

SECOND STATEMENT OF OBJECTION TO ENVIRONMENTAL PERMIT APPLICATION S13/006

Email to: community-safety@calderdale.gov.uk

From: [REDACTED]

Address: [REDACTED]

The Permit: Environmental Permitting (England and Wales) Regulations 2016 (“the Regulations”)

Application for environmental permit for Schedule 13 small waste incineration plant ref

S13/006 at Calder Valley Skip Hire, Belmont Industrial Estate, Rochdale Road, Sowerby Bridge HX6 3LL

This objection is supplemental to my objection sent on 1 April 2024. (attached) Since that date the Application documents have been updated by 4 documents. These are as follows

Supporting documents

1. [Notice to Request Further Information](#)
2. [Air Quality Assessment - Peer Review.](#)
3. [Response to Request for Further Information](#)
4. [BV Final Response.](#)

Quoted documents

Decision Calderdale EPR603

[REDACTED] _ **Objection to Environmental Permit 2024-Editfortypospdf.pdf**

1. As of todays date 5th June 2024, The Environmental Appeal decision document is not on the Councils web site (**Decision Calderdale EPR603**). This is material to the application and should be the starting point for the application. Instead, it appears to be largely avoided, misquoted and in preference the Planning Inquiry documents are quoted by both the applicant and the CMBC Technical expert.
2. Following the publishing of the application documents (21 Feb or thereabouts), I had been expecting CMBC to request from the applicant information which addressed the Inspector’s conclusion in the Environmental Permit appeal.
3. **Namely** “42. Taking all the above into account, I consider that the appeal should be dismissed because I am not satisfied on the evidence adduced that the proposal complies with IED Article 46 1., which requires that waste gases from waste incineration plants and waste co-incineration plants shall be discharged in a controlled way by means of a stack the height of which is calculated in such a way as to safeguard human health and the environment. Furthermore, I am unable to find that the necessary measures have been taken to ensure that waste management would be carried out without endangering human health,

without harming the environment and, in particular without risk to air, in compliance with Article 13 of the Waste Framework Directive 2008/98/EC.” **Decision Calderdale EPR603.pdf Page 9 ,**

4. The request for further information document from CMBC to the applicant (Notice to Request Further Information) does not ask the applicant to address the Stack height calculation other than to confirm the dimensions are as modelled and it certainly does not ask the applicant how the latest application resolves the Inspector’s concerns.
5. The document Air Quality Assessment - Peer Review. Is muddled and confused stating in the section headed “Development History Summary with regards to Air Quality” - “Permit Judicial Review – the Inspector cited the treatment of trees within the air quality modelling insufficient to give confidence that there would be no significant effects from the development and the appeal was dismissed.” (page 2).
6. In fact, the Judicial review resulted in a Judge, not an Inspector quashing the permit on all four grounds (no matter that the Applicant agreed only one). After resubmission this permit application was then appealed for non-determination and this was refused by an Inspector - decision dated 05 July 2023.
7. The conclusion from the original Environmental permit application appeal (Decision Calderdale EPR603) is not even quoted by the CMBC technical experts other than a misquoted reference in the section “Summary of the document in context of the Wider Application “ (page 8)
 - “ CVSH applied for an Environmental Permit to operate the Schedule 13 SWIP. An appeal was made by CVSH against the deemed refusal of the Environmental Permit application. The appeal was dismissed by an Appeal Decision dated 5th July 2023. The main reason for refusal was the potential effect of nearby trees on dispersion of emissions from the SWIP relative to the discharge height of the stack. The Inspector’s decision related to the refusal is primarily based on uncertainty of the effects of trees on dispersion around the stack.”
 - Where is the reference to this underlined statement by Bureau Veritas summarising the Inspector’s decision?
8. As a summary this is misleading, the Inspector’s dismissal of the appeal is not “primarily based on uncertainty of the effects of trees on dispersion around the stack” but on much broader grounds.
9. The Inspector’s decision stated (page 5 onwards) :
 - a. “23. The main issues in this appeal are the effects of granting an environmental permit for a SWIP on human health and the environment”
And
 - b. “35..Furthermore, there is no evidence to quantify how much the trees would reduce the velocity of the air flow, or how this would compare with the wind speed data used in the model.”

- c. “37. ...The trees/woodland are so close and so much higher than the 12 m high stack that I consider a more detailed site-specific assessment would be required to properly assess the effects of the trees on the dispersion of emissions.”

And

- d. “38....The results from this modelling do not provide any reassurance about the robustness of the stack height calculation now relied upon by the appellant because that run of the model also dealt with the trees solely by means of surface roughness length”
- e. 44...Similarly, as the deemed refusal will stand it is not necessary for me to rule on the technical objections raised by third parties.”

- 10. Therefore the documents provided showing the requests for information and the application itself redefines and limits the Environmental Appeal Inspector’s decision. This importantly says “The results from this modelling do not provide any reassurance about the robustness of the stack height calculation now relied upon by the appellant because that run of the model also dealt with the trees solely by means of surface roughness length”.
- 11. As stated in my previous objections , throughout the multiple permit applications there remains a question over the stack height, it did not satisfy Inspector Woolcock (“IED Article 46 2. provides that emissions into air from the SWIP shall not exceed the emission limit values set out in Annex VI of the IED, but air quality in the vicinity of the SWIP would also depend upon stack height.”), it was queried by AQC and Teta Tech for the Council and by multiple objectors.
- 12. The application has apparently ignored this concern and fails to directly address any of the Inspector’s concerns raised in the dismissal of the appeal. (5th July 2023) by not even referencing the document.
- 13. CMBC ‘s requests for information have not sought to answer the Inspector’s concerns or to answer them and represent a startling omission similarly not referencing or posting the Appeal decision.
- 14. The final statement from the CMBC technical documents (BV Final Response) is very troubling where it is stated that “It should be highlighted that there are potentially significant emissions of Arsenic as a result of the development, but it is accepted that this comes from a conservative assumption used in the assessment and it is considered that this can be controlled through appropriate permit emissions limit values (ELVs)”. When combined with the sentence in the conclusion of the document (APRIL_2024_CVSH-air-quality-assessment-peer-review.pdf) it is hard to reconcile with the Inspector’s conclusions. The CMBC document states “the best way to understand the effect of the trees would be to complete monitoring with the SWIP in operation.”
- 15. Both the above statements from the CMBC technical advisers are contrary to the Inspector’s documented statement , “45. Many of the requirements of the IED could be the subject of EP conditions, as was discussed at the Hearing. 44 However, the imposition of conditions would not overcome the conflict I have identified with IED Article 46 1.”

16. The public has not had sight of the proposed conditions, and so are unable to be sure if this concern from the Appeal is resolved. However unless there are now new significantly changed Conditions from those at the appeal then the Inspector's concerns remain unchanged and the statements in 14 and 15 are not likely possible. Nor is it possible to understand how such an exercise as suggested would be compatible with human health and the environment, let alone controlled or managed! It appears to be a very laissez faire version of regulation for Human health and the environment and would appear to be a case of predetermination, in that it assumes the operation of the incinerator as a method of risk assessment. It is hard to imagine quite how CMBC could manage such a scenario particularly in light of the Inspector's concerns over conditions as presented.
17. The appeal decision is unequivocal in its conclusions, yet the application we are asked to consult on has ignored the conclusions of the appeal and blithely states that the Appeal decision is perverse yet did not challenge it. Rather the applicant has chosen to ignore the dismissal of the appeal and failed to document solutions or answer any of the concerns raised. Merely resubmitted the same application with the majority of documents being previously submitted and dismissed for the Appeal.
18. The Council (CMBC) also appears to have ignored the documented dismissal of the appeal and failed to request any information from the applicant that could address the concerns of the Inspector in the Environmental permit appeal (Decision Calderdale EPR603.pdf) and CMBC failed to include this document as part of the application documents. This is indeed perverse.
19. The decision and views of the Inspector on the environmental permit appeal are more directly relevant to the Application than the Planning Appeal, which strangely **is** part of the documents. The dismissal of the Environmental permit appeal should carry more weight than that of the February 2020 appeal decisions which are under the different regulatory regime that looked at planning issues. No matter how often the Applicant argues to the contrary.
20. The approach and conclusions taken by the Inspector are a significant material consideration in the consideration of this new Application by the regulator (CMBC) on nearly identical terms and the Council must have due regard to this. It remains to be seen how the Council (CMBC) will explain the applicant has resolved the Inspector's concerns in the appeal document quoted in part above and how the Council will rule on the technical objections raised by third parties and of course will follow the Gunning principles and after so much work from the public in the consultation will ensure the results of the consultation are conscientiously taken into account.
21. For these reasons and those set out in my previous objection which I have not repeated here but assume will be taken into consideration (Attached 1. [REDACTED] _ Objection to Environmental Permit 2024-Editfortypospdf.pdf) - the Council must refuse this application for the same reasons as the refusal of the Environmental permit Appeal was dismissed by the Inspector 5 July 2023.



STATEMENT OF OBJECTION TO ENVIRONMENTAL PERMIT APPLICATION S13/006

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Environmental Permitting (England and Wales) Regulations 2016 (“the Regulations”)

Application for environmental permit for Schedule 13 small waste incineration plant ref S13/006

Calder Valley Skip Hire, Belmont Industrial Estate, Rochdale Road, Sowerby Bridge HX6 3LL

DOCUMENTS included with this Objection:

1. [REDACTED]_Objection to Environmental Permit 2024
2. Decision Calderdale EPR603.pdf
3. [REDACTED]_Final
4. Met_Office_email_[REDACTED]
5. Arboriculturists Report 1-4-24.pdf
6. 1. [REDACTED]_Objection to Environmental Permit Appeal Ref APP_EPP_603_FINAL +Documents (Original Objection) **Includes these documents:**
 1. Air Quality and Permit Review: Calderdale Valley Skip Hire Small Waste Incineration Plant – November 2021 - Air Quality Consultants Limited. Note this is the same as the Appellant has submitted except for the correction of the reference to “unpredicting sites” to “underpredicting sites” in Issue 5. (“AQC Report”)
 2. Advice - October 2022 - by [REDACTED] (“Counsel’s Opinion”)
 3. Technical Note – Calder Valley Skip Hire Small Waste Permit Incineration Plant – October 2022 – Air Quality Consultants Limited (“AQC Technical Note”)
 4. High Court Order granting permission for Judicial Review – 23 July 2021. (“High Court Order”)High Court Order granting permission for Judicial Review – 23 July 2021. (“High Court Order”)
7. Objection submitted by [REDACTED] in October 2022 in relation to Calder Valley Skip Hire Limited – Environmental Permit Appeal – Reference APP/EPR/603 (“Original Objection”)
8. CVSH-HD36-closing
9. Appeal Decisions 3205776 3205783 - Copy.pdf

GROUNDS OF OBJECTION

1. I object to the grant of an Environmental Permit for the reasons set out in this document and attachments.

Background of the Application - ref S13/006

2. In May 2022, Calder Valley Skip Hire ("the **Applicant**") appealed on the ground of a "deemed refusal" due to the failure by regulator to give notice of determination of its previous application for an environmental Permit within the statutory time-period. That Appeal was dismissed on 5 July 2023 by an Inspector appointed by the Secretary of State following a full public inquiry.
3. The Inspector dismissed the Appeal because he was **not satisfied on the evidence adduced that the proposal complies with IED Article 46 1.**, which requires that waste gases from waste incineration plants and waste co-incineration plants shall be discharged in a controlled way by means of a stack the height of which is calculated in such a way as to safeguard human health and the environment.

Furthermore, the Inspector was **unable** to find that the necessary measures have been taken to ensure that waste management would be carried out without endangering **human health, without harming the environment and, in particular without risk to air, in compliance with Article 13 of the Waste Framework Directive 2008/98/EC.**

To quote from the Inspectors decision :

"42. Taking all the above into account, I consider that the appeal should be dismissed because I am not satisfied on the evidence adduced that the proposal complies with IED Article 46 1., which requires that waste gases from waste incineration plants and waste co-incineration plants shall be discharged in a controlled way by means of a stack the height of which is calculated in such a way as to safeguard human health and the environment. Furthermore, I am unable to find that the necessary measures have been taken to ensure that waste management would be carried out without endangering human health, without harming the environment and, in particular without risk to air, in compliance with Article 13 of the Waste Framework Directive 2008/98/EC." Decision Calderdale EPR603.pdf Page 9.

4. In reaching his decision the Inspector John Woolcock made it clear that because he was dismissing the Appeal and the deemed refusal would stand he had **not**:
 - a. considered the application of Paragraph 13 of Schedule 5 EPR 2016 which provides that the regulator must refuse an application for the grant of an environmental permit if it considers that, if the permit is granted, the following will not be satisfied; (a) the applicant must be the operator of the regulated facility, and (b) would operate the regulated facility in accordance with the environmental permit.
 - b. ruled on the technical objections of third parties.

There is a great deal of important detail explaining the reasons for the Inspectors Appeal decision, not least the statement :

*" 38. Given the height and proximity of the trees/woodland in the vicinity of the proposed stack, I am not convinced that it would be **reasonable to rely solely on surface roughness length to properly take into account the likely effect of the trees on the dispersion of emissions from the SWIP.** In the circumstances, I am unable to find that waste gases from the SWIP would be discharged in a controlled way by means of a stack the height of which is calculated in such a way as to safeguard human health and the environment.*

39. Because of an error at the planning application stage in the AOD of the proposed stack, a previous run of the model inadvertently assessed a stack height 9 m higher than the correct discharge height.

The results from this modelling do not provide any reassurance about the robustness of the stack height calculation now relied upon by the appellant because that run of the model also dealt with the trees solely by means of surface roughness length.” My emphasis from the appeal document .”
Decision Calderdale EPR603.pdf Page 9.

Environmental Permit Application - ref S13/006

5. CVSH provide an outline of their reasons for this new application in document CVSH-R-JER1902LD-SWIP-application-26-jan-2024.pdf (“the Application”).
6. The Applicant (CVSH) states that this application is being submitted on the same basis as the original application (06/08/2020) . However, it has added further information to that provided to inform the redetermination in 2022 and certain documents from the hearing sessions in two appeal hearings in November 2022 and May 2023 have been incorporated.
7. To address the Inspector’s reason for dismissing the Appeal, the Applicant as they put it have sought *“an independent review of the treatment of trees within the air quality assessment and to provide an expert explanation of how variable surface roughness lengths work within the ADMS model.”* (CVSHR-JER1902-LD-SWIP-application-26-jan-2024.pdf point 1.5.4)

Considerations in Determining the New Application

8. It is clearly not the case, as CVSH suggest, that the Inspector would have granted the Appeal except for the issues around surface roughness and air quality computer modelling. The Inspectors conclusion repeated above from the Appeal decision show there are many deficiencies within the original application for an environmental permit.
9. The Council (CMBC) agreed with the applicant in both the previous Environmental permit applications, in fact the CMBC closing statement for the Environmental Permit Appeal(31 May 2023) ended **“ Conclusion 1.16 There is no proper basis to conclude that the proposed incinerator cannot be operated in a manner consistent with the EPR”**.

Subsequently the Inspector dismissed the appeal (5th July 2023) and was not satisfied the evidence showed compliance with **IED article 46.1** or **compliance with Article 13 of the Waste Framework Directive 2008/98/EC** as quoted above. The appeal decision shows the case for granting of a new permit application requires more than just an explanation of the surface roughness and the tree height within an air quality assessment..

10. Since this is a new application, Calderdale Metropolitan Borough Council (CMBC) as the regulator responsible for protecting Public health must look at all the relevant issues and cannot simply treat it as a “rubber stamping” of a claimed single outstanding issue from the Appeal. Meanwhile, the elected representatives claim once again “their hands are tied” and look away while officers are expected to approve the application.
11. [REDACTED] in her objection outlines the fact that the very recent Appeal and the approach taken by the Inspector is a significant material consideration in the consideration of this new Application on nearly identical terms and the Council **must** have due regard to this. The Applicant is out of time to challenge the decision through Judicial Review proceedings as it could have done. The decision and views of the Inspector on the environmental permit appeal are more directly relevant and should

carry more weight than that of the February 2020 appeal decisions under the different regulatory regime that looked at planning issues. No matter how often the Applicant argues to the contrary.

12. [REDACTED] noted in her objection to the Appeal that the Statement of Case of the Appellant which sought to set out the merits of the appeal very much centred around its incorrect contention that it is impermissible for anyone to revisit any of the air quality issues considered by the Planning Inspector ([REDACTED]) in his planning permission decisions dated 4 February 2020 during the environmental permitting process both as a matter of law and as a matter of Central Government guidance as contained in the National Planning Policy Framework (NPPF).
13. It is a matter of record that
 - a. the Appellant sought to persuade the Council (CMBC) and the Inspector hearing the appeal that none of the outstanding matters raised by the Calderdale Council's experts (Tetra Tech) or in the AQC Report could be taken into consideration in the decision as to whether or not to grant an Environmental Permit. The refusal to provide the additional information sought by the Council in relation to these issues appeared to be the primary reason for the submission of the Appeal.
 - b. Calderdale Council (CMBC), in its Statement of Case to the Appeal **also wrongly accepted the arguments put forward by the Appellant** and conceded the Appeal on the basis that it considered it was prevented from seeking the further information advised by its technical advisors (who were acting under delegated power of the Council as its "competent persons") and on the basis that no further evidence has been put forward to undermine the original quashed decision to grant the Permit. The Council's Statement of Case made no reference whatsoever to the AQC Report and the evidence in that which has been provided to counter the original decision to grant the Environmental Permit.
 - c. The Inspector who determined the appeal in relation to the Environmental Permit in July 2023 **disagreed** with both the Applicant and the Council in relation to the application of NPPF guidance.
 - d. He agreed with the position set out in the Counsel's Opinion submitted to him as part of the objections. (7. Advice - October 2022 - by [REDACTED] ("Counsel's Opinion"))

Law and Guidance

14. The correct position in relation to the law and guidance on the process that should be followed and the matters that can be taken into account in relation to the determination of an Environmental Permit application and appeal are set out in detail in the Counsel's Opinion and AQC Technical Note attached with this objection. This is presented clearly once again in [REDACTED] Objection to this latest application (Points 14.- 19) I will not repeat them here but attach the objection for reference. ([REDACTED] Objection to Environmental Permit 2024)

Relevance of High Court Order granting Permission for Judicial Review

(High Court Order granting permission for Judicial Review – 23 July 2021. ("High Court Order")) Document 6.4. The Judicial Review brought by myself after the Council erroneously granted the environmental permit in 9th February 2021 was successful on all grounds. It is the case that a Judge must refuse permission to apply for judicial review, unless satisfied that an arguable ground for judicial review **has a reasonable prospect of success**. One of the four grounds for the judicial review (ground 3) was that the application of an

alternative test could have made a difference to the outcome. In other words refusal of the Permit was a possibility.

The application ref S13/006 has provided very limited new information and uses the documents from the previous application for which the appeal was dismissed, without significant new information resolving the Inspectors concerns then there can be no good reason for approval of the permit in the face of the Inspectors finding in the dismissed appeal.

Obligations of the Regulator

15. **Pre-determination**, occurs when a decision-maker approaches a decision with a closed mind, making them unable to apply their judgment fully and properly to an issue requiring a decision. [It's a form of bias where the decision-maker has made up their mind before considering all the relevant evidence, which is not allowed and could make the decision unlawful.](#)
 - a. At a meeting on 21 December 2023 an Officer responsible for environmental health said "if emissions at the stack point monitor were ok there would be no reason to refuse an EP".
 - b. At each Environmental permit application since Mearclough, the elected members have said their hands are tied with respect to the Permit decision.
 - c. This whole approach by CMBC **appears** very like pre determination, the very limited updated information in the application limited to the topic already mentioned by the CMBC officer appears to indicate the permit will be granted without attempting to address other concerns raised by the Inspector or residents in their objections.
 - d. Previously Cabinet members have been disallowed from voting on the Permit application because they are opposed to it.
 - e. There is a difference between a closed mind and applying judgement to an issue requiring a decision.
16. It is the permitting authority that has the responsibility and statutory obligation to determine whether **operational stack emissions** from regulated facilities covered under the EPR are controlled to prevent significant impacts on human health and the environment. Combined with ensuring statutory minimum emission limit values can be met, predictive air quality assessments are the only data available to the permitting authority at application stage to determine the potential impact on human health and the environment and, consequently, the degree to which emissions are/can be controlled.
17. Irrespective of whether operational air quality effects have been discussed at planning stage, the local authority permitting function, as regulator for SWIPs, can, and must, **ensure** that operational phase assessments of stack emissions are robust. If any aspect of the air quality assessment of operational stack emissions is not considered to be robust, further information should be sought by the local authority permitting function, and provided by the applicant, before determining the application.
18. If the Council considers that it requires further information to determine a duly-made application, it may serve a notice on the applicant specifying the further information and the period within which it must be provided. If the applicant fails to provide the further information in accordance with the notice, the Council may serve a further notice on the applicant stating that the application is deemed to be withdrawn, upon which the application is deemed to be withdrawn.

Outstanding Issues preventing Grant of a Permit

19. As part of the process for the redetermination of the original environmental permit application (2020)the Council appointed Tetra Tech to undertake a further review of the amended permit

application and the AQC Report and the outcome was that, acting under the delegated powers of the Council, agreeing with points made by AQC, Tetra Tech required additional information before a decision was taken. Further information was therefore requested by the Council in relation to the assessment of 1-hour mean NO₂ concentrations, and a sensitivity test regarding uncertainty within the air quality assessments. CVSH refused to provide that information based on its incorrect assertion of the law and guidance.

20. As part of the redetermination process CVSH instructed RPS to undertake a review of the AQC Report. The subsequent report by RPS was provided by CVSH as part of the Appeal documents and is attached to the AQC Technical Note. That RPS report however ignored the items listed in the AQC Report (1) Uncertainty (3) Stack Height (5) Road Modelling Verification and Model Adjustment (6) Assessment of 1 hour- mean NO₂ Concentrations (10) Surface Roughness. The reason it did so was solely because it followed the (incorrect) legal advice from CVSH's lawyers to the effect that it was considered impermissible to revisit the air quality issues determined by the Planning Inspector during the environmental permitting process.
21. It is to be wondered (given the CVSH has sought to address other issues raised by AQC), whether the continued resistance or avoidance of CVSH to address these issues is not so much due to its interpretation of the law and guidance, but the fact that if they are properly addressed now in the terms of the environmental permitting regime, the results would lead to a conclusion that the Environmental Permit should be refused or that a new planning application would be required to facilitate a rise in the stack height.
22. CVSH sought to find an issue with the failure of the AQC Report to list the Planning Inspector's decision. AQC have confirmed in the AQC Technical Note that they reviewed the documents and Planning Inspector's decision. They confirm that, although the planning appeal decision was sent to AQC, it was not considered material for the review of the air quality impacts at permitting stage. They state that, *as previously demonstrated, both in terms of legislation and supporting guidance, it is the permitting regime that must determine whether the assessment of operational air quality effects of stack emissions is robust with respect to controlling emissions under the EPR. The planning regime serves an entirely separate purpose.*
23. Where the further information required by Tetra Tech and the issues raised by AQC ((1) Uncertainty (3) Stack Height (5) Road Modelling Verification and Model Adjustment (6) Assessment of 1 hour-mean NO₂ Concentrations (10) Surface Roughness) continue to remain relevant and unresolved they should be addressed as part of this new Application. In particular, AQC have confirmed that the issue they raised in relation to the Stack Height Determination in the ACQ Report (paragraph 3.17 onwards) has not been addressed.
24. I have attached MP Objection February 2023. This sets out further concerns with regard to the environmental permit that were raised during the Appeal. As stated above, the Inspector did not rule on the technical objections of third parties. I put forward the objections set out in the MP Objection February 2023 as matters which the Council **must** consider and respond to in determining this new Application. In the course of the Council's consultation I would expect all technical issues raised by myself and other objectors not only to be noted as previously but to be addressed.
25. It is my view, supported by that of Counsel's Opinion and the AQC Technical Note that a permit should not be granted until they are adequately addressed and found to have satisfactory outcomes. If CVSH continues to refuse to address these points, the Council should serve the formal notice on them to provide this information and if it is not forthcoming then the Application should be treated as withdrawn.

Additional Points

26. **Conflict with IED Article 46 1:** Inspector John Woolcock states very clearly (Point 45 of the Appeal decision) , the imposition of conditions would not overcome the conflict I have identified with IED Article 46 . To be clear IED Article 46 point 1 says “ Article 46 Control of emissions 1.Waste gases from waste incineration plants and waste co-incineration plants shall be discharged in a controlled way by means of a stack the height of which is calculated in such a way as to safeguard human health and the environment”.(**Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control) (Recast) (Text with EEA relevance) (legislation.gov.uk)**). Throughout the multiple permit applications there remains a question over the stack height, it did not satisfy Inspector Woolcock (“**IED Article 46 2. provides that emissions into air from the SWIP shall not exceed the emission limit values set out in Annex VI of the IED, but air quality in the vicinity of the SWIP would also depend upon stack height.**”), it was queried by AQC and Teta Tech for the Council and by multiple objectors.
27. Yet rather than address the point raised directly and demonstrate that the stack height safeguards human health and the environment, the latest application asserts “a height of 12 metres would provide effective dispersion of emissions from the exhaust stack.” (CVSH-R-JER1902-LD-SWIPApplication-26-jan-2024.pdf point 3.6.24). This does not satisfy IED Article 46 point 1 or the Inspector’s concern. The current application fails to address one of the Inspector’s main reasons for refusal.
28. **Safeguard human health and the environment (Trees):** The revised application details new information on surface roughness and how to treat the trees in terms of modelling. However I can find no assessment of the impact of the emissions on the trees, this is important since the IED is to safeguard the environment, and the woodland surrounding the site is longstanding and in some cases could be considered ancient woodland. The Incinerator is not neutral in its affects on the woodland and other wildlife and there is no **new** assessment addressing this in terms of the previous dismissed appeal or that allows granting the permit.
29. The affect on the trees was a significant element of the refusal and there has been no attempt to address this. I attach a document which considers this in more detail and shows that this is not simply a minor point. “The proposed development at the Belmont Industrial Estate has significant potential to damage protected trees, both directly and indirectly, and the impacts upon the adjacent woodland have not been assessed in adequate detail to satisfy the requirements of BS 5837: 2012...” **Arboriculturists Report 1-4-24**. This has not been addressed in the light of the appeal dismissal or the Inspectors concerns.
30. **Fire safety:** The CVSH document **240126 R JER1902 LD Calder Valley SWIP Application V1 R2.docx** at paragraph 3.12.2 states that in the event of a fire, contaminated fire water from firefighting would be contained on the site by the use of flood gates which will be deployed across all entrances of the SWIP building to contain all contaminated water from firefighting within the plant building. The MP Objection February 2023 made comments on the proposals for this in the original application and the draft permit conditions. Again, this was never ruled on by the Inspector. However, it is not clear how the newly proposed flood gates only at the entrances will contain water/oil in the event of a fire. This does not address the issues of damage caused by the fire to other parts of the building or damage caused to the floodgates during the fire. As the risk of fire must be considered one of the more likely occurrences (especially given the history of the site) and the severity of the consequences of pollution to the river acknowledged should harmful material from the building escape, then this issue must be addressed sufficiently before a permit is issued and in the permit conditions.
31. There is no detail regarding the storage or control of the fuel oil which is required to start up the incinerator. The oil tank would be in the incinerator shed – in which case what are the fire precautions for that how do the flood gates help?

32. **Planning Permissions linked and one possibly lapsed:** The CVSH document referred to above, also makes reference to one of the the planning permissions for the SWIP granted on appeal in 2020 - Appeal Ref: APP/A4710/W/18/3205776 (for planning permission 17/00113/WAM). There are of course two planning permissions involved in allowing a SWIP to operate on this site, the second being granted under Appeal Ref: APP/A4710/W/18/3205783 (for planning permission 17/00114/VAR to vary conditions 5 and 12 of 04/02712/FUL). It is not possible to implement 17/00113/WAM without amending the terms of conditions 5 and 12 of the original permission for the waste transfer station.
33. The document makes mention of the APP/A4710/W/18/3205776 (17/00113/WAM) planning permission it is not clear if all 22 conditions have been met, the Second Planning permission is not referenced (APP/A4710/W/18/3205783 (for planning permission 17/00114/VAR) nor the 28 conditions attached. It is to be expected that the status of all conditions and permissions will be documented in the CMCB review of the application.
34. The Planning Inspector determined 17/00113/WAM was acceptable on the basis that 17/00114/VAR would have to be implemented to allow it to proceed. He also amended other conditions to enable the SWIP use to proceed. He stated in paragraph 115 of his decision in relation to application 17/00114/VAR : *"The application sought a relaxation of the terms of: condition no. 5, which restricts the hours of use of the premises; and, condition no.12, which prohibits burning on site. The aim was to enable the proposed small waste incinerator plant within the appeal building to burn residual nonrecyclable waste and to operate 24 hours/day Monday to Friday inclusive"*.
35. In correspondence with the Council , CMBC have indicated that 17/00114/VAR may not have been implemented and may therefore have expired.
36. **Government guidance** is that planning and environmental permit issues are best considered together. However, both CVSH and the Council appear to want to keep them separate when it suits them. The situation with regard to the planning permissions needs to be settled when making a determination of the permit.
37. There are a number of open issues related to this , based on section 5 of The Government Environmental Permitting Guidance, item 5.4 (a) states that **providing** the plant design and equipment specification must be as a prerequisite for the application for an Environmental Permit. As [REDACTED] states in his objections, both pre the appeal and regarding the current application there are a number of issues with the design and operation of the Incinerator which have not been clarified with this new application. This is pertinent to the Operational stack emissions ([REDACTED] _Final)
38. **Footpath:** I have made mention of the footpath in previous objections. This is not shown on any plans and no reference is made to it in the latest permit application. Has the revised application now demonstrated:
- a. How will human health be protected for users of the footpath, given that there are no reference points for air quality within the site.
 - b. How will human welfare and safety be protected for users of the footpath with incinerator loading taking place regularly across the footpath.
39. **Dispersions on the site:** The assertion in the latest application point 3.6.2, that "a height of 12 metres would provide effective dispersion of emissions from the exhaust stack." Is not demonstrated and in particular at the site location I can still find no modelling or data that demonstrates the emissions at the site location at differing stack heights or why 12 Metres is the best height. It is my

understanding from modelling with [REDACTED], that emissions will likely be at the highest levels at the site and the point measurements used in modelling do not represent the ongoing continued levels of emissions particularly across the site.

- a. How is long-term human and environmental health protected from emissions at the site location?
- b. How are users of the footpath and employee's health and safety protected from emissions?

40. **Weather data** The modelling of the plume is not robust and the data used does not represent the realities of the location (as the met describes it " a very narrow, deep valley (~500m wide)... that valley would be prone to inversions/cold air pooling,". Even the CERC report suggests that CFD modelling would be a (better) alternative and this is confirmed by the MET office who say they can not nor would not model weather in the valley. (See email from [REDACTED]). The modelling for the emissions is still based on weather which isn't representative and on a stack height which is not demonstrated to safeguard human health and the environment. This is a significant reason for the dismissal of the appeal and the current application has not changed the inputs or the configuration of the Incinerator. It is essentially the same Incinerator that was dismissed by Inspector John Woolcock. There is no logical reason for the regulator CMBC to approve this revised application.
41. **Conditions:** if in spite of the appeal dismissal and the Inspector comments on the same application documents " 45. Many of the requirements of the IED could be the subject of EP conditions, as was discussed at the Hearing.⁴⁴ However, the imposition of conditions would not overcome the conflict I have identified with IED Article 46 1."
42. If the Regulator (CMBC) have reasons to approve this application, it would be reassuring to have a condition that Bureau Veritas or similar certify the installation and its emissions and compliance with R1 and all legislation PRIOR to commencement and to engage such certification in an ongoing relationship such that it is certified annually in compliance with the Planning R1 condition. This would also dovetail into the Councils annual reports on the AQMA. Conditions have been covered in many previous objections and I will not labour the point here.

Conclusion:

The Applicant has made this application asserting that rather than raise a Judicial to challenge the decision they consider " in material respects to be perverse as well as procedurally unfair" they have submitted a Environmental Permit Application S13/006, which does not address the matters in the previous application dismissed by an appeal to the Secretary of State.

Judicial review is the correct route for such an issue , however to seek the same application to be determined by CMCB without evidencing any of the reasons for the dismissal of the appeal or the Inspectors concerns would seem to make refusal a certainty.

10. For the previous Environmental permit applications CMBC were quick to agree with the applicant on the technical merits of the applications, and yet overall the arguments and technical competence were shown to be incorrect. The Council stated at the appeal " **Conclusion 1.16 There is no proper basis to conclude that the proposed incinerator cannot be operated in a manner consistent with the EPR**" CVSH-HD36-closing

This current (second) Environmental Permit application by CVSH is to all intents and purposes the same application as the previous flawed applications and does not significantly appear to address the concerns of the Inspector at the environmental permit appeal (5th July 2023). It does not contain evidence or detail that provides the basis for CMBC to come to any other decision than the same as the Inspector at the appeal.

For these reasons Calderdale Council should refuse the application.

[REDACTED]

01 April 2024



Appeal Decision

Hearing held on 29-30 November 2022 and 31 May 2023

Site visit 1 December 2022

by John Woolcock BNatRes (Hons) MURP DipLaw MRTPI

an Inspector appointed by the Secretary of State ¹

Decision date: 5th July 2023

Appeal Ref: APP/EPR/603

**Belmont Industrial Estate, Rochdale Road, Sowerby Bridge
Halifax HX6 3LL**

- The appeal is made under Regulation 31 & Schedule 6 of the Environmental Permitting (England and Wales) Regulations 2016 (EPR 2016).
 - The appeal is made by Calder Valley Skip Hire Ltd (CVSH) against the deemed refusal of an Environmental Permit (EP) application to operate a Schedule 13 small waste incineration plant (SWIP).
 - The application, Refs.S13/005 and MAU/31215, dated 6 August 2020, was not determined by the regulator, Calderdale Metropolitan Borough Council (CMBC), in the relevant period.
 - The applicant served a notice on the regulator referring to paragraph 15(1) of Schedule 5 EPR 2016 and so the application was deemed to have been refused on 23 May 2022.
 - The appeal form is dated 26 May 2022.
-

Decision

1. The appeal is dismissed.

Preliminary matters

The EP application

2. The site for the EP application is part of a larger waste management site operated by CVSH at Belmont Industrial Estate, Rochdale Road, Sowerby Bridge, which includes an existing waste transfer station (WTS) regulated by the Environment Agency (EA). At the time of my site visit the building proposed for the SWIP contained plant and equipment for a SWIP.
3. The application form is entitled "Application for a permit to operate Schedule 13 small waste incineration plant". Schedule 13 EPR 2016 applies in relation to; (a) every small waste incineration plant, and (b) every waste incineration plant or waste co-incineration plant, to which Chapter IV of the Industrial Emissions Directive (IED) applies.² EPR 2016 defines a "small waste incineration plant" as a waste incineration plant or waste co-incineration plant with a capacity less than or equal to 10 tonnes per day for hazardous waste or

¹ The Secretary of State as 'appropriate authority' has delegated this responsibility. The appointment is as 'appointed person' under paragraph 5 of Schedule 6 EPR 2016.

² Industrial Emissions Directive (Directive 2010/75/EU) at CD35.

3 tonnes per hour for non-hazardous waste. A SWIP is a regulated facility for the purposes of EPR 2016.³

4. The EP application is for a facility that would burn non-hazardous refuse derived fuel (RDF), with a European Waste Catalogue Code 19 12 10, at a feed rate of up to 2 tonnes per hour with a maximum throughput of 10,000 tonnes per annum. The RDF would be pre-treated within the adjacent WTS. The EP application included three drawings: Emission Points JER1902-PER-001, Illustrative Drawing 9677/17/03C and Existing Drainage Plan 9677/17/35A.⁴
5. The application was the subject of public consultation in 2020 and CMBC received 93 responses. The broad categories of issues raised in these submissions are summarised in the Cabinet Report. These included concerns about the impacts of air pollution on health and the local environment in this valley location, along with concerns about the material to be burned. CMBC considered the Cabinet report, dated 8 February 2021, recommending that the application be approved.⁵
6. On 10 February 2021 CMBC, as the regulator, issued an EP to CVSH pursuant to Schedule 13 EPR 2016 for the operation of a SWIP.⁶ This referred to Drawings S13/005/P1a, S13/005/P1b and JER1902-001_D_200702. Due to a procedural error in determining the application a Quashing Order was made by the High Court by consent on 14 September 2021.⁷ The application then fell to be redetermined by the regulator.
7. The claimant for judicial review drew attention to the fact that there was a gap between the boundary of the EP for the WTS and the EP boundary for the proposed SWIP.⁸ CVSH considered that this gap was of no legal consequence, but in April 2022 submitted a revised drawing JER1902-0002-01 to enclose the gap.⁹ The site identified on this drawing is referred to as the 'appeal site' in this decision.

The appeal

8. CVSH served a notice on the regulator referring to paragraph 15(1) of Schedule 5 EPR 2016 and so the application was deemed to have been refused on 23 May 2022. The appeal against the deemed refusal is dated 26 May 2022.
9. CMBC's Statement of Case, which was submitted on 18 August 2022, indicated that the regulator does not seek to resist the grant of an EP that is the subject of this appeal. At the appeal local residents and third parties opposed the grant of an EP.¹⁰
10. Paragraph 4(1) of Schedule 6 EPR 2016 states that the regulator must, within 10 days after receipt of a copy of a notice of appeal, give notice of it to any person whom the regulator considers is affected by, is likely to be affected by, or has an interest in, the subject matter of the appeal. Paragraph 4(2) of Schedule 6 EPR 2016 provides that representations in writing may be made to

³ EPR 2016 Regulation 8(1)(h).

⁴ CD3 with Supporting Statement at CD2 and CD10.

⁵ HD23.

⁶ CD12.

⁷ CO/1295/2021 at CD13.

⁸ The High Court did not consider this point as the permit was quashed for another reason.

⁹ HD7, CD10 and CD11.

¹⁰ CD22 and HD5.

the appropriate authority within a period of 15 working days after the date of the notice.¹¹ Notice about the appeal was not given by the regulator in this case until 5 October 2022.

11. During the consultation period at the appeal stage PINS received 90 written submissions. These largely reiterated many of the issues raised in the earlier consultation and included concerns about air quality modelling and stack height calculation. The appellant responded to these submissions prior to the opening of the Hearing.¹²
12. Those attending the Hearing on 29 and 30 November 2022 expressed views about the likely implications of the late notice for the appeal and how best to remedy the procedural defect. The Hearing was adjourned to enable the submission of further written representations.¹³
13. The initial public consultation on the application was on the basis of the drawings included in the application. Drawing JER1902-0002-01 was not subject to formal public consultation at the application stage. However, the draft EP devised by the appellant and the regulator stated, "The boundary of the site is shown in Plan S13/005/P1 and in drawing 'Permit Site Boundary Plan 1902-0002-01' ". This draft EP was submitted on 9 December 2022 and was made available on CMBC's website during the period up to 10 February 2023 for further written representations.¹⁴
14. The postcode cited for the address of the appeal site in some of the application and appeal documentation is HX6 3BL. This postcode includes the entrance to the appeal site off Rochdale Road, whereas postcode HX6 3LL includes all the appeal site. Concern was raised at the Hearing that use of the HX6 3BL postcode to assess flood risk would have resulted in a different outcome from an assessment based on the HX6 3LL postcode. However, it was confirmed at the Hearing that the submitted Flood Risk Assessment correctly identified the location of the appeal site. The HX6 3LL postcode should be preferred.
15. I have taken into account the written submissions received by 10 February 2023¹⁵, along with the response to those submissions by CVSH¹⁶. The Hearing was resumed on 31 May 2023. Following the without-prejudice discussion about suggested EP conditions the Hearing was adjourned to enable revisions to the wording of some conditions to be submitted. The Hearing was closed in writing on 7 June 2023.
16. The permit issued and subsequently quashed by the High Court referred to a 'small waste incinerator plant', but also referred to 'co-incineration' and the 'waste co-incineration plant'.¹⁷ The draft EP submitted by CVSH in the lead up to the opening of the Hearing described the facility as a small waste co-incineration plant.¹⁸ A comparison of the original and draft EPs was submitted by a third party.¹⁹ Following the discussion at the Hearing on 30 November

¹¹ The appropriate authority has delegated this to the Planning Inspectorate (PINS).

¹² CD28 and CD29.

¹³ Any further third party submissions were required to be received by PINS no later than 10 February 2023. The appellant and the regulator were given until 10 March 2023 to respond. HD14, HD19 and HD20.

¹⁴ HD21.1 was submitted when the Hearing was adjourned.

¹⁵ HD25.

¹⁶ HD26.1, HD26.2 and HD26.3.

¹⁷ CD12 Conditions 1.4 and 3.8.

¹⁸ CD36.

¹⁹ HD13.

2022 about suggested conditions the appellant and the regulator submitted an agreed draft EP.²⁰ This draft was made available on CMBC's website and was the subject of written submissions to PINS during the adjournment. There were further discussions about conditions at the resumed Hearing on 31 May 2023, resulting in an agreed position between the appellant and the regulator.²¹

17. Third parties raised concerns about the adequacy of public consultation throughout the application and appeal process. However, I am now satisfied that the appeal process has provided those who wished to do so a reasonable opportunity for effective participation. Third party submissions are critical of the way CMBC has dealt with the redetermination and the appeal, but that is not an issue for me in determining the appeal on its merits.

Planning appeal and EP for the WTS

18. Planning permission was granted on appeal for the site operated by CVSH in February 2020 for the construction of external flue and change of use of existing building from recycling use (B2) to heat and energy recovery process (*sui generis*) and introduction of mechanical drying of inert soils and aggregates (B2) adjacent to the existing recycling shed together with the installation in underground ducts of pipes connecting the energy recovery plant to a dryer.²²
19. The EA in April 2021 issued a notice of variation and consolidation of CVSH's EP for the WTS. This authorised CVSH to operate a household, commercial and industrial waste transfer station, including treatment of up to 145,000 tonnes of waste per year. The introductory note to the EP records that the variation notice extended the permitted treatment activities on site by allowing the drying and shredding of non-hazardous waste. It also regularised an installed shredder unit. A drying plant would be utilised to dry inert soils and aggregates from the existing waste transfer activity. Heat for drying activities would be generated by the SWIP that is the subject of the current appeal, with the heat transferred to the drying plant via underground pipework.²³

Schedule 13 EPR 2016

20. In determining this appeal, I am required by paragraph 4 of Schedule 13 EPR 2016 to ensure compliance with certain provisions of the IED. These include some of the special provisions for waste incineration plants and waste co-incineration plants set out in Chapter IV of the IED.²⁴ Paragraph 3 of Schedule 13 EPR 2016 states that the regulator must ensure that every application for the grant of an environmental permit includes the information specified in Article 44 of the IED.
21. Objectors argue that the application does not meet the requirements of IED Article 44 to guarantee that the plant is designed, equipped and will be maintained and operated to meet the relevant IED requirements.²⁵ Article 44

²⁰ HD21.1.

²¹ HD21.2.

²² Appeal decisions APP/A4710/W/18/3205776 and APP/A4710/W/18/3205783 at CD4.

²³ EPR/SP3196ZQ/V002 at CD20.

²⁴ IED Article 5(1) and (3); Article 7; Article 8(2); Article 9; Article 42(1); Article 43; Article 45(1), (2) and (4); Article 46; Article 47; Article 48(1) to (4); Article 49; Article 50; Article 51; Article 52; Article 53; Article 54; Article 55; Article 82(5) and (6).

²⁵ HD34 paragraph 5.

provides that an application shall include a description of the measures which are envisaged to guarantee that the following requirements are met: (a) the plant is designed, equipped and will be maintained and operated in such a manner that the requirements of Chapter IV are met taking into account the categories of waste to be incinerated or co-incinerated; (b) the heat generated during the incineration and co-incineration process is recovered as far as practicable through the generation of heat, steam or power; (c) the residues will be minimised in their amount and harmfulness and recycled where appropriate; (d) the disposal of the residues which cannot be prevented, reduced or recycled will be carried out in conformity with national and Union law. However, the objection omits the reference in Article 44 to measures 'envisaged' to guarantee requirements. I am satisfied that the application reasonably complies with Article 44 because it describes the measures contemplated to guarantee that the specified requirements would be met. Whether those envisaged measures would do so is a matter to be assessed having regard to other relevant Articles of the IED.

22. There is no published guidance for determining Schedule 13 SWIP permit applications. However, I have had regard to the General Guidance Manual on Policy and Procedures for Part A2 and B Installations.²⁶

Main issues

23. The main issues in this appeal are the effects of granting an environmental permit for a SWIP on human health and the environment.

Reasons

Environmental Permitting and Planning

24. The appellant's contention, based upon paragraph 188 of the National Planning Policy Framework (NPPF) and the scope of environmental permitting, is that, planning permission having been granted for the particular development including the SWIP, the planning issues, including the air quality issues, should not be revisited through the environmental permitting regime. In the appellant's submission the impact of the SWIP on air quality was undoubtedly a planning issue, and therefore should not be revisited as part of this appeal.²⁷ CMBC notes that the planning regime and the environmental permitting regime are separate regimes and considers that the findings of the planning appeal serve as a useful background to some of the matters in the current EP appeal.²⁸
25. NPPF paragraph 188 provides that the focus of planning decisions should be on whether proposed development is an acceptable use of land, rather than the control of processes or emissions (where these are subject to separate pollution control regimes) and that planning decisions should assume that these regimes will operate effectively. It adds that where a planning decision has been made on a particular development, the planning issues should not be revisited through the permitting regimes operated by pollution control authorities.

²⁶ SWIPS do not constitute a Part A or Part B permit for the purposes of EPR 2016. However, for local authority-regulated facilities the Environmental permitting: Core guidance refers to the General Guidance Manual on Policy and Procedures for Part A2 and B Installations.

²⁷ CD28 paragraph 29.

²⁸ HD36 paragraph 1.4.

26. Appeal decisions APP/A4710/W/18/3205776 and APP/A4710/W/18/3205783 are relevant material considerations in determining this EP appeal, but are binding considerations only insofar as the use and development of land is concerned. With this exception, I do not believe that paragraph 188 means that an extant planning permission fetters the discretion of a pollution control authority in exercising its functions pursuant to EPR 2016. It seems to me that there is a distinction to be drawn between assessing air quality to determine whether a proposal is an acceptable use of land; and determining what is required to control processes or emissions. This is especially so in this case, where IED Article 46 1. provides that waste gases from waste incineration plants and waste co-incineration plants shall be discharged in a controlled way by means of a stack the height of which is calculated in such a way as to safeguard human health and the environment.²⁹
27. In any event, the conclusions in the appeal decisions about the effects on air quality were based on a combination of the imposition of planning conditions and the regulatory controls likely to be associated with the required EP.³⁰ I read this as an acknowledgement by the Planning Inspector that air quality would remain a relevant consideration to be assessed in a separate jurisdiction pursuant to EPR 2016.
28. IED Article 46 2. provides that emissions into air from the SWIP shall not exceed the emission limit values set out in Annex VI of the IED, but air quality in the vicinity of the SWIP would also depend upon stack height.

Stack height calculation

29. The appellant undertook a stack height determination to establish the height at which there is minimal additional environmental benefit associated with the cost of further increasing the height of the stack.³¹ This notes that the EA removed its Horizontal Guidance Note EPR H1 (xv) for risk assessments in 2016, but considers that the appellant's approach is consistent with the guidance insofar as it identifies an option that gives acceptable environmental performance but balances costs and benefits.
30. The appellant's ADMS-5 model was run for a range of stack heights between 12 m to 18 m in 1 m increments. Tables D.5 and D.6 in Appendix D of CD21 indicate that the Predicted Environmental Concentrations (PEC)³² are below the Environmental Assessment Level (EAL) at all stack heights for both the long-term and short-term IED emission limit values, and so according to EA guidance the impacts would be considered not significant at all heights modelled. Appendix D of CD21 also referred to HMIP Technical Guidance Note (Dispersion) D1 Guidelines on Discharge Stack Heights for Polluting Emissions (TGN D1)³³, and applied a 3 m clearance between the roof of the tallest nearby building (9 m) and the top of the stack to arrive at an acceptable stack height of 12 m.
31. Local objectors to the granting of an EP raised questions about the height of the proposed stack and the implications for the health of nearby residents.

²⁹ CD23, CD24, CD25 and CD26.

³⁰ CD4 paragraphs 57 and 61.

³¹ CD21 Appendix D. I have also had regard to CD19, CD27, HD17 and HD24 regarding stack height calculation.

³² The PEC is calculated as the Process Contribution (PC) added to the Ambient Concentration (AC).

³³ HD32.

There is particular concern that the discharge height would be below the tops of nearby trees and at a lower level than Rochdale Road.³⁴

32. At the Hearing the appellant/CMBC proposed deletion of a previously suggested EP condition concerning off-site air quality monitoring. To properly assess the modelling in the absence of such a condition, I required further information about how the appellant's dispersion model deals with the likely effects on the plume emitted from the 12 m high stack due to the height, proximity and density of the nearby trees/woodland.³⁵ I requested a plan agreed by the appellant and CMBC to show the distance of nearby trees/woodland from the stack, along with the above Ordnance Datum (AOD) height of the top of the trees.³⁶ The extent to which the tops of existing trees/woodland would exceed the discharge height of the stack is evident from the following table derived from the submitted Tree/Woodland Assessment Plan.³⁷ This table excludes trees/groups with a life expectancy of '<10 years' and those that are in 'poor' or 'poor/fair' condition.

Tree T Group G	Distance from stack (m)	Difference between AOD of tops of trees and AOD of top of 12 m high stack (m)	Life expectancy of Tree/Group (years)
T2	41	+11	20+
T3	52	+16	20+
T4	36	+12	20+
T5	50	+22	40+
T6	57	+19	40+
T7	58	+19	40+
T8	57	+17	40+
G3	48	+16	20+
G4	60	+17	10+
G5	67	+18	10+
G6	52	+14	40+

The above table indicates that the tops of nearby trees would be significantly higher than the proposed discharge height of the stack, and at relatively close separation distances. Many of these trees have a long life expectancy and so any adverse effect they might have on dispersion of the plume would be likely to persist for a considerable time.

33. In answer to my question whether the existing trees/woodland result in a local reduction in ventilation in the vicinity of the proposed stack, the appellant indicated that the effect of the trees in this location, even though they are tall and in places densely packed and many of them are higher than the discharge height of the stack, is to reduce the velocity of the air flow and increase turbulence. The appellant's response to another of my questions was that the trees/woodland would not result in drag, wake or other aerodynamic effects that would at times be similar to that likely to result from buildings of a comparable size and proximity as the trees/woodland. The appellant considers

³⁴ Including HD3, HD11 and HD12.

³⁵ HD27.

³⁶ HD29.

³⁷ The distance from the stack to the group of trees is the closest distance between the stack and any tree in the group. The height of the groups of trees is the consistent height of trees within the group at the time of the survey.

that the sensitivity test applied, which involved increasing the surface roughness length around the site to 1.51 m to represent the high density of tall trees, fully accounts for the effect of the trees, and that no further sensitivity testing is necessary.³⁸

34. The appellant's model, insofar as the effect of the trees is concerned, relies solely on surface roughness length, and draws on guidance from the ADMS-5 User Guide to support this approach. The guide states; "If there are a large number of buildings on a large site, the user should consider whether to include those that are nearest to/attached to the sources and/or those that will have the greatest effect on dispersion (tallest/largest), or consider a higher surface roughness, which can be entered in the Meteorology screen, as a means of representing the buildings in a complex site". The appellant argues that this indicates that the use of a higher surface roughness is a good approximation of multiple buildings.
35. However, at the Hearing the appellant also argued that the reduced air flow velocity due to the trees would result in better plume rise because higher wind speeds reduce plume rise. But lower wind speeds would also reduce the rate at which emissions were moved away from the discharge location. No specific evidence was adduced at the Hearing about how these effects would be likely to impact on dispersion of emissions from the proposed 12 m high stack, or whether and to what extent these considerations are given effect in the surface roughness length input to the model relied upon by the appellant. Furthermore, there is no evidence to quantify how much the trees would reduce the velocity of the air flow, or how this would compare with the wind speed data used in the model.
36. In the appellant's submission, the trees would not behave like buildings and would not have the effect of causing the undiluted plume to be brought down to the ground. However, in TGN D1, which the appellant cited in the appeal notwithstanding the fact that it was published in 1993, trees are assessed as resulting in half the effect of a building of the same height. Paragraph 5.4.3 of TGN D1, about the effective heights and widths of trees, lattice towers and porous structures, states that trees and dense foliage should be taken as having their actual height, but an effective width of half their actual maximum width in the TGN D1 calculation.³⁹
37. TGN D1 and ADMS-5 apply different methodologies. Nevertheless, TGN D1 does indicate that trees can potentially have an effect on a plume that is similar, to some extent, to that which would result from nearby buildings. Although, in respect of trees, ADMS-5 applies an overall turbulence factor by way of surface roughness length, that is not specifically derived from the actual height and proximity of trees in the vicinity of the stack. The appellant considers that the use of a higher surface roughness is a good approximation of multiple buildings (and trees in this case). I am not satisfied that reliance on such an approximation is adequate here. The trees/woodland are so close and so much higher than the 12 m high stack that I consider a more detailed site-specific assessment would be required to properly assess the effects of the trees on the dispersion of emissions.

³⁸ HD28 paragraph 2.14.

³⁹ HD32.

38. Given the height and proximity of the trees/woodland in the vicinity of the proposed stack, I am not convinced that it would be reasonable to rely solely on surface roughness length to properly take into account the likely effect of the trees on the dispersion of emissions from the SWIP. In the circumstances, I am unable to find that waste gases from the SWIP would be discharged in a controlled way by means of a stack the height of which is calculated in such a way as to safeguard human health and the environment.
39. Because of an error at the planning application stage in the AOD of the proposed stack, a previous run of the model inadvertently assessed a stack height 9 m higher than the correct discharge height.⁴⁰ The results from this modelling do not provide any reassurance about the robustness of the stack height calculation now relied upon by the appellant because that run of the model also dealt with the trees solely by means of surface roughness length.
40. The planning appeal decision acknowledged that the data used had been modified by the models to take account of local topography, surface roughness effects, such as the neighbouring woodland, and building effects.⁴¹ The Planning Inspector would have seen the trees on his site visit, but there is nothing to indicate that the evidence before him included details about the height and proximity of the trees/woodland that is now documented in the Tree/Woodland Assessment Plan at HD29. Furthermore, there is nothing to indicate that the appellant in the planning appeal made the Planning Inspector aware of the fact that the trees reduce the velocity of the air flow. I have determined this EP appeal on the evidence before me.
41. The appellant stated at the Hearing that if I did not have sufficient information about stack height calculation to direct the regulator to grant an EP, I should adjourn the Hearing and request the additional information. However, this would not provide a fair and reasonable opportunity for consultees and third parties to participate in the assessment of the EP application. Consideration of any further information about stack height calculation should be, in the first instance, a matter for the regulator and subject to the consultation procedure required by EPR 2016.
42. Taking all the above into account, I consider that the appeal should be dismissed because I am not satisfied on the evidence adduced that the proposal complies with IED Article 46 1., which requires that waste gases from waste incineration plants and waste co-incineration plants shall be discharged in a controlled way by means of a stack the height of which is calculated in such a way as to safeguard human health and the environment. Furthermore, I am unable to find that the necessary measures have been taken to ensure that waste management would be carried out without endangering human health, without harming the environment and, in particular without risk to air, in compliance with Article 13 of the Waste Framework Directive 2008/98/EC.

Operator competence

43. Paragraph 13 of Schedule 5 EPR 2016 provides that the regulator must refuse an application for the grant of an environmental permit if it considers that, if the permit is granted, the following will not be satisfied; (a) the applicant must be the operator of the regulated facility, and (b) would operate the regulated

⁴⁰ CD4 paragraph 5.

⁴¹ CD4 paragraph 45.

facility in accordance with the environmental permit. However, this applies if the permit is granted. Given that I am dismissing the appeal and the deemed refusal will stand, it is not necessary for me to consider the application of paragraph 13 of Schedule 5 EPR 2016.

Other considerations

44. Similarly, as the deemed refusal will stand it is not necessary for me to rule on the technical objections raised by third parties. However, it is necessary to comment on the objectors' concern that CMBC has shown only limited understanding of the regulatory processes and that there is no evidence that CMBC has the technical expertise to regulate this facility.⁴² CMBC is the regulator for the proposed SWIP and has statutory responsibilities in this regard. Planning decisions should assume that the pollution control regime will operate effectively.⁴³ It seems to me that the same assumption should apply to the monitoring and regulation of environmental permits. Local reservations about CMBC's ability to properly regulate the SWIP are no part of my decision to dismiss the appeal.

Environmental Permit conditions

45. Many of the requirements of the IED could be the subject of EP conditions, as was discussed at the Hearing.⁴⁴ However, the imposition of conditions would not overcome the conflict I have identified with IED Article 46 1.

Conclusions

46. I have taken into account all other matters raised in the evidence but have found nothing to outweigh the main considerations that lead to my conclusions. I am unable to find that granting an environmental permit for the SWIP would not have an unacceptable adverse effect on human health and the environment.
47. In accordance with Regulation 31(6) EPR 2016 the appeal is dismissed and the deemed refusal stands. This appeal decision, including the above reasons, comprises the determination for the purposes of paragraph 6 of Schedule 6 EPR 2016.

John Woolcock
Inspector

⁴² HD34 paragraph 31.

⁴³ NPPF paragraph 188.

⁴⁴ HD21.2.

DOCUMENTS SUBMITTED DURING THE HEARING (HD):

HD	1	Opening submissions on behalf of the appellant
HD	2	Opening on behalf of CMBC
HD	3	Respiratory data for COPD and Asthma 2021 [submitted by ██████████]
HD	4	CMBC notes on draft EP
HD	5	CMBC note on delegated authority
HD	6	Code for complaints and complaints from 2004 - 2021
HD	7	Joint note from appellant and council on amended permit boundary plan
HD	8	EA invoice for subsistence charges 2020, 2021 and 2022
HD	9	Odour assessment by Environment Agency in 2016
HD	10	Information Update Calder Valley Skip Hire by Environment Agency April 2016
HD	11	Written statement by ██████████
HD	12	Written statement by ██████████
HD	13	Comparison of original EP and draft EP [submitted by ██████████]
HD	14	Written statement by ██████████
HD	15	Email from CMBC Planning Services dated 30 November 2022 concerning complaint history 2008 - 2020
HD	16	Email from CMBC dated 30 November 2022 concerning complaint history advising that no enforcement sanctions issued
HD	17	Email from Tetra Tech dated 30 November 2022 concerning stack height calculation
HD	18.1	Review of compliance with planning conditions April 2016
	18.2	Analysis of a number of planning conditions [submitted by ██████████]
HD	19	Inspector's Hearing Note 1 dated 2 December 2022
HD	20	Email from appellant dated 2 December 2022 in response to HD19 clarifying that appellant while pragmatically agreeing with CMBC's position on leaving the Hearing open for further written submissions does not consider that there has been any procedural flaw
HD	21.1	Draft Environmental Permit with conditions agreed by appellant and CMBC
	21.2	Revised suggested conditions agreed by appellant and CMBC submitted on 7 June 2023
HD	22.1	Summary evidence about EA compliance bands
HD	22.2	Extract from EP variation application re: operator competence
HD	23	Cabinet Report dated 8 February 2021 Calder Valley Skip Hire Application Determination
HD	24	WYG's response to Planning Inspector's questions dated 25 November 2019
HD	25	Bundle of 55 third party written representations received by 10 February 2023 including Statement of Objection from 1,017 Residents (personal details omitted) with 12 Appendices
HD	26.1	Legal Response to Statement of Objection with Appendices 1-6
	26.2	RPS Response on behalf of the Appellant to Third Party Representations dated 10 March 2023 with Appendices A and B
	26.3	RPS Response on behalf of the Appellant to Objections re Stack Height and Air Quality dated 10 March 2023
HD	27	Inspector's Hearing Note 2 dated 13 April 2023

HD	28	Appellant's response to HD27 Stack Height Calculation and Air Quality dated 9 May 2023
HD	29	Tree/Woodland Assessment Plan RPS Drawing 800 P03 May 2023
HD	30	Draft Agenda for resumed Hearing 31 May 2023
HD	31	Inspector's without-prejudice questions about draft EP conditions
HD	32	Technical Guidance Note (Dispersion) D1 Guidelines on Discharge Stack Heights for Polluting Emissions HMIP June 1993
HD	33	Objectors' response to Inspector's questions about HD21
HD	34	Closing Position from Objectors
HD	35	Review individual flood risk assessments: standing advice for local planning authorities Gov.UK February 2022
HD	36	Closing on behalf of Calderdale Council

CORE DOCUMENTS (CD):

[Also referred to as 'Appeal Hearing Bundle' pages 1-1,372]

CD	1	Appeal Form
CD	2	SWIP Permit Application
CD	3	Application Form
CD	4	Appeal decisions APP/A4710/W/18/3205776 and APP/A4710/W/18/3205783
CD	5	Noise assessment ES Addendum
CD	6	Other technical documents
CD	7	Chapter 3 ES Addendum to 2017 ES Chapter 7:Air Quality July 2019
CD	8	Residence time calculation
CD	9	Process Flow Diagram
CD	10	Application drawings 1, 2 and 3
CD	11	Revised Permit Application Site Plan drawing number JER1902-0002-01
CD	12	Environmental Permit for SWIP dated 10 February 2021 granted by CMBC
CD	13	High Court Quashing Order dated 14 September 2021
CD	14	Air Quality and Permit Review dated 23 November 2021 prepared by Air Quality Consultants Ltd (AQC) commissioned by local resident
CD	15	Response to AQC Review of Air Quality Assessment dated 15 March 2022 prepared by RPS
CD	16	Human Health Risk Assessment prepared by Gair Consulting Limited February 2022
CD	17	Environmental Management System Addendum for the SWIP prepared by RPS
CD	18	CFD Flow Simulation Report by Solid Solutions submitted to CMBC on 18 March 2022
CD	19	Correspondence between appellant and CMBC including Technical Note dated 17 March 2022 and Report dated May 2022 by Tetra Tech. Including notice of non-determination dated 23 May 2022
CD	20	Consolidated and Varied Environmental Permit issued by the EA dated 21 April 2021 for waste operation adjacent to appeal site
CD	21	ES Addendum Vol 2 Additional Air Quality Assessment July 2019
CD	22	Council's Statement of Case
CD	23	Appellant's Statement of Case
CD	24	Objection by [REDACTED] October 2022
CD	25	Objection by [REDACTED] October 2022
CD	26	Advice of [REDACTED] 21 October 2022

CD	27	Air Quality Consultants Technical Note October 2022
CD	28	Appellant's legal response to third party objections 18 November 2022
CD	29	Appendix B RPD Response on behalf of the appellants to third party objections 17 November 2022
CD	30	Proof of Evidence [REDACTED] 12 March 2019
CD	31	Appellant's closing submissions 28 November 2019
CD	32	Calderdale MBC Air Quality Annual Status Report 2022
CD	33	Extracts from EPR 2016
CD	34	<i>R (aoa [REDACTED]) v Dover DC and Another</i> [2022] EWHC 961 (Admin)
CD	35	IED Directive 2010/75/EU (as amended)
CD	36	Draft Environmental Permit prepared by appellant