

## Challenging Perceptions & Dispelling Myths

### The Waste Planning System on Trial: The case for an evidential based approach

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Beyond Waste recently completed a study with MEL Research on behalf of the Royal Institution of Chartered Surveyors (link at <http://www.rics.org/ricscms/bin/show?class=ResearchReports&template=/includes/showresearch.html&id=77&faculty=RICS>). Since that time the consultation draft of PPS10 has been released and a number of other important decisions that have a bearing on the future of waste planning.

In this article Alan Potter presents the findings of the study and his view of how the draft PPS10 stands up by comparison. <sup>2</sup>

#### Introduction

Repeatedly over the past few years or so the waste planning system has been cited as being the major obstacle to waste management development. While some might say the very purpose of the planning system is to be an obstacle to inappropriate development - it is clear that the system has given rise to frustration. This frustration has been expressed by planning officers and the industry alike and it was this pressure that gave rise to the production of the first dedicated planning guidance for waste management- in the form of PPG10 - five years ago. Now with the advent of the Landfill Directive BMW diversion targets and other EU Directives the necessity of getting the waste planning system right has never been greater. Government policy is under review in response to this need and while the consultation draft of PPS10 provides a clearer policy commitment to clearing the way for new development there is a degree of scepticism within the industry at least that the Government's outward commitment to moving the agenda forward will really result in the dramatic improvement required. Such scepticism is fuelled further by the most recent deferral of a decision by the Secretary of State on the Belvedere Inquiry outcome in the face of her own inspector's recommendation.

Hence the Royal Institution of Chartered Surveyors Waste Panel commissioned Beyond Waste in collaboration with MEL Research to undertake research into the current performance of the system and to establish to what extent its shortcomings could be attributed to being systemic. By being sponsored by a

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<sup>1</sup> Beyond Waste is a dynamic company created in order to make an active contribution to the global transition from a waste economy to a resource economy.

<sup>2</sup> All views expressed here are those of the author and have not been endorsed by RICS nor MEL Research. Alan can be contacted at [beyond\\_waste@btopenworld.com](mailto:beyond_waste@btopenworld.com).

party with no particular axe to grind, we had the freedom to undertake an objective analysis. The study was based on an analysis of the situation in the South East undertaken on behalf of SEERA with the assistance of local government planning officers and industry planners.

#### The 'Facts' of the Case

The Office of the Deputy Prime Minister (ODPM) collects data from local planning authorities on the number of waste-related planning decisions made. These are published annually in a summary report posted on the ODPM website. This presents an interesting picture of decline and rise of applications. ODPM's commentary states:

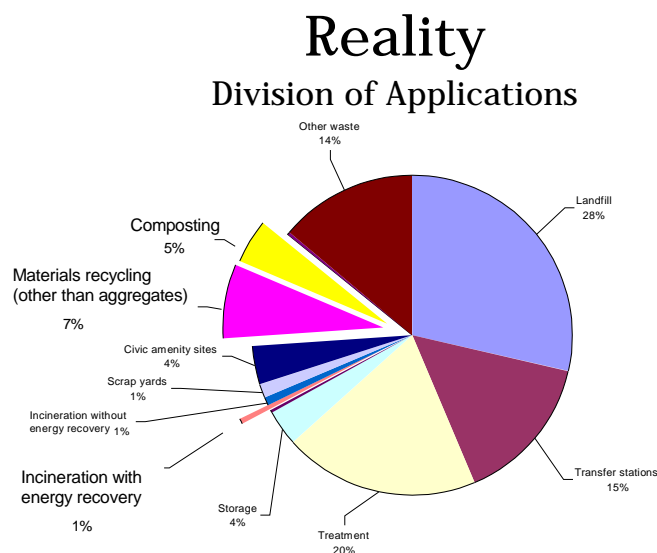
“Authorities decided 1,164 applications for waste developments in 2002/03. This is 10 per cent higher than in 2001/02 and is the largest number of decisions since 1996/97. Of these ninety-one per cent of all applications decided were granted, compared with 90 per cent in 2001/02 and 2000/01 and 89 per cent in each of the previous four years.”

On the face of it the ODPM's statistics show a positive picture - of an increasingly more efficient planning system delivering positive decision. Surprisingly even when interviewing the professionals who take forward planning applications for the industry, for every failure there were at least 4 positive stories to tell of significant applications going through - particularly in relation to non-landfill capacity.

True it is more problematic for larger more controversial facilities such as EFW plants but even then we have seen in the South East region (the focus of our study) a sustained growth in non landfill capacity - indeed one industry source said that his company was investing on the expectation that one EFW plant would get permission a year - and that is about what is happened so far.

However there are concerns as to whether sufficient applications are coming forward to deal with the anticipated need in the medium term - both to meet legislative demands and to compensate for the closure of existing sites. It is this and the hidden time delays that give most cause for concern. The current statistics do not capture 'hidden' delays which may be due to applications being withdrawn before going to committee for fear of refusal and then resubmitted at a later date - this could result in an application being in a perpetual state of limbo. A simple question of how many applications are resubmissions might help give an indication of how significant this is. Of course the whole pre-application negotiation which is never declared in the Government's statistics based on WPA returns might also be captured if application fees were charged on a time basis as now applied to PPC applications. The study made recommendations on improving this state of affairs but this appears to be beyond the scope of PPS10.

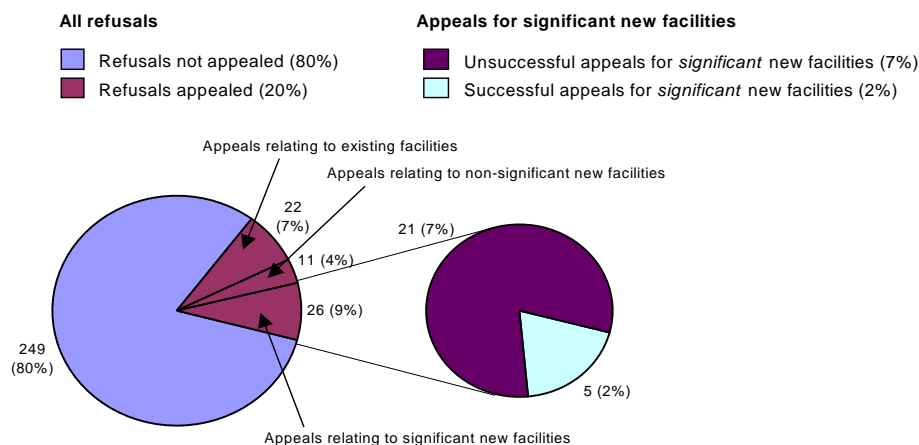
## Success Rates of Applications



Analysing the data on planning applications coming forward in 2002/03, of the applications relating to landfill development 9 out of 10 were granted. When one just considers applications related to addition of capacity either through new or extended sites the figure drops to 8 out of ten. This appears to still be a respectable success rate -certainly when compared with the national average for all applications. By way of comparison it is reported that only two in five applications for windfarms are granted planning permission.

Applications relating to 'other' types of facilities achieved 93% success rate even when limited to considering new or extended sites. However perhaps the most critical information is how much capacity has been added when approved and for which waste types. This is currently not given in the published ODPM data and is something the study recommends be rectified as matter of urgency. The draft PPS10 does make reference to the need to identify measurable indicators of change, which should be monitored and reported on in regional planning bodies and WPA's annual monitoring reports. It goes on to state that tonnages of waste to be managed should be set out as an annual rate for which management capacity is required but stops short of requiring submissions to be made on specific applications. PPS10 does seek to help the situation by stating that "WPAs should not generally require applicants for waste management capacity to demonstrate a quantitative or market need for their proposal." However this would appear to presume that the need assessment has been undertaken at the development plan evolution stage and does not account for early applications.

## Appeals



An assessment of the Planning Inspectorate data for waste related development nationally showed that nearly two thirds of the appeals related to new facilities. Of these, three quarters were potentially significant in capacity terms. Only five of these were successful on appeal (see chart). This makes a success rate of just 18% for significant new facilities. This rate is a lot lower than the 36% average for appeals as a whole. This supports the industry's perception that the planning appeal process is a major obstacle to all waste related applications.

Taking the figures in the round, only 23 applications were granted on appeal in total. Comparing this figure against the 300 odd refusals, it gives a success rate of less than 8% for refused applications (or to put it another way a refused application failure rate of 92%). These figures, which may be seen by some to be an indication of the effectiveness of the member-led planning system - with member decisions being vindicated by the Planning Inspectorate, undoubtedly deters industry from appealing against decisions, thereby further reducing the chances that facilities that fail due to lack of local political will in the first instance, ultimately being delivered.

With the move towards clarifying policy through PPS10 and the associated policy announcement on BPEO (see next section), it is possible that the number of applications going will reduce. However it remains to be seen whether, with the increase in loading expected on the system, the Inspectorate will look towards laying off staff.

### The Death Knell of BPEO: a Uniquely British Construct

Waste Strategy 2000 put the concept of BPEO at the heart of the waste management decision-making process. However of all the principles cited - regional self-sufficiency, the proximity principle and the waste hierarchy - it is the only one that does not find its origins in the Waste Framework Directive.

The study found that while the concept behind BPEO - of undertaking an options appraisal - was laudable in principle, it has in practice created confusion and become a growing obstacle to the provision of capacity. The study proposed either the clarification of the term or its abolition with reliance on EU Directive driven environmental appraisals. The parallel policy announcement from DEFRA on proposed Changes to Waste Management Decision Making Principles in Waste Strategy 2000<sup>3</sup> recognises the problem caused and proposes that the concept be dropped in favour of sustainability and SEA appraisals with the waste hierarchy having a higher profile. One is left to wonder if the Court of Appeal's latest judgment<sup>4</sup> on the Glapwell landfill appeal was the straw that broke the camel's back. This would have enshrined BPEO into the statutory delivery framework of the Waste Framework Directive - against the Secretary of State's own pleadings for it to be seen as a guiding principle only.

### The Development Plan System

The study also looked at the efficacy of the development plan system as it applied in the South East. The table below summarises some of the findings.

Waste Planning Area	Start ed	Adop ted	Durat ion	Period of Applic	Time remainin g
Berkshire Unitaries	1993 /4	1998	5 years	1998 - 2006	8 from 8 years
Buckingham shire	April 1995	Mar 1997	2 years	1994 - 2006	9 years
East Sussex inc B & H	Nov 2000	Est 2005	3.5 years	- 2015	10 years?
Hampshire	Sept 1992	Dec 1998	6 years	- 2001	3 years
Kent	Sept 1993	Mar 1998	4.5 years	1998 - 2011	13 years
Oxfordshire	June 1992	July 1996	4 years	1996-2006	10 years
Surrey	1995	May 1999	4 years	1997 - 2001-2016	6 years
West Sussex	2001	Est 2006	3 years	016	10 years?

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This provides two particularly striking findings. First the variability in time taken to just embark on the process of producing a plan with one pioneering authority commenced in 1994 while two still remain to have adopted theirs. The second is the prolonged nature of the plan preparation and adoption process. Taking an average across all the authorities nearly 4 and half years of effort has been expended to get just 8 and half years planned.

<sup>3</sup> Consultation Paper 1 Document A - Changes to Waste Management Decision Making Principles in Waste Strategy 2000 December 2004

<sup>4</sup> Derbyshire Waste Limited Vs John Blewett Case No: C3/2003/2505(A)\_11<sup>th</sup> November 2004

The change to Waste Development Frameworks provides the ideal opportunity to streamline the plan production process and synchronise it nationally with the emerging regional spatial strategies. This will be particularly important now that the regional strategies are proposed to cascade down apportionment to WPA level as made clear by the PPS10 statement “In turn, waste planning authorities should prepare local development documents that reflect their contribution to delivering the regional spatial strategy”.

PPS10 also makes it clear that where applications come forward before development plans are in place or under review that the policies in the PS are to be regarded as “material consideration which may supercede the policies in their development plan”. In effect this means to use the words of one ODPM official that “PPS10 trumps the development plan”. This can be expected to place pressure on WPAs to deliver their plans early if they want to control the form of the overall waste management system emerging within their areas.

#### The Latest Mantra: Make Plans Site Specific

Site-specific and area of search based plans provide an atmosphere of certainty for developers and the local community, and show how the objectives of the plan will be implemented in practice. However, disadvantages of this approach are that the sites may cease to be available during the life of the plan - which points towards the importance of safeguarding sites identified in plans as far as possible, unless alternative sites have come forward successfully - and may also distort land values on the site identified (the ‘ransom’ site). It may also discourage the coming forward of more novel or speculative applications.

The greatest ‘disadvantage’ is of course the political unpopularity of committing to naming sites at this stage in the planning process. However an in depth examination of a plan area with preferred areas identified shows that inclusion of a proposal within a preferred area identified in a plan does not guarantee success.<sup>5</sup> Simply adopting site-specific plans will not necessarily improve provision.

Most feedback received is that while the site-specific approach creates market disparities playing to the strengths of those companies with sites in the area, it is seen as the most likely means of achieving actual delivery of facilities. Again this idea is reinforced by the consultation draft of PPS10, which requires that sufficient available and suitable sites to be identified on the proposals map and outlines a sequential approach for site identification purposes. It goes on to state that “applicants for planning permission to develop waste management facilities should expect expeditious and sympathetic handling of planning applicators on sites and in locations identified in the development plan documents where their proposals reflect the planning strategy for waste management and policies set out in the

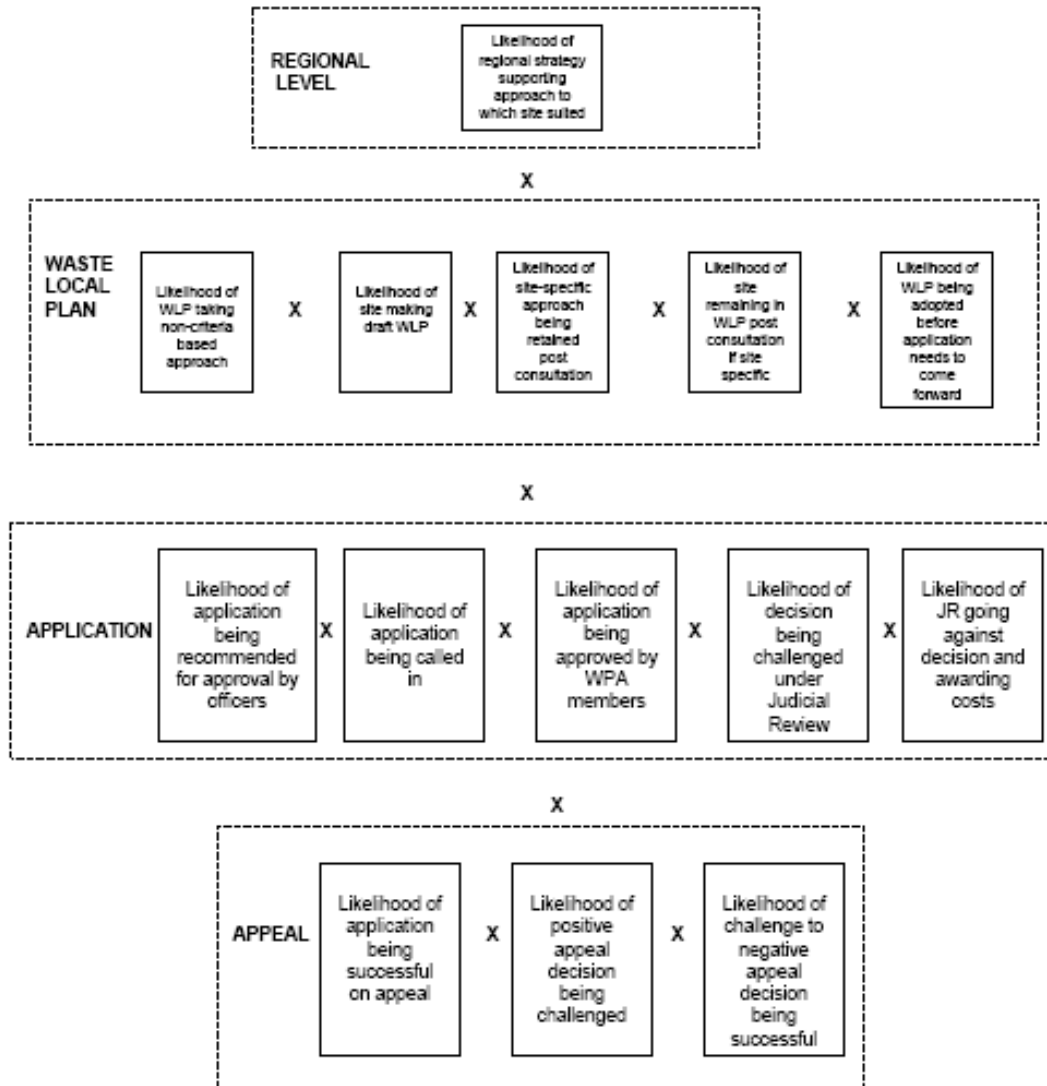
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<sup>5</sup> A study of Berkshire gave a 60% success rate achieved for waste planning applications is a far cry from the 91% success rate given in the ODPM figures nationally.

development plan". This does presume the existence of up to date plans and in trying to balance the need to provide facilities with a respect for local circumstances might open the door to local difficulty.

#### The Waste Planning Risk Model

Our analysis identified the pinch points and problems of the planning system all translate into investment risk for developers. Each step requires substantial investment of resources from scheme promoters. The stakes are high and while the rewards are lucrative, (potentially guaranteeing long-term survival for successful bidders); the consequence of failure is significant. Operators can ill afford not to compete for the sake of tomorrow but equally may not be able to afford the stakes to compete today. Risk management is something that might come naturally to private sector operators where the market pressure is intense and the ability to move on commercial opportunity is crucial. However at the end of the day so many of the outcomes of the process are dependent on subjective decision-makers: whether it be planning officers, members, planning inspectors or the Secretary of State. It is this along with the ever-changing policy and regulatory field, which makes the process so fraught with uncertainty that may make the risk unacceptable. The model shows the multiplicity of pinch points in the process that can all result in the application falling.



## Conclusion

The planning system is just one dimension of the risk that waste management companies and their financial backers have to take on when proposing a scheme or bidding for a contract. So how the level of risk can be managed so that it is not unacceptable particularly to the financial community upon whose confidence the delivery of facilities depends, seems to be the nub of the matter.

Would the introduction of powers for local authorities to borrow to build facilities themselves that they can then lease to private sector operator's help? In letting long-term contracts should the client authority take the burden of risk of identifying sites and gaining permission for itself? The trend towards citizen challenge through judicial review of planning authority decisions about a third party's proposal, points towards such an approach. The intervention of the regions in securing sites for regionally significant waste and resource management facilities also suggests itself.

While the research found that as a whole the system seems to work reasonably well, there is little room for complacency. An analysis based on evidence rests on the presumption that what lies ahead is comparable with what has gone before. It is clear that this will not be the case with waste management since the new legislative drivers and diminishing landfill capacity will force a step change in practice within a decade. The time is ripe to elevate waste management to its proper place in the public mind (and the political agenda) and cast off the shackles of the past. With the Government making its clearest and boldest policy statement on waste yet, it has signalled its intent. Waste management is moving up the political agenda - whether this is simply driven by fear of infraction by the European Commission or from a real desire to "ensure that, by 2020, England has a world class waste management system" as the Prime Minister's Strategy Unit Report<sup>6</sup> puts it, remains to be seen. Whatever the reason it creates clear opportunities for all players to up their game so that better plans, applications and decisions are made. By doing so one part of the waste management jigsaw might just fall into place.

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<sup>6</sup> Waste Not, Want Not - A Strategy for Dealing with the Waste Problem in England (PMSU 2002)