built could effectively have a very damaging effect upon the market as a whole. The concept of Rookery being given consent is likely to suppress the market for the development of smaller facilities. Those facilities would actually drive waste up the hierarchy, rather than simply taking it into recovery.

4415. **MR WILLIAMSON:** If this facility were to draw in waste from outside the catchment because there was not enough in the catchment, then you could be not merely undermining the environmental issues of transporting waste but also having an economic impact on those other contracts in neighbouring authorities.

4416. **MR PLANT:** Correct.

4417. **MR WILLIAMSON:** Is that why most authorities tend to go bespoke, trying to size proposals to fit their catchment?

4418. **MR PLANT:** I will come on to the quantities of waste later on and the view of the market, but it is very difficult to fund these projects, something that is recognised by the Government and working parties within Government—projects that have a large reliance upon commercial and industrial waste.

4419. **MR WILLIAMSON:** We are coming on to that, are we not? Do we need to pick anything else up in JP011 or can we move on?

4420. **MR PLANT:** I think we will move on. I think we have probably covered the majority of the points on that.

4421. **LORD FAULKNER:** If I may, Chairman, the third bullet point down on the right-hand side, I assume you do not mean “loose”. You mean “lose”, do you not?

4422. **MR PLANT:** Sorry, yes. My apologies; it was quite late when I typed this.

4423. **LORD FAULKNER:** “Loose” does mean something a bit different.

4424. **MR PLANT:** Thank you for pointing that out.

4425. **MR WILLIAMSON:** “Lose”, yes. JP012 then, Mr Plant: the problems with the deliverability of merchant C&IW facilities. You quote firstly from Mr Chilton’s letter. Just to set the context for this, at the IPC hearing I think I asked if I could cross-examine somebody from Covanta about the deliverability of their scheme, and what we got was this letter. You could not cross-examine it and the IPC said they did not give it much weight, because it was not available for cross-examination, but the claim was being made on Covanta’s behalf that this facility would be a merchant facility. You have quoted the key extract from the letter. It is before the Committee. You are really picking up on that unique selling point that was being put forward to the IPC, and then you are giving some further evidence below. Is that the context?

4426. **MR PLANT:** That is the context of it. If I may, I will draw some further points out. Clearly the question of supply and reliance on trade or commercial and industrial waste, whatever you want to call it, is a problem—a problem that causes concerns for the banks, if they are providing finance for the waste projects. In my experience, they are unwilling to expose the project to a significant risk associated with quantities of trade waste. Similarly, they are not prepared to expose the project to risks associated with refuse-derived fuel supply, unless that is guaranteed by a local government contract. They see any other arrangement as carrying a commercial risk or a corporate risk: 1) where the provider of those guarantors, the provider of those wastes, may, because of commercial circumstances, particularly in the current economic climate, be unable to honour their obligations.

4427. **MR WILLIAMSON:** Just to get an idea of the scale here, I think the capital expenditure, according to Covanta, is 275 million to build this facility.

4428. **MR PLANT:** It is probably of that sort of right order.

4429. **MR WILLIAMSON:** That is in their evidence.

4430. **MR PLANT:** They are very large projects. If they are funded through non-recourse finance, where the banks effectively take the risk, banks will generally in my experience allow you to bring in about 20% of the total throughput of commercial and industrial waste through non-guaranteed contracts. That is obviously a significant issue if you are proposing to build a merchant facility.

4431. I will move on further, if I may. Covanta has claimed that its UK projects are not reliant on MSW, as you will see from Mr Chilton's note, but shortly after making that statement, they withdrew from the Brig Y Cwm project down in South Wales. They quoted there, as you will see on JP013, circumstances that related to the local authority procurement situation as being the reason for their withdrawal. That must be seen, surely, as having some reliance upon municipal solid waste as the fuel supply for that facility. Clearly, if the project were capable of being delivered on the basis of commercial and industrial alone, it would have proceeded.

4432. Similarly, it would appear that Covanta encountered difficulties in the funding of their other project at Poolbeg in Dublin, which has been in the throes of being closed for some five years now. When I joined WRG, as it was in those days, from Focsa Services, where I previously worked, WRG was actually a bidder for that project. Despite five years having passed, that deal has still not been closed. As you will see from the exhibit at JP013, which is an article taken from the *Irish Journal*, a new deadline has been set for the project to achieve financial close in 2013. This is a project that can have no reliance on MSW, because in the Republic of Ireland municipal solid waste is not collected as a municipal function; it is a private function, and the authorities cannot direct the collectors as to where they send it. There was a suggestion that there was going to be a change in the law in Ireland, such that

they would be able to do so, but that has not happened. Here you have a project that is a merchant facility that, despite being in the throes of being closed for five years, is not being delivered.

(2.45 PM)

4433. In contrast, sites that are associated with long-term anchor contracts based upon municipal solid waste, such as Calvert and Ardley, have a very significant possibility of moving forward. An anchor contract is one that provides some stability; it a banker's term—they love creating these descriptions of contracts and various matters. In fact, Ardley is already in construction and we are intending to move to financial close on Calvert very shortly.

4434. **MR WILLIAMSON:** This is an important point, because the IPC's findings related to terms of capacity and deliverability. In order to make a judgment about that point, you have to understand what the likely timing and delivery of this scheme is. As I understand Covanta's case, there is absolutely no legal commitment on them to build the scheme if the Order is confirmed. What is your own view, Mr Plant, about the likelihood and the timing of delivery of the various schemes that are before us?

4435. **MR PLANT:** In terms of Rookery, without knowledge of how Covanta might consider funding this, it is very difficult to see how it would go forward. The only way I could see it going forward is it being a pure merchant facility relying upon commercial and industrial waste and a very small proportion, potentially, of municipal solid waste. Would it be funded on balance sheet, which would mean that it would appear as a long-term liability on Covanta's books? There is no evidence of that happening on pure merchant facilities, and indeed one of the large power operators with which I have been working in the UK gave me a clear indication that they would not move forward until they had secured at least one-third of the total capacity for a facility that is now in development. In the current economic climate, there appears to be less of an appetite for on-balance-sheet funding, and certainly

we are getting evidence from our two competitors that regularly use that, two French companies, that they are no longer doing so, because of the nature of the finance market and the nature of the overall economic climate in which they work.

4436. **MR WILLIAMSON:** We will see if we get an opportunity, in due course, to ask questions of Covanta on that. JP013 is just some evidence about relying on anchor contracts. It is just a bit more information on the points you have just been making. Is there anything else we need to add?

4437. **MR PLANT:** It is probably just worth drawing out that this is not just my view. This is the view of the Associate Parliamentary Sustainable Resource Group in September of last year, where uncertainty over waste arisings was identified as being a problem when they stated quite clearly it was “a near impossible situation for fully merchant facilities to attract finance”. That obviously predates any announcements relating to the creation of Infrastructure UK and the Green Bank. I have been in discussion with Infrastructure UK, and they use a number of parameters to determine whether they are going to loan to a project. It has to be capable of starting construction within 12 months. In relation to their due diligence processes, they have told us quite clearly that they will operate in the same way a commercial bank would. When we specifically asked them questions in terms of taking risk on waste supply or power price, they said they would take exactly the same positions as commercial banks. They are very averse to taking any risk in relation to either electricity price or waste supply.

4438. **CHAIR:** Having been in this place for seven years, I have never heard of the Associate Parliamentary Sustainable Resource Group. Could you tell me who they are and what their connection is with this?

4439. **MR PLANT:** I understand it is a group, made up of a number of MPs and operators within the waste industry, that considers aspects of interest in relation to waste strategy. My former chief executive, I think, was once a member of that.

4440. **CHAIR:** We have corroboration. I am happy.

4441. **MR PLANT:** Thank you, Lord Faulkner. Having said that, I do not know who they are.

4442. **MR WILLIAMSON:** Obviously you have quoted a short statement from it, Mr Plant. It is quite important, given that it is a parliamentary group. Can we just record their findings? Let me read it: "Uncertainty over waste arisings has been exacerbated where there is a reliance on merchant and short-term contractual C&I waste in local authority waste infrastructure projects. Such risk undermines the deliverability of projects, leading to higher debt costs. In turn, this poses a near impossible situation for fully merchant facilities to attract finance without significant local authority contracts of reasonable duration." That essentially supports your premise that the Rookery is going to be in the same boat as everybody else in terms of its timing and delivery. It is going to have to win long-term contracts before it is likely to be delivered.

4443. **MR PLANT:** If it is going to rely upon non-recourse sources of finance, which is the norm within the industry, yes.

4444. **MR WILLIAMSON:** Then it is your final exhibit. I hope we have not been galloping through this too quickly, but it is JP014. There is quite a bit of detail in it. Hopefully you can have a look at it at your leisure. Can you look at JP014?

4445. **MR PLANT:** Yes, I am looking at that. I will take you through it. Clearly the use of the Infrastructure Planning process, which is intended to allow EfW schemes of over 50 megawatts access to Compulsory Purchase powers, discriminates against smaller county-scale energy-from-waste projects. At the time of the creation of the Infrastructure

Planning Commission, we actually lobbied to ask that smaller facilities of around 250,000 tonnes be included within the remit of the IPC. That unfortunately was rejected. We made the point that it was incredibly difficult, at that stage, to get planning consent for those smaller facilities and that they did have an infrastructure role that was important to the Government achieving targets, particularly in relation to diversion of active biological waste from municipal waste away from landfill, but that was rejected.

4446. We have a situation here where we have some long-binding promises between parties in relation to land that are now being expunged as a result of the IPC. That is clearly in contravention of the Government's stance in relation to the waste policy review of 2011, which confirms, "The Government will only intervene where necessary, where there are clear market failures and barriers." There appears to be no market failure at this stage. There are, as was identified by Lord Geddes earlier on when he counted the number of facilities, a number of waste incineration facilities that will generate electricity in the area. It also seems to contravene Article 7 of the Electricity Directive—because this is an electricity-generation plant; it was called a power station earlier—which says, "For the construction of new generating capacity, member states shall adopt an authorisation procedure, which shall be conducted in accordance with objective, transparent and"—I will emphasise here—"non-discriminatory criteria." This is clearly discriminatory.

4447. As I said, the covenants are recent. They are covenants that any diligent company would have identified when selecting potential sites. Matters such as these are not uncommon. I have personal experience of identifying a highly suitable site for EfW, only having to discount it because it had a covenant that prevented the burning of waste on that site. It would have been impossible to have brought it forward without reliance upon Compulsory Purchase powers. We were not minded to do so, through use of the IPC, because it would have been an inappropriate plant to deal with the waste within the area.

As a prudent and mature operator, we discounted that site and moved on to another one, one where I am pleased to say we actually eventually secured planning permission.

4448. I mentioned earlier that we lobbied the IPC to allow smaller EfW plants to be included within its remit. That was rejected. It does discriminate. There appears to be no compelling case that the IPC would have identified to allow them to use their Compulsory Purchase powers in this instance, and there is no real prospect, we believe, of this facility being developed in the timescales that will allow it to fulfil the need that the IPC considered. Indeed, if it is built in anything other than the scale and configuration that was intended, it will not achieve the parameter of generating 50 megawatts of electricity, and it would be farcical to allow it to come forward if it was not able to do so. It would be manifestly unfair.

4449. **MR WILLIAMSON:** Just one final point then: Mr Mould was putting it to Mr Leeson about the effect of the covenant and what is essentially a private interest, suggesting that Covanta would be kept out of the marketplace if this covenant were upheld. Is Covanta prevented from entering the marketplace at any other site it chooses to look at?

4450. **MR PLANT:** To my knowledge, no. They have already entered the marketplace through other activities. They have other sites that they are actively developing, one in Scotland and one in Cheshire.

4451. **MR WILLIAMSON:** I am grateful. Unless there is anything else, Mr Plant, I think we have galloped through that reasonably quickly, hopefully to your satisfaction.

4452. **CHAIR:** We are most grateful, sir, thank you—most grateful. Mr Mould, would you like to cross-examine?

4453. **MR MOULD QC:** Yes, thank you very much indeed. Mr Plant, good afternoon.

4454. **MR PLANT:** Good afternoon, Mr Mould.

4455. **MR MOULD QC:** What I would like to do, if I may, is to ask you and the Committee if they could have before them your petition and also a copy of the draft

Development Consent Order. They are a bit short of copies, so I am just seeing if we can lend any. I will carry on. If you turn, please, Mr Plant, to your petition, just turn to paragraph 4.2. You invoke a well known policy test, which, in the context of Development Consent Orders that are applied for under the Planning Act 2008, has been converted into a statutory requirement. It is set out in part in 4.2, by reference to Section 122(3) of the Planning Act. I say “in part”, because what that says is, “In order to justify the use of compulsory powers, the decision maker must be satisfied that there is ‘a compelling case in the public interest’.”

4456. What the statutory test actually is is this: “The condition,” for compulsory acquisition, “is that there is a compelling case in the public interest for the land to be acquired compulsorily.” In other words, the focus of inquiry is on the land that is proposed to be acquired, and it breaks down into two questions: is the acquisition of the land needed in order to enable the scheme to proceed? The second question is: if that is so, does the public interest compellingly justify the acquisition of the land for that purpose? Mr Plant, that is what the petition is driving at in 4.2, but it does not quite capture the focus of the inquiry, which is on the land that is proposed to be acquired. Do you see the point?

4457. **MR PLANT:** Yes.

4458. **MR MOULD QC:** In this case, we know that two items of land, in the legal sense, presently owned by WRG are in the firing line for compulsory acquisition under the Order in its current terms. They are, firstly, a small section of subsoil below Green Lane, and the second is the benefit of the restriction that you have identified in your JP002, which you read out to the Committee from the document prepared by your colleague—the restriction on the use of the Rookery site for waste-related activities. Yes? The first of those, that is to say the subsoil, is needed by Covanta because it needs to put electricity transmission cables through the subsoil beneath the highway in order to complete the physical transmission line

between the power station and the National Grid, just to the west of Green Lane. That is the point, is it not? You understand that.

4459. **MR PLANT:** I think I can see where you are coming from, yes.

4460. **MR MOULD QC:** I am not going to trouble the Committee with that, because it seems to me that the issue in this case does not stand or fall on that relatively minor point. The real issue that you focus on is the second item of land, which is essentially whether Covanta should be given powers to override the benefit of the restriction that you currently own and that enables you to prevent waste-related activities being carried out on the Rookery South site. That is the focus of your concern, is it not? You want to be able to maintain that restraint on waste-related activities on Rookery South.

4461. **MR PLANT:** We wish to see the owners of the land involved—

4462. **CHAIR:** Could you speak up?

4463. **MR PLANT:** Sorry. We wish to see the owners of the land involved honour the obligations that are set out within the covenants.

(3.00 PM)

4464. **MR MOULD QC:** Yes, but that is the point. You want to see them honour it. You want to be able to enforce the contract. The reason you want to enforce the contract is that the contract enables you to prohibit waste-related activities being carried out on the Rookery South site. That is the point, is it not?

4465. **MR PLANT:** That is correct, yes.

4466. **MR MOULD QC:** The benefit of the restriction is enjoyed principally by your own land at Elstow South, is it not?

4467. **MR PLANT:** That is correct, yes.

4468. **MR MOULD QC:** You want to be able to stop Rookery South being used for waste-related activities, and the land of yours that will benefit from that is your proposed development site at Elstow South.

4469. **MR PLANT:** The intent is as you say, but our contention is that the application of Compulsory Purchase powers is not justified.

4470. **MR MOULD QC:** That is why I ask you the questions I do, because the question for the Committee is this, is it not? It is not a general question as to whether compulsory acquisition is justified in the public interest. The question is whether the compulsory purchase of your restriction is justified in the public interest: whether, in simple terms, the public interest compellingly commands that you should be unable to enforce the restriction on the use of Rookery South for waste-related activities. That is the question, is it not?

4471. **MR PLANT:** It is a question. The question of whether or not it is in the public interest is obviously one that is complex, and needs to take into account the effect of giving Compulsory Purchase powers and the potential for Rookery to be given consent and to be built, and the implications it could have upon other projects. I am quite interested in your statement—the wording was perhaps not correct in our petition—that the CPO is there for the intention of acquisition of the land. There is nothing to prevent Covanta acquiring the land. They already have an agreement in place to acquire it. That is our understanding.

4472. **MR MOULD QC:** You are correct, nor is there anything to prevent Covanta building a power station on the land. That is right, is it not?

4473. **MR PLANT:** Yes, and we would have no objection to them building a power station, as Mr Leeson said earlier on.

4474. **MR MOULD QC:** Indeed, it is a sharper point than that. The draft Development Consent Order, Article 3, authorises us to build a power station on the land, does it not? Do you remember?

4475. **MR PLANT:** If you say so. I am not aware of that.

4476. **MR MOULD QC:** Do you want to look at it?

4477. **MR PLANT:** I will take your word for it, Mr Mould.

4478. **MR MOULD QC:** You do not seek an amendment to Article 3. You do not ask the Committee to interfere with the current power of the Development Consent Order to enable us to build a power station, do you?

4479. **MR PLANT:** No.

4480. **MR MOULD QC:** You come in at the point where we have built the power station; you say we should be prevented from operating the power station, do you not?

4481. **MR PLANT:** I do not say that, no.

4482. **MR MOULD QC:** That is the purpose of your proposed amendment. It is to prevent us from actually fuelling the power station by that which it is permitted to be fuelled, namely by waste. That is the purpose of your amendment, is it not?

4483. **MR PLANT:** The purpose of our amendment is to seek the removal of the Compulsory Purchase powers. What happens thereafter is a matter for conjecture. It would depend upon how we approached it. It would depend upon commercial arrangements, which may or may not be reached, between us and Covanta in relation to the release of the covenants. It would depend upon our appetite as to whether or not we wished to injunct to prevent it either being built or operated.

4484. **MR MOULD QC:** Just look at your JP002, please. I think we are actually at one on this. The third bullet point precisely indicates your practical objective based on the existence of the covenant. You say, "Our concerns are not with the concept of Rookery being used as an energy generation site," so you do not mind Rookery being used for a power station, "but its proposed development as a waste treatment facility, an action that would be counter to recent covenants." I am absolutely right: you are happy for a power

station to be built. What you want to do is to invoke the Committee's assistance in preventing the power station being fuelled by waste. That is the position, is it not, Mr Plant?

4485. **MR PLANT:** The nature of the fuel that went into that facility would be a matter for Covanta.

4486. **MR MOULD QC:** No, no.

4487. **MR PLANT:** Yes, it could.

4488. **MR MOULD QC:** Not under this Order, it could not. What we are authorised to do under this Order is to build a power station and to fuel it with waste. We are not allowed to fuel it with gas or coal or whatever. We are only authorised to fuel it with waste. Mr Plant, my proposition is, I think you will agree, correct. You do not oppose us being permitted under the Order to build a power station. We are only able to build a power station that is available to be fuelled by waste, but you say that the Committee should assist you in enforcing your restrictive covenant that prevents it being operated by that sole fuel by which it is authorised to be operated under the Order. That is the position, is it not?

4489. **MR PLANT:** That would appear to be the case but, in essence, our objection is to the effect that the CPO, as it has been given—

4490. **LORD DEAR:** Sorry, I am slightly behind you. Can you speak up?

4491. **MR PLANT:** Sorry. Our concern is that the granting of the CPO rights to Covanta is not warranted because there is no realistic proposition of this plant being built, on the basis of the evidence that has been provided, and it is not in the public interest for it to be built. On that basis, the CPO should not have been granted, and we are asking to be given the protections that we would have, assuming that the Committee accepts that there is no realistic prospect and that there is no justification for this plant to go forward.

4492. **CHAIR:** Forgive me. Does that not mean that, if the power station is not built, you do not have an objection?

4493. **MR PLANT:** We do not have an objection if the power station is not built, no.

4494. **MR MOULD QC:** I will just read it out, just because you are slightly doubtful. I do not want to cause you any difficulty.

4495. **MR PLANT:** If it is not built, we have no reason—

4496. **CHAIR:** Sorry about this, but we must be very careful. You said it has no prospect of being built.

4497. **MR PLANT:** Our assessment is it has no realistic prospect of being built.

4498. **MR MOULD QC:** That is not a matter of concern to you. You are indifferent to whether it is built or not. What you are not indifferent to is it being fuelled by waste. You do not oppose the grant of planning permission for a power station. What you oppose is the operation of that power station by being fuelled by waste. That is the point, is it not?

4499. **MR PLANT:** Which is counter to the covenants that we have the benefit of.

4500. **MR MOULD QC:** Exactly. You can restrain that particular trade, and you want the Committee to assist you in continuing to restrain that particular trade, do you not?

4501. **MR PLANT:** The Committee would not be assisting us; the Committee would be recognising that policies would not allow the CPO powers to have been granted.

4502. **MR MOULD QC:** That is a distinction without a difference, with respect, Mr Plant. Let me just assist you in this, because you seemed a little uncertain as to precisely what it was that the Order authorises. I read from Schedule I, Part I, under the heading “authorised development”, the first item, “Work No. 1: An electricity generating station with a nominal gross electrical output capacity of 65 megawatts of electricity fuelled by waste”. That is what it authorised. We cannot burn coal. We cannot put gas in here or animal feed or whatever it is. It has to be waste. Let us just take that forward. The first point is you clearly do not agree to that covenant being lifted, do you? You are not going to volunteer the release of that covenant, are you?

4503. **MR PLANT:** That is not a matter that is within my gift, I am afraid. I assume that we would not release it voluntarily.

4504. **MR MOULD QC:** I think we can assume that you are not going to do that, otherwise you would not be here.

4505. **MR PLANT:** Absolutely.

4506. **MR MOULD QC:** We need the release of that covenant in order lawfully to operate the plant, do we not, because otherwise you will go along and get the court to injunct us?

4507. **MR PLANT:** Potentially, yes, as I said earlier on.

4508. **MR MOULD QC:** Going back to my first question, raised based on Section 122(3), whether or not we need your land or, in this case, whether we need powers to override your restrictive covenant, the answer is inescapably yes we do, do we not?

4509. **MR PLANT:** As I said earlier, Mr Mould, there is no reason to suggest that we might not reach a commercial agreement between us.

4510. **MR MOULD QC:** If you are willing to release the covenant, why on earth is this Committee being troubled with this petition?

4511. **MR PLANT:** We have been made a derisory offer—let us put that aside—but we are more concerned that, in essence, the removal of the covenants damages our business and potentially other business in the area, and has an effect that is not in the public interest, because it would allow the facility to be built.

4512. **LORD FAULKNER:** Can I be clear about this? This is a rather crucial point, I think. Are you saying, Mr Plant, that you are not opposed to having the covenants lifted, so long as you are compensated properly for lifting them?

4513. **MR PLANT:** We would wish the covenants to remain in place and for those matters to be then dealt with appropriately by our two parties working together, if possible, and if not, the facility would not proceed. It is quite clear.

4514. **MR MOULD QC:** Are you finished, my lord? I am so sorry. I can follow that point up?

4515. **LORD FAULKNER:** Yes, you can follow that point up.

4516. **MR MOULD QC:** Would you turn please to Article 18 of the draft DCO?

4517. **MR PLANT:** Which is page?

4518. **MR MOULD QC:** Page 11 of my copy. It is the draft Development Consent Order, my lord. In its current form, this Article, if enacted, would enable Covanta to fuel and to burn waste at the power station, so as to generate electricity. It would enable it to do so, notwithstanding that that would involve a breach of your restrictive covenant. Do you see that?

4519. **MR PLANT:** Yes, I see that.

4520. **MR MOULD QC:** It is item b, it is not?

4521. **MR PLANT:** Yes.

4522. **LORD DEAR:** Could you just give us our reference, please?

4523. **MR MOULD QC:** Paragraph 18(1)(b). “Any authorised activity which takes place on land within the Order Limits”—my lord, that would obviously include the burning of waste in the power station—“is authorised by this Order,” for the purposes of this Article. If it is authorised by the Order apart from this Article, which it is, Article 3, “notwithstanding that it involves ... b) a breach of a restriction as to the user of the land arising by virtue of a contract.” That is the relevant species of land with which we are concerned in your petition, is it not? It is a restrictive covenant, in other words.

4524. **MR PLANT:** There is a restrictive covenant, yes.

4525. **MR MOULD QC:** The Order, in its current form, authorises us to fuel the power station with waste, notwithstanding that that would be in breach of your restriction. What you asked the Committee to do is to relieve WRG of the force of that provision. You say that that provision should not apply to WRG, do you not—that you should be able to enforce your restriction?

4526. **MR PLANT:** As a matter of common law, because the reasons for the removal of that are inappropriate.

4527. **MR MOULD QC:** If you turn over the page, please, to sub-paragraph 5, let us just see what—and this is to pick up on my Lord Faulkner’s point—is available to you in the event that the Committee decides not to accede to your petition. “In respect of any interference, breach extinguishment, abrogation or discharge in pursuance of this Article, compensation ... [is] payable under ... section 7 or 10 of the Compulsory Purchase Act 1965.” If the Order were made and we were able to override your covenant, you would not be left with nothing. You would be left with a claim for compensation, and that claim would be valued on the basis of the degree to which, in money terms, the value of your land at Elstow South was diminished by virtue of being unable to enforce the restriction by injunction. Do you see?

4528. **MR PLANT:** I will have to take your word for that, Mr Mould.

4529. **MR MOULD QC:** In effect, what you are saying to the Committee is, “We are not satisfied with the amount of money, whatever it may be, that we would be able to recover from Covanta by virtue of effectively having the benefit of our restriction converted into money. We want to be able to force Covanta to pay us more money in order to be able to fuel this power station with waste.” That is what you are effectively saying, is it not? That is the bite of your petition in commercial terms. That is right, is it not?

(3.15 PM)

4530. **MR PLANT:** Our petition seeks to have the CPO withdrawn because it was applied wrongly and it is disadvantageous to us as a company.

4531. **MR MOULD QC:** You mentioned negotiations, and you said that, effectively, we had not been willing to pay you enough money. You want the Committee to preserve your right to rely on the covenant to get us to pay you more than you would otherwise be able to recover under the compensation code. That is the position, is it not?

4532. **MR PLANT:** I think I said, initially hypothetically, it could be dealt with through either injunction or through negotiation—hypothetically.

4533. **MR MOULD QC:** It is the right to enforce the injunction that gives you the negotiating position in terms of getting us to pay you a sum of money that is over the compensation on this.

4534. **MR PLANT:** If the CPO powers had been considered appropriately, it would not be an issue, because the CPO would not have been entered into, because alternatives appear not to have been appropriately considered and there is no compelling case.

4535. **MR MOULD QC:** What you want to be able to do is this, is it not? Let us be blunt about it. You want to be able to hold us to ransom.

4536. **MR PLANT:** We wish to be able to continue our business, reliant upon the benefit of covenants that were known and that were valued when we purchased Elstow and intended to bring that forward as a development, which is a long-term proposition.

4537. **MR MOULD QC:** Let us just then consider where the public interest lies, if we may, Mr Plant. We need to be able to override your covenant and to pay you land compensation, insofar as that arises under this provision. You have your rights there. We need to be able to override this covenant, so that we can build a power station, which you do not object to, and operate the power station so as to deliver 65 megawatts of electricity into the National Grid from renewable and low-carbon sources, thus contributing to the

urgent and pressing need that the nation has for a secure supply of electricity. That is one side of the public interest balance, is it not?

4538. **MR PLANT:** Mr Leeson said quite clearly we would have no objection to this being built as a power station reliant upon gas. We have no objection to a power station, per se.

4539. **MR MOULD QC:** Thank you very much. That is very helpful.

4540. **MR PLANT:** A waste treatment facility, which through the use of powers that are granted by the IPC in relation to a large waste facility—one that generates more than 50 megawatts of electricity—obviously gives additional powers, including potentially the use of CPO, if applied appropriately. This facility, if it were built at 50 megawatts, would still classify. If it was built at anything less than that, it would not be classified as a nationally significant infrastructure project, and it would be farcical to allow it to proceed without any restriction upon its capacity.

4541. **MR MOULD QC:** If it were something else, it would be something else. I am happy to accept that.

4542. **MR PLANT:** In terms of the public need, we have had some discussions. You have to accept that there is a finite amount of fuel out there, that there are already facilities that are being built that are reliant upon that fuel, and that there are facilities coming forward that are actually driving up the waste hierarchy the waste that would otherwise simply be put through a recovery facility—waste that can be recycled. If this facility were built, it would have an effect upon the market of dampening interest in creating those, which would not be in the public interest and would not be in the interests of the environment, because ultimately waste will be burned that otherwise could have been recycled.

4543. **MR MOULD QC:** On the other side of the balance test, from the public interest that I have identified and you have agreed, is WRG's desire to preserve its trading position at Elstow South, Calvert and elsewhere by preventing Covanta from delivering 65 megawatts

of electricity into the National Grid and thus fulfilling the strong policy objective of the Houses of Parliament, the Secretary of State and the Government, as set out in the document that I referred to the Committee this morning. That is on the other side of the balance, is it not?

4544. **MR PLANT:** Yes. It is interesting that you refer to that document, because it is relating to renewable energy. That renewable energy does not have to derive from waste alone. There are other sources that can provide renewable energy that would be more sustainable because there is no finite supply of fuel to support them—wind, wave, etc.

4545. **MR MOULD QC:** You come to the Committee not saying, “Unless this restriction is maintained, we will not be able to develop Elstow South.” Far from it; you come to this Committee positively asserting that you have a settled intention of developing Elstow South, whether or not the Covanta scheme goes ahead. That is right, is it not?

4546. **MR PLANT:** Has anyone said that?

4547. **MR MOULD QC:** That is your position, is it not?

4548. **MR PLANT:** Elstow South clearly has a business case at the moment, which is based upon waste availability in the area, which we have assessed. In considering Elstow South, we have assumed, because of the existence of the covenant, that there would be no competing facility built at Rookery. If that covenant is removed, we would have to review our position in respect of that.

4549. **MR MOULD QC:** You mean you have taken the view that you should go so far to develop a planning application and you tell the Committee about the qualitative advantages that Elstow South enjoys over Rookery, which you explain to the Committee by reference to your JP003, during the course of your evidence in chief. The Committee is entitled to assume, is it not, that whether you can hold this covenant is not a principal consideration in

whether you proceed with your development of Elstow South. It is entitled to make that assumption, is it not?

4550. **MR PLANT:** Surely we could, as the owner of Elstow, assume that, in the absence of there being any compelling case, the covenants would remain in place and our business would be protected. Therefore, that development would come forward.

4551. **MR MOULD QC:** Mr Plant, for the reasons I have put to you, this purported petition of amendment is a wrecking petition, is it not?

4552. **MR PLANT:** It is a petition that is designed to protect a business that has relied upon covenants and covenants that exist in relation to other waste land that may actually have the ability to bring forward other facilities, which may create a precedent. I am not saying this does, but it would be very disadvantageous to the waste management infrastructure in the area for this to be allowed to proceed.

4553. **MR MOULD QC:** Let us surely take this, your helpful, constructive, public-spirited course, and let us join together and invite the Committee to allow a proposal to go ahead that will deliver a substantial supply of low-carbon renewable electricity on to the National Grid. Let you and I, both—if I can put it this way—big people in the global waste management and recovery sector and in the global energy-from-waste delivery sector, get together outside of these rooms and have a sensible discussion about how much you should receive for the release of the covenant, having regard to the compensation provisions that are guaranteed to you under Article 18(5) of this draft Order. Is that not the right way for us to present our joint position to this Committee?

4554. **MR PLANT:** I would disagree with that, on the basis that there is uncertainty around what is going to happen with the environment. Our ability to bring forward Elstow, we believe, is an appropriate approach, which will ensure that waste is managed in a more efficient and effective way than simply taking it into an energy recovery facility, where it

would be burnt. It would be disadvantageous environmentally; it would be disadvantageous to us as a company; it would be disadvantageous to the existing infrastructure and other waste operators, and not in the public interest, because of the involvement of the public sector in many of those schemes, for Rookery to proceed.

4555. **MR MOULD QC:** I am grateful, sir. Thank you very much, Mr Plant.

4556. **CHAIR:** Would you like to re-examine, Mr Williamson?

4557. **MR WILLIAMSON:** Just bear with me a second, sir. May I just check my notes? No, sir; he has re-examined himself on one point; I am just making a note of the re-examination question. No, I have got no re-examination. Thank you very much, sir. I have no re-examination, thank you. I have checked my notes and the witness covered the question.

4558. **CHAIR:** I am most grateful to you. That brings us to the point where you might like to sum up your case, Mr Williamson.

4559. **MR WILLIAMSON:** Thank you very much. Sir, I am not going to go back through the opening statement this morning. Hopefully, you will be able to remember it, but there are just a few points I need to pick up. Firstly, just as an observation on the way in which Mr Mould has put his questions to the two witnesses, but particularly Mr Plant, in his questions he said we want the Committee to “intervene”, “interfere”, “evoke the Committee’s assistance”, “relieve WRG of the force of that provision” and he described it as a “wrecking provision”. Just keep your eye on the ball. He speaks as if the Order has already been confirmed, and that is what you are here to decide—whether it should be. In order to compulsorily purchase land from anybody, you have to have a compelling case in the public interest, and it is Mr Mould’s case that has to be the compelling case in the public interest, nothing else. The guidance from ENI says there is a specific duty to consider alternatives; you have to consider those alternatives to see if they are realistic prospects. There was not

a single question about any of the actual tests. In particular, I liked the trick at the end: trying to negotiate during the course of this actual Committee. It is smoke and mirrors.

4560. It is his case that has to meet the compelling case in the public interest. 4.4.3 sits alongside those overarching provisions about electricity generation, and that is the test that you will need to apply, which means you will have to examine whether or not there are realistic alternatives. You have to consider Mr Leeson's evidence. Was that really undermined during the course of cross-examination? Was it really attempted? Were the words "realistic prospect" put to him? What about "inchoate" or "vague"? That is what we had at the IPC; Richard Phillips was cross-examining on those points. We have not tried even to do that. Central to that balancing judgment, absolutely essential, is the likelihood of this scheme being delivered more timeously than the alternatives. That is the absolute key.

4561. So far, I have not been able to ask anybody from Covanta about their business case and the likelihood of their delivering it. I asked the IPC and what we got was a letter. It was not available for cross-examination. You have to ask yourselves, when you go to retire and think about this issue, if you do not really need to ask Covanta whether or not they are really likely to deliver this any more quickly than Calvert or the others. If this permission is going to hang around for 12 months or 18 months, and it is going to take 39 months to build according to their own programme—three and a quarter years—is this permission really going to deliver within five years? If it is not going to deliver, their USP is they are going to build this as a merchant facility. They are going to de-risk it. The whole Government policy is about encouraging new entrants and this will happen. You cannot be sure about the others. We have not really had any attempt at that in the cross-examination of Mr Leeson or, indeed, Mr Plant. I would, in your shoes, think that you would want to ask Covanta at least about that part of their case, in terms of likely delivery. How are you going to make the judgment as to whether or not there are realistic alternatives? How are you going to

investigate the legal obligation on you to decide whether or not the need can be met by less interfering methods? Let us have that opportunity and let us see what that looks like, when we have got to that stage. Just give us that chance.

4562. I do not really need to repeat what I have said in my opening statement. I would briefly mention the points that, again, have not really been picked up, apart from slightly with Mr Plant, about the fact that Covanta has been consistently dismissive about the proposed interference with private rights. Well, I made the three points this morning, but there is a general public good in upholding legally binding contracts. It is not just a personal thing. You have to ask yourselves, when somebody is spending more time questioning your motives, whether it is an argument of ad hominem. If you are attacking the man and not the argument, it is generally a sign, in my submission, that they have not actually got a good argument. I would ask you to just think about that when you are considering whether or not we should go on to hear a response from Covanta. I do not propose to read out my opening statement. Hopefully, you will have made a note of it and can remember the main points I was making.

(3.30 PM)

4563. **CHAIR:** Thank you very much. Can I now ask if any member of the Committee has any final questions to ask of Mr Williamson with regard to the position? Okay, can I thank you, Mr Williamson, for your presentation of the case on behalf of FCC Waste Recycling Group? Can I announce that the Committee will now go into private meeting to consider petition 35? It might be helpful to you if you could not rush off for your evening meal straight away, because we might be able to come to you with some information with regard to the continuation of this case or otherwise, as the case may be.

4564. **MR MOULD QC:** Can I just raise one point with you in relation to that? We have gone a great deal shorter today than we expected. We thought we would be a day and a

half. As a result of that, if, as a result of your deliberations, you do need to hear from us in a case to answer, I am in some difficulty—I will be frank about it—with regard to witnesses, because of course I have come here expecting only to have to answer—

4565. **CHAIR:** Mr Mould, we will not be asking you to make presentation today, if that is the outcome.

4566. **MR MOULD QC:** I am very grateful for that. Thank you.

4567. **CHAIR:** You will know that we have two potential outcomes that we can arrive at. Sorry, three—my legal advisers quickly jump in.

4568. **MR MOULD QC:** I am grateful. I just wanted to check that point.

4569. **CHAIR:** As long as you are aware of that, whichever the outcome is, the information we hope to have for you at the end of our deliberations will be relevant to how the matter proceeds or otherwise.

4570. **MR MOULD QC:** We should presumably clear the room.

4571. **CHAIR:** Consequently, I would be very grateful if we could clear the room. Thank you very much indeed.

Public session adjourned at 3.32 pm

Ordered at 4.29 pm: That the Parties be called in.

4572. **CHAIR:** Can I bring the Committee to order and tell those present that the Committee has deliberated? With respect to petitions 35, 36 and 38, we find that there is no case to answer in respect of those three petitions. The Committee does find, however, that there is a case to answer in respect of petitions 37 and 39, but only in respect of the amendments relating to the waterway.

4573. Our clerks will be discussing this matter, particularly with Covanta, in the hope that we can get some agreement in that respect, and other counsels of course. We will be in touch with you with regard to the sitting, depending upon those discussions.

4574. That means that we have nothing more to say, but simply to end this particular session, and I do so with the words, "Order, order". Sorry; I am remiss. It is not unusual. Can I remind representatives that we will be meeting at 10 am next week to finalise this matter, hopefully?

Public session adjourned at 4.31 pm

Note: The letter referred to in paragraphs 3556 and 3610 was received on 20.2.2013. It has been archived with the petitioners' evidence and is posted on the Committee's website in the "publications" section.