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# Appeal Decision

Inquiry held on 25-28 June, 2-4 July, 9-12 July and 16, 17 and 19 July 2013  
Site visits made on 26 and 28 June, 18, 19 and 21 July 2013

**by John Woolcock BNatRes(Hons) MURP DipLaw MPIA MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 17 October 2013**

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**Appeal Ref: APP/J1155/A/12/2185633**

**Whitecleave Quarry, Plymouth Road/Strode Road, Buckfastleigh, Devon  
TQ11 0DQ**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by MVV Environment Devonport Ltd against the decision of Devon County Council.
  - The application Teignbridge District Council Application No:11/02685/DCC, Devon County Council Ref.DCC/3242/2011, dated 8 July 2011, was refused by notice dated 3 May 2012.
  - The development proposed is the construction and operation of a materials recovery facility for inert construction and demolition waste and construction and operation of an incinerator bottom ash processing facility together with associated site engineering and infrastructure.
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## Decision

1. I dismiss the appeal.

## Application for costs

2. At the Inquiry an application for costs was made by MVV Environment Devonport Ltd against Devon County Council (DCC). This application is the subject of a separate Decision.

## Procedural matters

3. A list of abbreviations used below is included on the last page of this decision. Buckfastleigh Community Forum (BCF) objects to the proposed development and participated in the Inquiry as a Rule 6(6) party.
4. The planning application was accompanied by an Environmental Statement dated July 2011 (ES).<sup>1</sup> Further submissions were made in October 2011 and March 2012. An Environmental Statement Addendum was submitted in April 2013 (ESA), including proposed amendments to the appeal scheme. The ES and ESA were advertised in accordance with the EIA Regulations. I am satisfied that the ES and ESA reasonably comply with the relevant provisions of the EIA Regulations. I have taken into account the Environmental Information, as defined in the EIA Regulations, in determining this appeal.

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<sup>1</sup> The Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 continue to apply in accordance with the transitional arrangements for the Town and Country Planning (Environmental Impact Assessment) Regulations 2011.

5. Notwithstanding the description of the proposed development on the application form, DCC describes the proposal as; "Construction and operation of Materials Recovery Facility for Inert Construction and demolition wastes; Construction and operation of Incinerator Bottom Ash Processing facility; removal of dolerite outcrop and filling quarry with dolerite and inert material to a depth of 60 m AOD to facilitate storage of recycled materials with associated site engineering and infrastructure".<sup>2</sup> I consider that this is a more specific description and have dealt with the appeal on this basis.
6. DCC refused the application for two reasons, against officer recommendation for approval subject to a section 106 agreement. The first concerned unacceptable adverse impacts on the amenities of the local community due to increased movement of HGVs, noise and dust, contrary to Policy WPP4 of the Devon County Waste Local Plan 2006 (WLP). DCC's second reason for refusal states that the site is not allocated in the WLP, and there has been inadequate consideration of alternative sites to accommodate the proposed operations, and therefore there is no overriding need for this facility in this location. DCC's Statement of Case cites, amongst other things, objections on the grounds of noise, air quality and dust, and traffic and transportation. At the Pre-Inquiry Meeting (PIM) DCC referred to witnesses dealing with these topics, but indicated that it might not be necessary to call all witnesses depending on the outcome of ongoing technical work.<sup>3</sup> DCC advised on 22 May 2013 that following the submission of further technical assessment and information exchanged between the parties, it now considered that the concerns in the first reason for refusal had been satisfactorily resolved and that this reason for refusal was withdrawn, and that evidence to the Inquiry would only be provided in respect of the second reason for refusal.<sup>4</sup>
7. The amended scheme proposed at the appeal stage includes alterations to the phasing and construction programme; changes to levels and hard standing proposed for the Incinerator Bottom Ash (IBA) processing and storage area; consequential amendments to the drainage strategy; minor highway improvements to the site access; along with an alteration of the red line site boundary to allow for the inclusion of the existing settlement tanks beneath the A38.<sup>5</sup> The Highways Agency was consulted, and formal notice about the proposed amended site boundary encompassing highway land was given during the Inquiry.<sup>6</sup> These alterations would not result in a substantially different proposal to that which was before DCC when it determined the application. Advertisement of the ESA and amended scheme provided an opportunity for consultation. There was some criticism about whether those who might be affected along the River Dart were aware of the scheme.<sup>7</sup> However, there were submissions at the Inquiry representing the views of those residing in these areas. I do not consider that determining the appeal on the basis of the amended scheme would be prejudicial to the interests of any other party. There was no objection from DCC or BCF to consideration of these alterations

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<sup>2</sup> Inquiry Document 10 (ID10).

<sup>3</sup> The PIM was held on 9 April 2013. Separate technical statements were subsequently prepared on traffic, noise and air quality indicating the agreement reached between the Council and the appellant on these issues.

<sup>4</sup> ID11.1, ID11.2 and ID11.3 set out details of the delegated decision and reporting to June 2013 Development Management Committee. A statement by Cllr Vint about consultation with Buckfastleigh Town Council and the Community Forum about this is at ID25.

<sup>5</sup> These are set out in A1.2 of the ESA.

<sup>6</sup> ID16 and ID32.

<sup>7</sup> ID70.

at the appeal stage.<sup>8</sup> I have, therefore, determined the appeal on the basis of the amended scheme as shown on the drawings in the List of Plans attached to this decision.

8. The baseline for the ESA was amended to take into account recent works within the quarry. An enforcement notice was issued, and the Inquiry was informed about an ombudsman investigation.<sup>9</sup> However, there is nothing to indicate that development proposed as part of this appeal scheme has taken place. There are no grounds to deal with the appeal on the basis of a retrospective application to regularise development that has taken place.<sup>10</sup>
9. DCC received more than 250 objections to the proposal, and 25 letters in support. I have taken into account all the written representations submitted at both the application and appeal stages. Buckfastleigh Town Council commissioned a Parish Poll which was carried out in March 2012. This had a turnout of about 50% and resulted in 1,367 votes against, and 73 in favour, of Whitecleave Quarry being used for any handling, processing or storage of industrial waste and bottom ash from waste incineration. I have also had regard to petitions about the scheme and its traffic implications. A key planning objective of national waste policy is to reflect the concerns and interests of communities.<sup>11</sup> I note that one of the aims of national planning policy is to strengthen local decision making.<sup>12</sup> However, it remains a general principle of the planning system that local opposition or support for a proposal is not in itself a ground for refusing or granting planning permission, unless it is founded upon valid planning reasons.<sup>13</sup> I have had regard to local opinion, both for and against the proposal, but have determined the appeal on its planning merits.
10. A Statement of Common Ground (SoCG) between DCC and the appellant, dated 3 July 2013, sets out, amongst other things, documentation for the applications and a list of plans and drawings.<sup>14</sup> The SoCG provides that DCC has no objections to the proposal on a number of grounds, subject to the imposition of appropriate planning conditions. These include need, ecology, landscape and visual impact, cultural heritage, socio-economic impact, hydrogeology and hydrology, and health. However, other parties object on these grounds. DCC's case is based on considerations related to the minimisation of waste transportation by road and associated carbon emissions from heavy goods vehicles (HGVs). It considers that the proposal is in the wrong place and would conflict with policy despite the acknowledged benefits that an IBA and construction and demolition (C&D) waste reprocessing facility would bring, and that alternative sites should be preferred. Suggested conditions in the event that the appeal succeeded were discussed on a without-prejudice basis during the Inquiry.<sup>15</sup> The SoCG states that Sam Gilpin Demolition Limited (SGDL) is the site lease-holder and would be the operator in the event that permission was granted. However, any planning permission granted would run with the land.

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<sup>8</sup> However, BCF argued that the amendment to the scheme would remove any benefit that might have arisen from the blending of IBA Aggregate with extracted dolerite.

<sup>9</sup> ID14.

<sup>10</sup> ID78.1, ID78.2 and ID78.3.

<sup>11</sup> PPS10 paragraph 3.

<sup>12</sup> *National Planning Policy Framework Annex 1: Implementation.*

<sup>13</sup> *The Planning System: General Principles* ODPM 2005.

<sup>14</sup> ID40.

<sup>15</sup> ID23.2.

11. A planning agreement, dated 18 July 2013, provides for financial contributions, on commencement of the development that is the subject of this appeal, towards the alteration of the speed limit along parts of the B3380 and towards highway works, and to planting of 0.37 ha of woodland within Potter's Wood SSSI and a contribution to the South Devon Biodiversity Offsetting scheme to fund a further 0.37 ha of woodland planting, along with funding for vibration monitoring of blasting. It would also require that blasting only take place on specified dates. The obligation would provide for the revocation of the extant mining permissions.<sup>16</sup>

### **The appeal site and surrounds**

12. The appeal site is approximately 3.7 ha within Whitecleave Quarry, which is a hard rock quarry extending to about 9 ha in area. The site lies within Buckfastleigh Parish Boundary, but outside the designated settlement boundary.<sup>17</sup> It adjoins the southern boundary of Dartmoor National Park and is about 275 m west of an Area of Great Landscape Value (AGLV). The quarry is located to the south and east of the A38 trunk road, which is elevated near the appeal site. Access to the appeal site is from the B3380 Plymouth Road/Strode Road via a dedicated junction and private haul road beneath the A38. This access is shared with an adjoining site used by a coach hire company. Plymouth Road/Strode Road can be accessed from the A38 at the Dart Bridge junction to the north, and from the Lower Dean junction to the south. The nearest residential dwellings are located on the northern side of Strode Road and the western side of Plymouth Road. Dwellings are some 92 m from the nearest part of the site for the proposed Materials Recovery Facility (MRF), 122 m from the site of the proposed IBA processing facility, and 42 m from the site entrance.<sup>18</sup> The central core of Buckfastleigh is a designated Conservation Area. This encompasses Orchard Millennium Green, which is an area of open space.
13. Whitecleave Quarry has had planning permission for the winning and working of minerals since the 1950s. The current permission, which expires in 2042, was reviewed in accordance with the Review of Old Mineral Permissions (ROMP) in 2002.<sup>19</sup> It was a major production unit until 2003 and sales from the site continued until 2007. SGLD has undertaken work to fulfil ROMP conditions. A 15 year period review of the ROMP conditions is due in 2017. Restoration and aftercare provisions require the land to be used for agriculture, forestry or nature conservation. ROMP Condition 27 provides for restoration to a condition suitable for nature conservation in the event of cessation of working, unless otherwise agreed in writing by the mineral planning authority.
14. Part of the appeal site near to its southern boundary lies within Potter's Wood Site of Special Scientific Interest (SSSI). Buckfastleigh Caves SSSI, which is about 700 m north-east of the appeal site, forms part of the European designated site South Hams Special Area of Conservation (SAC), for which greater horseshoe bats are a qualifying feature. Dean Burn adjoins the appeal site and flows into the River Mardle, which subsequently joins the River Dart. The River Dart is a migratory route for salmon, which are an interest feature of the Dartmoor SAC.

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<sup>16</sup> ID1.2.

<sup>17</sup> ID51 and ID54.

<sup>18</sup> ID40.

<sup>19</sup> The current permission 98/3304/32/9DCC is at Core Document R1 (CD R1).

## **The proposed development** <sup>20</sup>

15. The appellant has been awarded the South West Devon Waste Partnership (SWDWP) Residual Waste Treatment and Disposal Contract to deal with the management of waste from Plymouth City Council, Torbay Borough Council and from South Hams, West Devon and Teignbridge District Councils for a period of 25 years. The appeal scheme would process IBA from the appellant's Devonport energy from waste (EfW) facility, which is currently under construction, and would be capable of processing 65,000 tonnes per annum (tpa) of IBA. The processed IBA would be Incinerator Bottom Ash Aggregate (IBAA). The MRF would have a capacity to handle 25,000 tpa.
16. Phase 1 would involve the construction and operation of the MRF sorting building for inert C&D waste in Area A (the area which contains the existing office and surrounds), the extraction of 300,000 tonnes of dolerite and levelling of the IBA processing area in Area C (southern part of quarry) by infilling to create a plateau at 60 m AOD, construction of an IBA processing building and facility, with the remainder of the extracted dolerite used to infill Area B (northern part of quarry) to 48.5 m AOD. Recycled aggregate would be screened, crushed and blended in Area B, which would continue to be de-watered. The IBA processing facility and related external storage area would be sited on an impermeable concrete slab. Phase 2 would raise the level of Area B to 60 m AOD with 120,000 tonnes of inert material, after which it would be capped with concrete, and used for screening and crushing inert C&D waste, along with possible blending of IBAA.
17. HGV movements would be limited to a maximum of 100 two-way trips (100 in and 100 out) in any one day. It is intended that the scheme would provide benefits from the co-location of the MRF and the IBA processing facilities, including the ability to blend IBAA and C&D waste to form a greater range of products, along with commercial benefits from managing two operations from a single site with shared administration and marketing.
18. The appeal scheme would remove more of the dolerite outcrop (referred to as the spur at the Inquiry), which currently lies between the quarry and the town, but marginally less of the northern part of Potter's Wood SSSI, than would the permitted extraction. The differences between the extant permission and the proposed extraction for the appeal scheme, in both area and section, are depicted on drawings submitted to the Inquiry.<sup>21</sup>
19. The proposal would require a bespoke Environmental Permit (EP) from the Environment Agency (EA). The appellant has undertaken pre-application discussions with the EA, but at the time of the Inquiry no EP application had been submitted. These discussions included agreement with the appellant's assessment that the activity would be a recovery operation based on the information then provided.<sup>22</sup>

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<sup>20</sup> Based on SoCG and evidence at the Inquiry.

<sup>21</sup> ID39.1 and ID39.2.

<sup>22</sup> Mr Miles rebuttal proof of evidence Appendix 4.

## Planning policy

20. The development plan for the area comprises the WLP, the Devon County Minerals Local Plan 2004 (MLP) and saved policies of the Teignbridge Local Plan 1996 (LP). The appeal site is not allocated in the WLP for waste management. However, WLP Policy WPP4 applies. This provides that proposals for waste management facilities would be permitted where they would accord with all relevant policies in the WLP and where it can be demonstrated that they would contribute to the achievement of an integrated and sustainable waste management strategy for the County. Policies WPC1 and WPP20 of the WLP concern, respectively, sustainable waste management and transportation of waste. Policy WPP20 does not properly reflect the provisions in the revised Waste Framework Directive (rWFD) for recovery operations, but this would not affect the weight given to it in determining proposals for disposal operations.<sup>23</sup> I note also that the supporting text to Policy WPC1 provides that there might be exceptions to the rule that waste should generally be managed as near as possible to its place of production, for example where reprocessing or re-use of waste was carried out nearer to the market for products than the source of the waste. Again this refers to recovery, not disposal, operations.
21. WLP Policy WPC2 sets out development control considerations. Policy WPC3 encourages the integration of waste management facilities on one site. WLP Policy WPP18 provides that waste management facilities which increase the risk of flooding or reduce floodplain capacity would not be permitted unless the risks or impacts were mitigated by appropriate measures. The appeal site lies within a Mineral Consultation Area, where MLP Policy MP13 provides that development would not be permitted where it would sterilise mineral resources which are, or may become, of economic importance, or would otherwise be incompatible with mineral development. WLP Policy WPP19 has a similar aim. How these and other relevant development plan policies apply in this case is considered in more detail later in this decision.
22. The *National Planning Policy Framework* (hereinafter the *Framework*) does not contain specific waste policies, which will be published as part of the National Waste Management Plan for England. Planning Policy Statement 10: *Planning for Sustainable Waste Management* (PPS10) remains in place until the National Waste Management Plan is published. However, the *Framework* states that decisions on waste applications should have regard to policies in the *Framework* so far as relevant. The *Waste Strategy for England 2007* and the *Government Review of Waste Policy 2011* are also relevant as they stress the need to drive waste up the waste hierarchy and divert waste from landfill. These policy objectives are restated in the *Waste Management Plan for England 2013* (WMPE), which was published for consultation on 16 July 2013 and was discussed at the Inquiry.<sup>24</sup>
23. Emerging planning policy is contained within the Devon Waste Plan (eDWP), the Devon Minerals Plan (eDMP), and Plan Teignbridge (ePT). However, both the eDWP and eDMP are at an early stage of preparation and significant decisions remain to be taken in respect of their form and content.<sup>25</sup> They can be given very little weight at this stage. The policies in the ePT can be given more weight because it has been submitted to the Secretary of State, but it

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<sup>23</sup> CD L2.

<sup>24</sup> ID84.1 and ID84.2.

<sup>25</sup> SoCG paragraph 4.16.

does not deal expressly with minerals and waste, and so it is not very helpful in determining this appeal.

## **Main issues**

24. The main issues in this appeal are:

- (1) The effects of the proposed development on:
  - (a) The character and appearance of the area.
  - (b) The living conditions of nearby residents and the amenity of the area, with particular reference to noise, vibration and disturbance.
  - (c) The local road network, highway safety and whether suitable access to the site could be achieved.
  - (d) Protected species and nature conservation.
  - (e) Air quality and water pollution, and any implications for health, quality of life and amenity.
  - (f) Tourism and the local economy.
- (2) Waste management and the compatibility of the proposal with national and local waste policy.
- (3) Whether alternative means to meet the need is a material consideration, and if so, the suitability and availability of such alternatives.

## **Reasons**

### *Preliminary matters*

25. Mining and related activity within the quarry has in recent years been considerably less than was the case during former times when it was a major production unit. The appellant acknowledges that limited economic hard rock reserves remain within the quarry. Nonetheless, circumstances might change in the future, depending on markets and availability, and mining activity could in future intensify in accordance with the provisions of the ROMP. The extant permission for mining is therefore an important planning baseline for determining this appeal.
26. The appellant acknowledges the reality that no waste management facility will improve the quality of the built, natural or historic environment, but that management of waste is a requirement of everyday life, and that PPS10 sets out how to do so sustainably. It is therefore necessary to consider whether the benefits of the scheme would be sufficient to outweigh any harm that might be caused. The economic, social and environmental roles for the planning system, which derive from the three dimensions to sustainable development in the *Framework*, also require a balancing exercise to be performed to weigh the benefits of the proposed waste management facility against its disadvantages.

### *Character and appearance*

27. DCC concluded that there was no evidence that the proposal would have a significant adverse effect on the setting of Dartmoor National Park or on the visual amenity of residents within Buckfastleigh. The SoCG provides that the proposal generally accords with all relevant development plan and emerging planning policies for the protection of landscape and visual amenity. However, there is local concern about the effects of the scheme on the character and appearance of the area. An assessment of landscape and visual effects was

- included in the ES. I have judged potential effects on the basis of the analysis in the ES, along with the evidence before the Inquiry, and my observations during site visits to the area.
28. Given the existing buildings, activity and nature of the permitted mineral development, I do not consider that the proposed waste management facility would have a significant adverse effect on the character of the area. Parts of the existing quarry face are visible from the National Park and from Buckfastleigh. The removal of the spur and vegetation would open up wider views of the quarry. However, the scale of this effect would have a limited impact on the overall perception of the quarry when seen in its wider landscape context. The proposal would, in my view, have a low magnitude of effect on visual amenity. Receptors in the town and the National Park would have high sensitivity to the change proposed, but I consider that in terms of visual effects and visual amenity the appeal scheme would be of moderate significance.
29. HGVs using the B3380 in the vicinity of Buckfastleigh Conservation Area would not unduly affect views into or out of the heritage asset. This would be so even if the conservation area was extended as proposed. I find that the proposal would preserve the character and appearance of the Conservation Area, and would not conflict with DCC's guidance or WLP Policy WPP10.<sup>26</sup> I have had special regard to the desirability of preserving the setting of the listed buildings shown on the plan attached to the SoCG. It was apparent from my site visits that the setting of these buildings is generally limited to their immediate surroundings. I do not consider that HGVs on the B3380 serving the proposed development would adversely affect the setting of any listed building.
30. On the first main issue, I do not consider that the proposed development would have a significant adverse effect on either the character or appearance of the area, or heritage assets. The proposal would not conflict with WLP Policies WPP5 or WPP11, which concern the effects on the National Park and AGLV, respectively. It would also reasonably comply with WLP Policy WPP24 concerning site design and appearance. The appeal site lies within the countryside where LP Policy ENV4 applies. I find that the scheme would not conflict with the aims of this policy insofar as it requires particular attention to be paid to the scale of development and to its siting, layout and appearance. Policy ENV4 also requires wildlife interests to be taken into account, and I deal with this separately below.

### *Living conditions*

31. DCC do not take issue with the proposal on these ground, but there are local concerns about noise, disturbance and vibration.<sup>27</sup> The suggested conditions propose a maximum noise limit of 55 dB  $L_{Aeq,30min}$  for emissions from the proposed operation. This would be more onerous for the operator than the maximum of 55 dB  $L_{Aeq,1hr}$  which is the limit currently specified in Condition 9 of the ROMP.<sup>28</sup> The Technical Guidance to the *Framework* also refers to this noise limit averaged over a one-hour period. The proposal would, therefore, result in some improvement in terms of maximum noise emissions from the site, during the operation of the proposed MRF and IBA processing plant. The modelling indicates that the proposed limit could be complied with even allowing for

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<sup>26</sup> ID81.

<sup>27</sup> ID62 and ID64.

<sup>28</sup> ID49 and CD R1.



reflections from the quarry face and the shape of the void. However, a 3 m high noise berm or bund for the proposed crusher would be required to achieve this limit.<sup>29</sup> I have had regard to the *Noise Policy Statement for England*, but subject to the imposition of appropriate planning conditions, I do not consider that noise from the proposed facility would have an unacceptable adverse effect on the living conditions of neighbouring residents.<sup>30</sup>

32. The scheme includes blasting to remove 300,000 tonnes of hard rock from the spur. There is little technical evidence available about what might be required in terms of the number or intensity of blasts that would be necessary to extract the dolerite. Blasting can be particularly intrusive and disruptive for those in the locality. The appeal scheme proposes many controls on blasting, and includes provisions in the obligation to deal with monitoring. These restrictions include that measureable air overpressure at any buildings used for human habitation should not exceed 120 decibels. This is the same limit as is currently imposed by Condition 15 of the ROMP. Previous blasting in the quarry had the benefit of the screening provided by the spur, and its removal would bring disturbance from blasting nearer to the town. However, given that the same air overpressure limit would apply, there is nothing to indicate that any harm from vibration would be worse from the appeal scheme than would be so for the implementation of the extant permission. I do not, therefore, consider that harm to residential amenity from vibration would weigh against the proposal.
33. Many residents along the B3380 are concerned about noise and disturbance from HGVs accessing the site from the A38. I accept that the technical evidence adduced indicates that road traffic noise from vehicles associated with the proposed development would not have a significant effect on local noise levels when averaged out over the relevant time periods. However, it was evident from my site visits that properties close to the road are affected at times by disturbance from HGVs. This is due to the particular characteristics of the sounds emanating from vehicles carrying large loads, which makes them more noticeable than other road traffic, and because of an intermittency or irregularity effect that makes them more distracting than background road traffic noise. However, such effects would also apply to HGVs serving the extant mining use, and the ROMP does not impose any restriction on vehicle numbers. I have taken into account that the ROMP is time-limited, and so eventually this factor would not apply. Nevertheless, there is nothing to prevent such disturbance in the short term.
34. Given the extant mining permission, I find that the proposed development would not have an unacceptable adverse effect on the living conditions of neighbouring residents by reason of noise or vibration. In the long term the proposal would have some net or overall adverse impact on those living along the B3380 because of disturbance from HGVs, but I do not consider that this weighs heavily against the proposal.

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<sup>29</sup> ID21.1.

<sup>30</sup> ID21.1a.

### *Highway safety*

35. Further traffic survey data and analysis was submitted after DCC's determination of the application, and this resulted in a measure of agreement about the assessment.<sup>31</sup> However, it was challenged at the Inquiry by BCF and local residents. I believe that its findings on likely vehicle movements and distribution are sound, and form a proper basis for judging likely traffic impact. BCF criticised the comparison between existing and projected traffic levels because the definition of HGVs is any vehicle over 3.5 tonnes, whereas those proposed to serve the appeal scheme would predominantly have a gross weight of about 35 tonnes. Others raised issues about increases in the number of HGVs, the width of the B3380 and use of the shared footway, along with the manner in which statistics had been used in the assessment.<sup>32</sup> Notwithstanding some errors in the appellant's use of accident statistics, I do not consider that there is any technical evidence which demonstrates that the proposed development would, even allowing for the size of the vehicles likely to be used, and the width and nature of this part of the B3380, increase the risk to highway users to a degree which would justify dismissing the appeal. I do not consider that BCF's submissions undermine the overall conclusions of the assessment.
36. There is currently an advisory sign on the southern A38 approach to Buckfastleigh that is intended to encourage HGVs bound for the town centre to use the Dart Bridge.<sup>33</sup> However, there is no weight limit on the B3380, and this indicates to me that there is no technical reason why HGVs should be prevented from using this route. I have had regard to local concerns about the use of this southern link to the A38, but the evidence does not support a convincing case against its use by HGVs on highway safety grounds.<sup>34</sup> In addition, there is no convincing evidence that HGVs from the appeal scheme using the northern link to the A38 would significantly impair the safety of those using Orchard Millennium Green.
37. The obligation includes provision to alter the speed limit and to amend the white lining along parts of the B3380. I am satisfied that these changes would be beneficial, and might not otherwise be undertaken if not provided as part of the appeal scheme, or at least would be introduced earlier than would otherwise be the case.<sup>35</sup> Measures could be taken by the operator of the proposed facility to safeguard against the stacking of waiting lorries at the entrance to the appeal site.<sup>36</sup> The proposal would include improvements to the access to the appeal site and the nearby junction. Suitable access to the site could be achieved. However, I share local opinion that a pedestrian crossing facility here would not be as useful as one in the vicinity of Old Totnes Road.<sup>37</sup>
38. Any residual transport impacts from the proposed development would fall well short of the severe impact that would warrant refusing the appeal on transport grounds in accordance with the advice in paragraph 32 of the *Framework*. I am satisfied that the proposal would not be at odds with that part of WLP Policy WPP21 which provides that development which would generate HGV

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<sup>31</sup> ID21.3.

<sup>32</sup> ID43.1 and ID43.2.

<sup>33</sup> ID103.

<sup>34</sup> ID64 and ID66.

<sup>35</sup> ID38.1 and ID38.2.

<sup>36</sup> ID98.

<sup>37</sup> ID59.

movements that could not be satisfactorily accommodated on the local highway network would not be permitted. I find no grounds that indicate either that the appeal should be dismissed for highway safety reasons, or that likely adverse traffic impact would weigh significantly against the proposed development.

#### *Nature conservation*

39. The appeal site has considerable nature conservation interest and is used by protected species. It is an important site for bats, with 12 out of a possible 18 species recorded on site. It is traversed by a strategic flyway associated with the South Hams SAC, as identified in Natural England's (NE) South Hams SAC greater horseshoe consultation zone guidance. It is estimated that the site is used as a commuting route by over 300 of the 1,000 greater horseshoe bats in South Hams SAC, which is about 5% of the total UK population. Caves within Potter's Wood SSSI are used by hibernating bats. The spur proposed to be removed contains 0.12 ha of semi-mature broad-leaved woodland, which includes hazel dormouse habitat.<sup>38</sup> The site contains nesting peregrine. There is evidence that Dean Burn is used by otters. Concern has also been raised about the effects on Great Crested Newts, reptiles and other wildlife. DCC in determining the application conducted an Appropriate Assessment pursuant to the Habitats Regulations and concluded that any residual effects on the strategic flyway would not constitute an adverse impact on the integrity of South Hams SAC.
40. The SoCG provides that the appeal proposal meets the requirements of the Conservation of Habitats and Species Regulations 2010, and accords with relevant development plan policies for the protection and enhancement of nature conservation interests.<sup>39</sup> This is disputed by BCF. In particular BCF does not consider that sufficient survey work has been undertaken. It suggested at the Inquiry that additional surveys for bats at dawn, and to establish the range or variation in numbers using the flyway, along with other wildlife surveys, would be necessary. Since the Council's determination of the application additional survey work has been undertaken and further mitigation measures have been considered in a revised Landscape and Ecological Mitigation Plan (LEMP).<sup>40</sup> I am satisfied that the evidence available is adequate to properly assess the effects of the proposal in accordance with relevant statutory and policy requirements.
41. The LEMP is an integral part of the appeal scheme, and in accordance with the judgment in *Hart DC v Secretary of State for Communities and Local Government Luckmore Limited Barratt Homes Limited and Taylor Wimpey Developments Limited Natural England*, I have had regard to it in considering whether the proposal would have likely significant effects on the designated European sites. In doing so I have had regard to the precautionary principle. A risk of significant effects exists if it cannot be excluded on the basis of objective information, in the light of the best scientific knowledge in the field, that the project would have significant effects on the conservation objectives of the designated SAC.

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<sup>38</sup> The majority of the vegetation on the spur (0.25 ha) was removed in 2012 under the mining permission, with hazel dormouse displaced to adjacent woodland in accordance with a European Protected Species Licence issued by NE.

<sup>39</sup> SoCG paragraphs 5.8 and 5.13.

<sup>40</sup> ID30.1.

42. NE required assessment of the effects on migratory salmon in the River Dart in relation to the Dartmoor SAC, and it subsequently concluded that subject to the water quality of Dean Burn being maintained the proposal would not have a likely significant effect on the Dartmoor SAC. Given the mitigation measures within the scheme to prevent water pollution, I am satisfied that the proposal, either alone or in combination with other plans or projects, would not have likely significant effects on the conservation objectives of Dartmoor SAC, which amongst other things, seek to maintain supporting processes on which habitats of qualifying species rely.
43. The conservation objectives of South Hams SAC include, amongst other things, avoiding significant disturbance of qualifying species, ensuring the integrity of the site is maintained, and that the site makes a full contribution to achieving Favourable Conservation Status of qualifying features. There is evidence that the removal of the spur would not significantly affect the greater horseshoe bat flyway. Furthermore, the LEMP provides measures to safeguard the flyway through the appeal site, both during the construction and operation of the proposed facility.
44. These measures include restrictions on site opening hours, provisions for emergency access, along with additional restrictions on vehicle movements in the commuting period for parts of March and October. It includes protection of habitat along the commuting route and the avoidance of any obstructions, along with planting and management to increase bat habitat along the route. The proposal includes a lighting scheme which demonstrates that illuminance along the bat flight path would be below 0.56 lux, even without the additional screening provided by the proposed planting.<sup>41</sup> NE is satisfied that the revised lighting proposals with a maximum of 0.56 lux would be sufficient to prevent detrimental impact upon greater horseshoe bat commuting activity. This was accepted by the experts at the Inquiry.
45. BCF refers to advice about Natura 2000 sites, and doubts the likelihood that mitigation would remain effective in perpetuity.<sup>42</sup> However, the examples cited by BCF about effectiveness concern provisions for bats crossing major roads, which is not comparable with the circumstances that apply here.<sup>43</sup> Lighting design could be controlled by condition, and illuminance measured and enforced. Measures in the LEMP would provide for effective monitoring and enforcement. I am satisfied that the extensive evidence before the Inquiry, taking into account the LEMP, indicates beyond reasonable scientific doubt, that the proposal, either alone or in combination with other plans or projects, would not have likely significant effects on the conservation objectives of South Hams SAC. Accordingly, there is no need for me in determining this planning appeal to undertake an Appropriate Assessment. However, European Protected Species (EPS) that use the appeal site include bats, otters, Great Crested Newts and hazel dormice, and I turn next to the effects of the proposal on EPS.
46. Measures in the LEMP to provide for greater horseshoe bats would also be beneficial for other bat species that frequent the site. The proposed planning conditions would restrict blasting and require it to accord with an approved programme. NE is satisfied that a limited period for blasting would prevent

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<sup>41</sup> LEMP Appendix 7.

<sup>42</sup> ID67.

<sup>43</sup> ID71, ID72 and ID73.

- potential adverse impacts on bats hibernating in Potter's Wood caves.<sup>44</sup> Other measures in the LEMP would appropriately deal with effects on commuting and foraging habitat and potential roosting sites for other bat species.
47. The experts could not agree whether the spur includes ancient woodland, which for the purposes of the *Framework* is defined as an area that has been wooded continuously since at least 1600 AD. If it did the *Framework* provides that planning permission should be refused for development which would result in the loss of such irreplaceable habitat unless the need for, and benefits of, the development in that location clearly outweighed the loss.
48. The proposed off-site replacement tree planting on a steep area currently overgrown with bracken to the south of the appeal site within Potter's Wood SSSI would require consent from NE.<sup>45</sup> However, I have no reason to doubt that a scheme could be devised that could be consented. This planting would be beneficial in the long term, but it would take many years for it to offer comparable habitat to the semi-mature trees that would be lost from the spur. The loss of semi-mature woodland and hazel dormouse habitat is a consideration which weighs against the proposal. This would be so irrespective of whether the spur includes any ancient woodland.
49. There is also local concern about the effects of the proposal on otters.<sup>46</sup> Risk from traffic at the site access is of particular concern in this respect, but it seems to me likely that otters would use the route available to them under the site entrance road.<sup>47</sup> The LEMP makes provision for monitoring otters. Subject to appropriate controls on surface water discharge, I do not consider that the proposal would have a significant effect on otters.
50. Appropriate measures are proposed in the LEMP for the monitoring of peregrine and for any necessary avoidance and mitigation. The circumstances which applied to a proposed change of use for outdoor activity, including climbing, at Merrivale Quarry are not comparable to the situation which applies here. Subject to appropriate conditions, I do not consider that the proposal would have a significant adverse effect on protected birds.
51. The Deptford pink is a rare plant which has been recorded in Buckfastleigh, in a location some 600 m from the appeal site and about 100 m from the proposed HGV route.<sup>48</sup> However, there is no evidence that the appeal scheme would adversely affect these areas. I am also satisfied that survey work to identify the plant within the appeal site was adequate.
52. There is local concern about the effects of the proposal on Great Crested Newts.<sup>49</sup> However, there is no compelling evidence to suggest that amphibians in the area could not be safeguarded by measures in the proposed LEMP and Construction Environmental Management Programme (CEMP). The same would apply to badgers, reptiles and birds. Given my findings below about air and water pollution, I do not consider that the proposal would significantly affect the British Cave Shrimp or other invertebrates. For similar reasons, the proposal would be unlikely to harm lichen or bryophyte habitats on the higher

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<sup>44</sup> ID82. Restriction of blasting is proposed to within the period from 1 September to 30 November unless approved by the waste planning authority following an assessment of the likely effects on bats and nesting birds.

<sup>45</sup> ID86.

<sup>46</sup> ID55 and ID45.

<sup>47</sup> ID46.

<sup>48</sup> ID90.

<sup>49</sup> ID52 and ID68.

slopes and terraces on the rock faces.<sup>50</sup>

53. The creation of a wildlife pond and grassland habitat/bee meadow to the south of the quarry at the edge of the SSSI would be beneficial to wildlife. So too would be the contribution towards 0.37 ha of new woodland as part of the South Devon Biodiversity Off-Setting scheme. Extension of the hedgebank near to the western perimeter of the site would be of some wildlife benefit, as would the proposed wetland swale and planted bund around the northern half of the void. The scheme would encompass a small part of Potter's Wood SSSI, but this area is recently worked bare ground/spoil of the quarry and the extant permission provides for further extraction in this area. Accordingly, I find for Potter's Wood SSSI, no conflict with WLP Policy WPP6, which states that proposals would not be permitted if they were likely to harm the particular wildlife interest or geological interest of an SSSI.
54. Nevertheless, it was not disputed at the Inquiry that an EPS licence from NE would be likely to be required to enable the project to proceed. Even if it could be shown that favourable conservation status of EPS in their natural range would be maintained, it seems to me that there might be some doubt whether imperative reasons of overriding public interest of a social or economic nature would exit for the proposed development, which for the reasons set out later in this decision, I have found would not deliver sustainable waste management. Furthermore, and again for the reasons set out below, the evidence before me does not demonstrate that there would be no satisfactory alternative. LP Policies C16 and C17 would be relevant in this regard. Policy C16 seeks to ensure the protection of species and to safeguard their habitats where development proposals would affect sites supporting species specially protected by law. Policy C17 reflects the provisions of the EC Habitats Directive concerning priority species. For the reasons set out in the waste management section of this decision, the evidence before the Inquiry does not give me confidence that the Habitats Directive derogation tests could be met.
55. DCC and the appellant consider that the proposal would include provisions to maintain the extent, diversity and local distinctiveness of the County's nature conservation resource, and so find that it would comply with WLP Policy WPP14. I am not convinced that this would be so because of the loss of semi-mature woodland on the spur, which includes hazel dormouse habitat and possibly some ancient woodland. It seems to me that this would result in some harm, albeit future off-site planting might in the long term provide compensation. Furthermore, even if the scheme did comply with WLP Policy WPP14, this policy only requires a proposal to 'maintain' the nature conservation resources, which just means to cause to continue, keep up or preserve what exists. I am not convinced that, overall, the proposal including the measures in the LEMP, would mean that the appeal scheme would result in long term benefits for biodiversity, which was the appellant's submission to the Inquiry.<sup>51</sup>
56. The planning status of the appeal site, which requires restoration for nature conservation on cessation of mining, means that it currently has potential in the longer term to be a biodiversity asset of considerable importance, particularly as an area valued for its wildness. There is no compelling evidence to suggest, in the event that the appeal was dismissed, that this would not be

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<sup>50</sup> ID86.

<sup>51</sup> Inspector's question to Mr Mellor.

a likely future outcome in the long term. However, activity associated with the proposed waste management facility would be likely to have an adverse impact on species that preferred wild and secluded places. Some species might not habituate to activity at the proposed facility, and its concrete-capped surface would limit habitat creation compared with the likely restoration of the quarry in accordance with the ROMP conditions. Even with the extensive mitigation measures set out in the LEMP, including off-site planting, it seems to me that in the long term the site restored under the current planning permission would be more valued for its biodiversity than would be so if it was developed for the proposed waste management scheme. This is a material consideration which weighs against the proposal because the *Framework's* aims for sustainable development include moving from a net loss of biodiversity to achieving net gains for nature. Taking all these considerations into account, I find that likely harm to biodiversity is a consideration in this case to be weighed against the benefits of the proposal.

#### *Air quality and water pollution*

57. DCC takes no issue regarding air quality, but local concerns about dust and particulate matter, PM<sub>10</sub> and PM<sub>2.5</sub>, were raised at the Inquiry.<sup>52</sup> Analysing past complaints about operations at the quarry is not very helpful in determining this appeal because the proposed development would be required to comply with a specific dust and air quality management plan devised and approved to deal with the particular operations associated with the proposal.<sup>53</sup> The Technical Guidance to the *Framework* refers to research that indicated measures to control PM<sub>10</sub> might be necessary if residential property or other sensitive uses were within 1,000 m of haul roads, crushers and stockpiles. Dwellings in the locality of the appeal scheme would be within this distance of such activities, but I am satisfied that sufficient information has been provided to demonstrate that dust emissions could be controlled, and that any such pollution or amenity considerations could be addressed by planning conditions.
58. Considerable evidence was adduced about likely emissions from HGVs. However, the evidence indicates that the magnitude of change in PM<sub>2.5</sub> emissions from HGVs associated with the appeal scheme would, in terms of annual mean concentrations, be imperceptible.<sup>54</sup> Even allowing for short term events, or peaks of emissions at times, there is no compelling evidence that the proposal would have a significant adverse effect on health by reason of particulate matter. There is no technical evidence to indicate that air flow patterns around the quarry would result in dust depositions that could not be controlled by appropriate prevention and suppression measures.<sup>55</sup> The EA has advised that as well as a monitoring and management scheme a specific EP condition would be imposed in relation to dust pollution nuisance.<sup>56</sup> Teignbridge District Council would be responsible for issuing permits for mobile plant such as the crushing plant, and it has no objection to the adequacy of the proposed dust management and monitoring plan.<sup>57</sup> With adequate controls, properly enforced, I do not consider that any significant adverse effects of the appeal scheme arising from impacts on air quality would weigh against the proposal.

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<sup>52</sup> ID48.1, ID48.2 and ID56.

<sup>53</sup> ID27.

<sup>54</sup> ID87.

<sup>55</sup> ID87 and ID90.

<sup>56</sup> ID37.

<sup>57</sup> ID21.2.

59. Buckfastleigh is an area of high rainfall and there is considerable local concern about the effects of the proposed development on groundwater quality, where local dwellings and businesses rely on water supplies extracted from local aquifers.<sup>58</sup> There is also concern about down-stream water pollution affecting the River Dart.<sup>59</sup> Little evidence was available to the Inquiry about groundwater in the locality. However, from the evidence available it seems unlikely, even allowing for the possibility of perched water tables and complexities associated with the local geology, that any contamination from the proposed facility would affect springs or water extraction at some distance upstream of the appeal site, or at elevated locations compared with the appeal scheme.<sup>60</sup> Even if there was hydraulic connectivity between the appeal site and local aquifers such that extraction sites were affected, it seems to me that water pollution would be unlikely. This would be a matter that would be addressed in any EP issued for the appeal scheme, and the EA has indicated that the proposed impermeable surfaces and sealed drainage of stockpiled areas would provide acceptable protection of ground water.<sup>61</sup> The EA would be responsible for ensuring that this would be so. It would also control discharges into Dean Burn. With appropriate enforcement the proposal would be unlikely to result in water pollution downstream of the appeal site.
60. The *Framework* advises that it should be assumed that the pollution control regime will operate effectively. Planning conditions could deal with any amenity issues arising from air and water quality not addressed by pollution control permits. Subject to the imposition of appropriate planning conditions, I do not consider that either dust, air quality or water pollution considerations would weigh significantly against the proposal. I find no conflict with the provisions in LP Policy ENV9 that deal with pollution to land, air or water. For similar reasons, the proposal would accord with WLP Policies WPP17 and WPP22.

#### *Local economy*

61. The proposal would create an estimated 12 new jobs. There would be some economic benefits to the local economy in terms of direct and indirect jobs. Some benefits would also result from the provision of a C&D waste recycling centre for local businesses, and the supply of secondary and recycled aggregate for construction.
62. There is local concern that the proposal would have a negative effect on measures planned for the regeneration of the local economy and the development of important sites within the town.<sup>62</sup> Given my findings about the likely effects of the proposal on the character and appearance of the area, I do not consider that the appeal scheme would unduly impact upon local regeneration initiatives or the tourist economy.

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<sup>58</sup> ID66, ID36.2, ID69 and ID88.

<sup>59</sup> ID94.

<sup>60</sup> ID34, ID44 and ID53.

<sup>61</sup> ID15.

<sup>62</sup> ID41.1-3 and ID83.



### *Other issues*

#### Health

63. IBA is not inert and local concerns about health issues are understandable. Fear about the consequences of the proposed development on the health and well-being of local residents, and concern about adverse implications for local businesses, is a material consideration in this case, and I have given it some weight.<sup>63</sup> The Household Survey undertaken by BCF highlights some of these concerns. However, the proposal was the subject of a Health Impact Assessment, with input from the Primary Care Trust. This concluded that there would be no specific or evidenced threat to public health from the appeal scheme if appropriate conditions were imposed. It seems to me that these health fears underestimate the efficacy of the pollution controls which would be likely to apply to such a waste management facility. I find no conflict with WLP Policy WPP22 concerning health. Furthermore, PPS10 advises that modern, appropriately located, well-run and well-regulated, waste management facilities operated in line with current pollution control techniques and standards should pose little risk to human health. This limits the weight that should be given to health fears, and anxiety about negative implications for local businesses, in determining this appeal.

#### Minerals

64. The proposal would sterilise about 372,000 tonnes of dolerite for the period that the waste facility existed. This would be a small proportion of the crushed rock extracted annually in Devon.<sup>64</sup> DCC does not consider that this is an issue that would justify dismissing the appeal. However, dolerite is a hard rock of economic importance, and there is no compelling evidence to indicate that the dolerite within Whitecleave quarry would not be of economic importance in the future. Furthermore, the proposed development would be incompatible with mineral development. It would, therefore, conflict with the provisions of MLP Policy MP13 and WLP Policy WPP19. This conflict with part of the development plan is a consideration to be taken into account in determining how the proposal squares with the development plan as a whole.

#### Flooding

65. The ESA update on flood risk states that with the exception of the site entrance, which is located within Flood Zone 3, the proposed development site is located within Flood Zone 1. But this does not refer to the settlement tanks incorporated within the red line boundary of the appeal site, which appear from my site visit to lie below the level of the site entrance. Given the proximity of Dean Burn to the settlement tanks, I do not consider that there is any technical evidence which rules out the possibility that the tanks lie within Flood Zone 3b functional floodplain.<sup>65</sup>

66. The appellant's argument that the existing settlement tanks would not be new development for the purposes of applying flooding policy does not take into account that the development would change from mining to waste management. The tanks would be part of a waste treatment development, which would be a less vulnerable use for the purposes of Table 2 of the Technical Guidance in the *Framework*. Table 3 provides that such development

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<sup>63</sup> ID36.1, ID63, ID92 and ID93.

<sup>64</sup> ID24.

<sup>65</sup> ID33. I have had regard to ID85 which refers to circumstantial evidence that the area did not flood in the recent flooding events in Buckfastleigh, but I do not consider this to be decisive.

should not be permitted in Zone 3b. If the tanks were in Flood Zone 3a then the Sequential Test would apply because the proposal is not a minor development or a change of use. The possible use of reed beds as an alternative to the settlement tanks was discussed at the Inquiry, and reference was made to their use in the EP granted for the Ince Marshes IBA Aggregate Facility.<sup>66</sup> The Inquiry was informed that the site shown on the appeal scheme for staff car parking could be used for reed beds if required. An area outside of Flood Zone 3 might be capable of being used in this way, but there is no evidence to indicate that there would be sufficient space within the site for both settlement tanks/reed beds and parking, as part of this proposal. There is insufficient information available to demonstrate that this is a matter that could be addressed by the imposition of a planning condition.

67. The proposed development has the potential to increase the risks associated with flooding by releasing contaminants from the settlement tanks. It seems to me that the siting of such a facility outside Flood Zone 3 would be sequentially preferred. The evidence adduced falls short of what would be required to find that the proposal complies fully with both WLP Policy WPP18, which refers to measures to mitigate impacts, and with paragraph 101 of the *Framework*.

#### Scheme of works

68. BCF is critical of the outline programme of the CEMP, but I consider that it is sufficient to assess whether planning permission should be granted. I also note that the suggested conditions would appropriately require a more detailed scheme of works to be approved prior to the commencement of any development.

#### *Waste management*

69. The proposal would divert a substantial amount of IBA from landfill, but it would also use 120,000 tonnes of C&D waste to raise the level of Area B to 60 m AOD. In Phase 2 the capped surface of Area B would have an area of 1.8 ha. A key planning objective of PPS10 is to deliver sustainable development through driving waste management up the waste hierarchy, addressing waste as a resource and looking to disposal as the last option, but one which must be adequately catered for. In the waste hierarchy 'disposal' is the least desirable solution where none of the options higher in the hierarchy is appropriate. Where waste can serve a useful purpose by replacing other materials that would otherwise have been used, that would be 'other recovery', and higher in the waste hierarchy. In terms of the planning balance which applies here, the benefits of a recovery operation that helped deliver sustainable development by driving waste management up the hierarchy would be a weighty consideration to balance against any adverse effects of the scheme. But I am not convinced, for the following reasons, that the evidence adduced demonstrates that this scheme would be a recovery operation.
70. The appeal scheme would be a recovery operation only if the infilling of Area B was recovery by construction, which was the basis of the appellant's submission put to the EA in pre-application discussions. However, a recovery operation must be designed to achieve an effective and lasting beneficial use, the materials should be suitable, and the minimum amount of waste used to achieve the intended benefit. Demonstrating a realistic likelihood of the project

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<sup>66</sup> CD S2.

being undertaken using non-waste materials would be a strong indicator that the activity was a recovery operation. These are considerations that would inform the EA's determination of any application for an EP, but they are also relevant in determining whether the proposal would accord with national and local planning policy about sustainable waste management.

71. Phase 2 of the scheme includes raising the level of Area B from 48.5 m AOD to 60 m AOD with inert material from the MRF, from demolition works undertaken in the region by SGDL, and other inert C&D materials brought in from other contractors. Given the size of the void proposed to be so filled, this would amount to a substantial infill operation. The Council raised no objection on these grounds, but there is local concern about the proposed use of this void, and whether it would deliver sustainable waste management.<sup>67</sup> I asked questions about this at the Inquiry.
72. As part of pre-application discussions for an EP the EA advised in May 2013 that the scheme would be a recovery operation. In coming to this finding the EA asked whether any alternative surface water management options were available on site to prevent surface water collection within the proposed scheme area, other than filling to the proposed heights. The response from the appellant was that the steep quarry faces left no room for interception options, and that therefore the only solution was to remove the water from the quarry void once it had flowed down the face. I am not convinced that this response considered the relevant issues which apply here in sufficient depth.
73. The appellant's submission to the EA was based on the conceptual model that Area B once filled to 48.5 m AOD with dolerite would progressively fill with incident rain water and not drain away into the rock mass, and so would require ongoing pumping. However, Phase 2 of the scheme proposes a concrete cap for Area B draining to a lagoon. It would also include a perimeter drain around the steep sloped quarry face, which would drain into Dean Burn. The impermeable cap and perimeter drain would reduce the amount of surface water that could potentially find its way to the bottom of the void. If there was hydraulic connectivity between the base of the void and nearby aquifers, then the void would only fill above the height of the water table if the rate of inflow from surface water exceeded the rate of drainage into the rock mass. Another factor which might affect this water balance is raised in the ES Further Information. With respect to possible contamination within the trapped groundwater in the filled void, it advised that a sump could be used to check the level and quality of water in the quarry fill, and this facility could be used to pump out groundwater should remediation be required.<sup>68</sup> It seems to me that this possibility of pumping might indicate that there could be no overriding need for the surface level to be fixed at 60 m AOD. It is therefore necessary to consider in more detail the basis for the requirement in the scheme for the 60 m AOD surface level.
74. The conceptual hydrology model now relied upon by the appellant provides, in summary, that the quarry acts as a bucket and would fill with water to a lip or rill at about 58/59 m AOD before draining down to Dean Burn. However, a geotechnical assessment prepared in 2007 pursuant to the Quarry Regulations 1999 states that the topographical survey indicates that Dean Burn near to the site entrance is at circa 47 m AOD, and that the lagoon contained within the

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<sup>67</sup> ID91 and ID94.

<sup>68</sup> ES Further Information October 2011 paragraph 10.7.6.

southern extension has an ambient water level of circa 50 m AOD. The assessment states; thus it is reasonable to conclude that if the pumps were switched off, the water level in the quarry would over time recover to between 47 m and 50 m AOD.<sup>69</sup> However, the appellant refers to survey data which indicates that Dean Burn near to the entrance of the appeal site is about 45 m AOD.<sup>70</sup>

75. The assessments in the ES were based on professional judgement, in the absence of any data on the existing quality and quantity of groundwater in the area, or about hydrogeological properties and demonstrated karstic pathways. The geological sections included in the ES were to be considered as a simplification of the actual conditions, and did not include folding or faulting structures that were expected to occur on a local scale. These showed the bottom of the quarry intersecting limestone dipping beneath the igneous rocks. The ES estimated groundwater levels to be around 50 m to 60 m at the quarry with groundwater flow to the north and feeding the baseflow to Dean Burn, and that the un-pumped level to which the water rises in the quarry base would reflect the local groundwater level. It also stated that there was no indication that groundwater would rise to the rim of the quarry on the north-western side. Nonetheless, the ES stated that should there be some hydraulic connection it would be anticipated that the quarry would contain groundwater that could rise to an elevation of around 60 m AOD.<sup>71</sup> It appears that the appeal scheme was devised with a 60 m surface level on this basis.
76. The appellant's October 2011 revisions to the geological cross-sections showed the limestone dipping more steeply and below the base of the quarry, but were again qualified as a simplification, not including folding and faulting. Photographs of the quarry walls and aerial imagery showed a fractured dolerite rock mass, but it was concluded that the dolerite does not permit significant groundwater movement. It was also concluded that although the water level in slates and igneous rocks, other than the quarried dolerite, was anticipated to be variable with local perched water tables, there was no meaningful groundwater level in the quarry.<sup>72</sup>
77. The EA found the appellant's conceptual model plausible, but suggested that the appellant carry out a water balance calculation to consider whether known inputs to the quarry (rainfall and surface drainage) matched known outputs (pumped drainage).<sup>73</sup> The rainfall/pumping data submitted to the Inquiry by the appellant is not comprehensive enough to draw any valid conclusions about the balance between surface water inflow and possible sub-surface drainage.<sup>74</sup> In the absence of some reliable evidence about the local hydrogeology, the necessity for a 60 m AOD surface level for the proposed capped surface has not been demonstrated. I have taken into account that surface water from the capped area and the outfall from the perimeter drain would need to drain to Dean Burn, and that the 58/59 m AOD quarry lip would be a design constraint. The outfall from the settlement lagoon within the IBA processing area is proposed to be via a device or small pipe to control the rate of flow, and this would have to incorporate an overflow facility. However, there is no evidence that consideration was given to a design for such an outfall other than that

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<sup>69</sup> ID9.

<sup>70</sup> Mr Robinson's rebuttal Appendix 1.

<sup>71</sup> ES paragraphs 10.3.2, 10.4.4, 10.9.1, 10.5.3 and 10.4.12.

<sup>72</sup> ES Further Information paragraphs 10.4.19, 10.4.33 and 10.4.34.

<sup>73</sup> ID15.

<sup>74</sup> ID19.

based on a 60 m AOD surface level. If such a scheme was feasible, it would mean that infilling to 60 m AOD would not utilise the minimum quantity of C&D waste necessary to achieve the intended benefit.

78. There is no evidence that any alternative to a 60 m AOD surface level was ever considered in the design process. This is evident from the findings of the noise assessment, undertaken after the finished level for the concrete capped surface had been fixed, of a requirement for a noise berm or bund 3 m high to screen the mobile crushing plant.<sup>75</sup> It does not appear that the need for this bund was taken into account in determining either how much of the existing spur would be required to be removed, or the requirement for a 60 m AOD surface level for the facility. This also indicates to me that the scheme might not minimise the amount of waste used.
79. For the likelihood that the scheme would be a disposal installation to be ruled out, substantive evidence would be necessary to verify the conceptual model on which the 60 m AOD level relies. If this level was not required for sound design considerations, then the scheme would be a disposal installation. A disposal operation of this scale importing C&D waste could undermine efforts to encourage recycling. I am not convinced that the appeal scheme would utilise only the minimum amount of waste necessary to achieve a beneficial use that would qualify as a recovery operation. Furthermore, there is nothing to indicate any likelihood that Area B of the project would be, in the absence of the infill proposed in the appeal scheme, undertaken with non-waste materials. The appellant acknowledges that the mass importation of virgin material from off-site sources is not considered practicable, environmentally sound or commercially realistic.<sup>76</sup>
80. In the absence of evidence to demonstrate that the appeal scheme would qualify as a recovery operation, I consider that it would be a waste disposal installation. Furthermore, as a disposal operation, there is no convincing evidence that the appeal site would be part of the integrated and adequate network of waste disposal installations, which in accordance with the rWFD, would enable waste to be disposed of in one of the nearest appropriate installations, by means of the most appropriate methods and technologies, in order to ensure a high level of protection for the environment and public health.<sup>77</sup> Buckfastleigh lies adjacent to Dartmoor with few settlements to the north and west, and so the main likely sources of C&D waste would be the urban areas around Plymouth, Torquay and Exeter. Notwithstanding the agreed position between the appellant and the Council that there is a need for additional capacity for the recycling of C&D waste within the south Devon area, there is nothing to indicate that the appeal site would be one of the nearest installations to the origin of the C&D waste in the context which applies here.<sup>78</sup> The evidence does not demonstrate that the scheme would gain support from WLP Policy WPP32, because this policy requires consideration to be given to re-use or recycling on-site or as near as possible to the site of generation.
81. In the absence of evidence to indicate otherwise, I consider that the proposal would be a disposal installation, which would not move the treatment of waste up the waste hierarchy. The proposal would not, therefore, deliver sustainable

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<sup>75</sup> ID21.1.

<sup>76</sup> Mr Miles rebuttal Appendix 4 Waste Recovery Plan paragraph 4.5.

<sup>77</sup> rWFD Article 16. A key planning objective of PPS10 is to enable waste to be disposed of in one of the nearest appropriate locations.

<sup>78</sup> SoCG paragraph 5.1(c).

waste management. I find that the proposal would, for the reasons set out more fully below, conflict with WLP Policies WPP4, WPP20 and WPC1, and would not accord with PPS10.

### *Alternatives*

82. The Council accepts that there is no general requirement to demonstrate that a proposal is an optimal solution or to carry out an assessment of alternative sites. But the appellant acknowledges that alternative sites are capable of being a material consideration. WLP Policy WPP20, albeit not fully in accord with the provisions of the rWFD for recovery operations, states that proposals for waste management facilities should seek to minimise the need to transport waste, especially by road. It was evident from my site visit to Devonport and Plymouth that practical difficulties, including possible double-handling, would render transport of IBA by rail or water problematic. It seems to me likely that IBA from the Devonport EfW facility would be moved by road. The policy requirement to reduce greenhouse gas emissions, and to therefore minimise transport distances, renders consideration of alternative sites a material consideration. But this is not the only reason here to consider alternatives.
83. The supporting text to WLP Policy WPC2 states that in determining applications authorities should seek to minimise any adverse environmental impacts. Furthermore, the *Framework* advises that the planning system should contribute to and enhance the natural and local environment by, amongst other things, minimising impacts on biodiversity. Given that the appeal scheme would result in the loss of semi-mature woodland on the spur, the availability of alternatives is a relevant consideration to be weighed in the balance in this case. This finding is in accordance with the judgment in *Bovale Limited v Secretary of State for Communities and Local Government and Hereford Council*.
84. However, the issue before me is not whether an alternative scheme might be more appropriate than that proposed, but whether an available alternative might meet the need in a way which could be less objectionable than the appeal scheme. If so, this would add weight to arguments in favour of dismissing the appeal. If not, this would add weight to the case that the appeal should succeed. A lot of time was taken at the Inquiry considering the marketability of IBAA and the likely effects on the minimisation of travel distances. This dealt with factors like the location of the proposed facility in relation to the source of the IBA, and the possible location of markets for IBAA. However, if the scheme was a recovery operation for IBA, then the provisions in the rWFD regarding the proximity principle would not apply.
85. Furthermore, without a product to market there is little evidence about how the IBAA would be likely to be used or where its final destination might be. There is evidence from marketing information for an existing IBAA product that the prerequisites for its safe use include its application solely under a watertight surface like concrete or asphalt, its use outside of water protection areas, flood areas or hydro-geological sensitive areas, and requires a minimum separation distance of 1 m above the highest ground water level, and a minimum distance of 0.5 m from buildings with a risk of corrosion.<sup>79</sup> Such requirements might limit the opportunities for the use of IBAA, and so mean that it would need to be transported some distance to sites where suitable conditions for its use were

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<sup>79</sup> Information about *Granova* at Appendix 20 to Ms Gilpin's evidence.

available. The WLP acknowledges the need for such exceptions. Nonetheless, the *Framework* states that to support the move to a low carbon future authorities should plan for new development in locations and ways which reduce greenhouse gas emissions. Therefore the origin of C&D waste transported to the appeal site is also a relevant consideration in this regard. I deal with the evidence about alternatives with these considerations in mind.

86. DCC no longer contends that the Coypool China Clay Works site would be an alternative for the appeal proposal. I have no reason to find otherwise. Three other alternative sites were suggested by DCC. Land west of Ernesettle Lane is 3 km from the Devonport EfW facility and is allocated in the Plymouth Waste Development Plan as appropriate for strategic waste management. There is a care home and recreation uses nearby, which I saw on my site visit. However, there is no evidence that these uses would rule out the possibility of designing an acceptable waste management scheme that would serve the same function as the appeal scheme. This site would reduce the travel distances considerably compared with the appeal scheme. But an email from Plymouth City Council's Head of Land & Property states that the site is part of the City Council's land holding of strategic importance in connection with future development plans for the north of the City and therefore could not be considered available for sale or lease for other purposes.<sup>80</sup> No further information is before the Inquiry about this need, or how it would compare with the need for the proposed waste management facility. However, the reluctance of the land owner raises serious doubts about whether the site would be made available.
87. I was not able to see the Moorcroft Quarry site as part of my site visit. However, it is allocated for waste uses and is much closer to the Devonport EfW facility than the appeal site. The Inquiry was not able to establish the extent to which the site had been used as a silt pond, or the likely implications of such use for any redevelopment scheme. DCC considers that the Moorcroft Quarry site is a potentially preferable site, which warrants further exploration before permission was granted for a scheme further afield. However, the inability of any party to gain access to the site, along with the owner's earlier advice that there was no interest in processing IBA and that there was no land available for such use, suggests that its availability is questionable.
88. DCC argues that the Heathfield Industrial Site would be preferable if the market for the products from the proposed waste management facility were to be located in the Exeter sub-area. DCC also say that it would have a much shorter, more sustainable, connection for C&D waste than the appeal site. The site is allocated for waste management, but has an unimplemented planning permission for housing and business use, which was considered by the Inspector who dealt with that appeal to be the best means of protecting the site's ecological interest. There may be doubts about the viability of the permitted scheme and whether it would be implemented, but it seems to me that the prospect of this site being used for housing would discourage the landowner from considering offers for an alternative waste management use.
89. Other possible sites were suggested to the Inquiry.<sup>81</sup> There is no evidence that alternative land might become available at Lee Moor or Hemerdon outside areas allocated for china clay waste.<sup>82</sup> There is limited land available at

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<sup>80</sup> Mr Miles Appendix 7.

<sup>81</sup> ID31.1-3, ID79.1, ID79.2, ID80, ID97 and ID102.

<sup>82</sup> ID101.

Chelson Meadow, and the site is under consideration for use as part of proposals for the rationalisation of Plymouth City Council's depots. Land in the vicinity of Marshmills rail sidings would be close to the EfW facility, but there are doubts about whether sufficient land would be available. The site is not allocated for waste purposes and it has potential for inter-modal freight activity. There is nothing to indicate that it might be available for a waste management facility. Suggestions that IBA could be transported by rail or water to more distant treatment plants lack details about the operational capability of these plants, and the practicalities and cost implications of such transshipments. Sites near Exeter (Hill Barton and Greendale) would increase travel distances for IBA considerably.

90. DCC is critical of the appellant's alternative sites assessment, but I am satisfied that this reasonably complies with the requirements set out in the EIA Regulations. Furthermore, it seems to me that there should be some onus on those advocating alternative sites to provide evidence that a preferable alternative is available, or at least has reasonable prospects. No such evidence was adduced at this Inquiry.
91. The evidence adduced does not demonstrate that alternative sites are suitable, deliverable and developable, and would meet the need in a way which would be less objectionable than the appeal scheme. This is potentially a consideration that would weigh in favour of allowing the appeal. However, it does not take into account the possibility of meeting the need by an alternative proposal. Given my concerns about the justification for infilling Area B with C&D waste to 60 m AOD, I do not consider that there is enough evidence to rule out the possibility of an alternative scheme that might meet the need in a way which could be less objectionable than the appeal scheme. However, this finding is not sufficient to add weight to arguments in favour of dismissing the appeal. On the other hand, there are no grounds to find that the absence of alternatives is a consideration which would add weight to the case that the appeal should succeed. Therefore, the issue of alternatives is not one that weighs significantly, either for or against the proposal, in the planning balance which applies here.

### *Planning balance*

92. As set out at the start of this decision a balancing exercise must be performed to weigh the benefits of the proposed waste management facility against its disadvantages. The appeal scheme would not unduly affect the character or appearance of the area. Given the extant mining permission the proposed development would not have an unacceptable adverse effect on the living conditions of neighbouring residents, with the exception of some disturbance at times from HGVs. It would not significantly increase the risk to those using the local road network. With appropriate controls it would not result in pollution or impair health, and so not much weight can be given to health fears. The proposal would not impair local initiatives for regeneration or significantly affect tourism or other local businesses. The scheme would beneficially facilitate the processing of IBA and the recycling of C&D waste. It would also contribute to the local economy.
93. However, removal of the spur and its vegetation would result in harm to wildlife. In the longer term biodiversity would be impaired by a permanent permission for waste management. This is an important site for nature conservation and biodiversity considerations weigh heavily against the scheme.



In the absence of evidence to indicate otherwise, I have found that infilling with inert C&D waste would be a disposal operation. The evidence adduced does not demonstrate that the appeal scheme would be a sustainable waste management operation. This is a consideration which also weighs heavily against the proposal.

94. The planning obligation is a material consideration to which I have given weight in determining this appeal. There are potentially some advantages in revoking the mining permission in favour of the appeal scheme, insofar as there might be some short term benefits for the local community in terms of restrictions on working hours, vehicle movements, blasting and noise limits. The appellant argues that it would create some certainty. But the extant permission provides for the eventual restoration of the site for nature conservation, whereas the appeal scheme would provide a permanent facility for waste management. The appellant does not place great weight on the revocation of the mining permission because of the limited economic reserves that remain within the quarry. Notwithstanding some benefits of revocation, it would remove the current restoration requirements, and so I do not consider that it weighs in favour of allowing the appeal.
95. Taking all these considerations into account, in my judgement, the benefits of the scheme would not be sufficient to outweigh the harm that would result. I find that the planning balance weighs against the proposal.

#### *Development plan*

96. I am required to decide this appeal having regard to the development plan, and to make my determination in accordance with it, unless material considerations indicate otherwise. In the absence of evidence to indicate otherwise, I have found that the proposal would include a disposal operation, which would not drive waste management up the hierarchy. The strategy for the County is to ensure that the management of waste is as sustainable as possible in accordance with the waste hierarchy, applied flexibly and having regard to the most sustainable waste management method for a particular type of waste (WLP Objectives 4 and 5). It has not been demonstrated that the appeal scheme, which includes an integral element of infilling with C&D waste, would contribute to the achievement of an integrated and sustainable waste management strategy for the County, and so the proposal would not comply with WLP Policy WPP4. This would also mean that the proposal was at odds with the aims of WLP Policy WPC1(i) concerning the waste hierarchy.
97. It has not been demonstrated that a disposal facility in this location would minimise the need to transport waste, and so it would be at odds with the aims of WLP Policies WPP20 and WPC1(ii). This would bring the proposal into conflict with the first limb of WLP Policy WPP4. The available evidence does not indicate compliance with WLP WPP18 concerning flooding. The proposal would conflict with MLP Policy MP13 and WLP Policy WPP19 concerning the sterilisation of mineral resources. The policies cited above are generally consistent with the *Framework*.
98. However, the proposal would gain some support from WLP Policy WPC3 because it would integrate waste management facilities on one site. For the reasons set out above, the proposal would comply with WLP Policies WPP6 concerning harm to SSSIs, and would in part comply with WPP14, except for that part which provides that opportunities will be sought to restore and

enhance key conservation interests. It would also accord with relevant development plan policies concerning development in the countryside. However, the support the proposal gains from relevant development plan policies would be outweighed by conflict with policies concerning sustainable waste management. I find that the proposal would not accord with the development plan when considered as a whole.

#### *National Planning Policy Framework and other material considerations*

99. The *Framework* refers to PPS10. I have found that the evidence before the Inquiry does not demonstrate that the proposal would accord with the advice in PPS10 about sustainable waste management and breaking the link between economic growth and the environmental impact of waste by moving the management of waste up the waste hierarchy of prevention, preparing for reuse, recycling, other recovery, and disposing only as a last resort. This scheme would not help deliver sustainable development through driving waste management up the waste hierarchy, which is a key objective of PPS10. As the scheme would in part be a waste disposal facility, the appellant has not demonstrated that the facility would not undermine the waste planning strategy through prejudicing movement up the waste hierarchy, and so the proposal would not accord with paragraph 25 of PPS10. The favourable consideration to be given to proposals on unallocated sites, as set out in paragraph 24 of PPS10, does not apply in this case. Furthermore, the evidence does not indicate that the proposal would accord with guidance in the *Framework* about flooding.
100. The *Framework* states that pursuing sustainable development involves seeking positive improvements in the quality of the built, natural and historic environment, as well as in people's quality of life, including moving from a net loss of biodiversity to achieving net gains for nature, and improving the conditions in which people live, work, travel and take leisure. I find that the proposed development would not represent sustainable development to which the presumption in favour set out in the *Framework* would apply. National policies, when read as a whole, do not support the proposal. The emerging WMPE does not foreshadow any changes to national policy that would indicate a different finding.

#### **Conclusions**

101. The evidence does not demonstrate that the appeal scheme would deliver sustainable waste management. The proposed facility would have some benefits, but overall I consider that the likely harm to biodiversity and the conflict with waste policy weighs against allowing the appeal. The scheme would not comply with the development plan when read as a whole. Furthermore, it would not accord with national policy. I have taken into account all other matters raised in evidence, but have found nothing to outweigh the main considerations that lead to my conclusions. There are no other material considerations here to indicate that the appeal should be determined other than in accordance with the development plan.
102. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

*John Woolcock*  
Inspector

## APPEARANCES

### FOR DEVON COUNTY COUNCIL:

Rupert Warren QC and when absent Ted Keegan Sue Penaluna	Instructed by Solicitor for Devon County Council.
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He called

Ted Keegan MSc MRTPI MILT	Divisional Director, Jacobs UK.
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### FOR THE APPELLANT:

Mark Westmoreland Smith of Counsel assisted by Claire Brook	Instructed by Claire Brook, Partner, Bond Dickinson LLP.
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He called

Georgina Gilpin Jon Robinson BSc(Hons) MSc MCIWEM CWEM CSci Neil Rugg BSc(Eng) MICE MIET	Finance Director, Sam Gilpin Demolition Ltd. Operations Director, URS Infrastructure & Environment UK Ltd. Principal Traffic Engineer, URS Infrastructure & Environment UK Ltd.
Alfred Maneylaws BSc(Hons) MSc MIOA Dr Garry Gray PhD MIAQM CChem MRSC Ryan Mellor BA(Hons) MSc CEnv MCIEEM Roger Miles BSc(Hons) MSc DipTP MRTPI	Associate, URS Infrastructure & Environment UK Ltd. Associate Director, URS Infrastructure & Environment UK Ltd. Technical Director, URS Infrastructure & Environment UK Ltd. Director, Roger Miles Planning Ltd.

### FOR BUCKFASTLEIGH COMMUNITY FORUM:

Charlie Hopkins Non-practising solicitor and when absent Julia Wilton	Instructed by BCF.
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He called

Cllr Denise Rudgley Registered Nurse and Health Visitor Masters Degree in Public Health Professor (retired) Tim Drey PhD FRSC John Day BSc(Hons)	Mayor and Chair of Buckfastleigh Town Council. Local resident. Independent landscape ecologist/botanic consultant.
Professor John Altringham	Professor of Animal Ecology and Conservation, University of Leeds.

Chris Woodhead BA(Hons)Arch MA(Arch)	Chartered architect and local resident.
Dr Mike Rodger BSc MBChB MRCS	Doctor and local resident.
Hannah Fraser BA(Cantab) MSc FGS CGeol	Hydrogeologist, Director, H Fraser Consulting Ltd.

INTERESTED PERSONS:

Cllr Robert Vint	Devon County Council.
Gabriel David	Local businessman.
Jessica Stacey	Local resident.
Andrew Rowell	Local resident.
Daniel Murphy	Local resident.
Stephen Bamford	Local resident.
Cllr Philip Vogel	Ward Councillor, Teignbridge District Council.
Simon Rines	Local resident.
Richard Christy	Local businessman.
Andrew Rudgley	Chairman of the Orchard Millennium Green Board of Trustees.
Anthony Goldsworthy	Local resident.
Dr Peter Edwards	Local resident.
Robin Williams	Local resident.
Colin Kilvington BSc PGCE FLS FZS FRGS	Local resident.
Dr Ro Cartwright	Local resident.
Cllr Jacqi Hodgson	Deputy Mayor, Totnes Town Council.
Cllr Peter Smerdon	Representing the residents of Eastmoor Ward, South Hams District Council.
Jennie Godwin BSc(Hons) PGCE	Natural Boundaries.
Alex Rube	Local resident.
Neil Smith BSc(Hons)	Local resident and co-chair of BCF.
Dr Jean Harris-Hendriks MB ChB DPM FRCPsych	Local resident.
Dr Larch Maxey LLB MSc PhD FRGS	Project Manager of Network of Wellbeing.
Tim Stacey	Local resident.
Leaf Lovejoy BSc PGCE MSc	Local resident.

Other local residents asked questions and participated in the without-prejudice discussion about possible conditions.

DOCUMENTS SUBMITTED AT THE INQUIRY (ID)

ID	1.1	Draft section 106 Agreement.
	1.2	Section 106 Agreement dated 18 July 2013.
ID	2	Bundle of revised plans.
ID	3	Otter Habitat Review June 2013.
ID	4	Bat and Protected Species Survey May 2013.
ID	5	Opening statement by appellant.
ID	6	Opening points by Council.
ID	7	Opening statement by BCF.
ID	8	Department of Transport Statistics re CD T3.

- ID 9 Geotechnical Assessment of the Quarry Excavation at Whitecleaves Quarry made in pursuance of Regulation 33 of Quarry Regulations 1999, by JHF Sedman, dated October 2007.
- ID 10 Email dated 11 July 2011 from Devon County Council to the appellant concerning description of the proposed development.
- ID 11.1 Email dated 25 June 2013 concerning withdrawal of first Reason for Refusal.
- 11.2 Minutes of Development Management Committee 6 June 2013.
- 11.3 Record of Decision Taken by Officer 22 May 2013.
- ID 12 Gilpin Demolition Mission Statement.
- ID 13 Site plan Gilpin's Heathfield site.
- ID 14 Letter dated 6 June 2013 from Devon County Council concerning Breach of Condition 3 regarding storage of polystyrene blocks.
- ID 15 Letter dated 26 June 2013 from Environment Agency commenting on ID9.
- ID 16 Email to Highways Agency re certificate as land owners, dated 25 June 2013.
- ID 17 Errata sheet Mr Rugg's proof of evidence.
- 17.1 Letter from URS to Highways Agency dated 21 October 2011.
- ID 18 Plymouth City Council's letter dated 9 August 2012 advising discharge of Condition 8 of Devonport EfW permission [CD P2].
- ID 19 Rainfall pumping data January to May 2013.
- ID 20.1 Noise audit.
- 20.2 Air quality audit.
- 20.3 Transport audit.
- ID 21.1 SoCG noise.
- 21.1a Note on NPPF and *Noise Policy Statement for England* requested by Inspector.
- 21.2 SoCG air quality.
- 21.3 SoCG transport.
- ID 22 Heathfield Environmental Permit No.EPR/AB3208TV.
- ID 23.1 Bundle of working draft suggested conditions.
- 23.2 Suggested conditions.
- ID 24 First Devon Local Aggregate Assessment, February 2013.
- ID 25 Statement by Cllr Robert Vint.
- ID 26 Overview and trends in reported road casualties 2011.
- ID 27 Whitecleave Quarry Complaints Log.
- ID 28 Waste transfer note concerning silt from settlement ponds, February 2011.
- ID 29 Note re Mr Gilpin's visit to Sheffield IBA processing facility. [requested by Inspector]
- ID 30 Updated Landscape and Ecological Management Plan (LEMP), June 2013.
- 30.1 Landscape and Ecological Management Plan (LEMP), July 2013.
- 30.2 Note explaining changes to LEMP following further comments from Devon County Council and Natural England.
- ID 31.1 Statement of Anthony Goldsworthy.
- 31.2 Appendices – aerial photographs.
- 31.3 Supplementary statement
- ID 32 Email from Highways Agency confirming provisional agreement to amendment of red line site boundary.
- ID 33 Statement from Jon Robinson that settlement tanks likely to be located in Flood Zone 3.

- ID 34 Extract from British Geological Survey.
- ID 35 Consented and proposed mineral extraction plan, showing blasting trial location and excavator location.
- ID 36.1 Hearing Notes by Gabriel David, with list of jobs.
- 36.2 Plan showing location of spring and borehole used by Luscombe Drinks.
- ID 37 Email from Environment Agency concerning draft conditions, dated 2 July 2013.
- ID 38.1 Email from Senior Traffic Engineer concerning changes to speed limit on B3380, dated 2 July 2013.
- 38.2 Email from Devon and Cornwall Police, dated 23 April 2012.
- ID 39.1 Plan showing proposed extraction area with consented extraction areas, with cross section B-B.
- 39.2 Cross section B-B showing existing section, proposed section and section depicting extent of permitted extraction.
- ID 40 Statement of Common Ground, dated 3 July 2013.
- ID 41.1 Statement by Simon Rines.
- 41.2 Appendix for questions to Mr Miles.
- 41.3 Appendices 1-4.
- ID 42 URS memorandum clarifying storage volume for IBA product, dated 3 July 2013.
- ID 43.1 Statement by Dr Cartwright.
- 43.2 Statement Addendum.
- ID 44 URS memorandum regarding water abstraction at Dean Court.
- ID 45 Otter Monitoring, July 2013.
- ID 46 Note from appellant concerning ecology – revision to Appendix 12 Mr Mellor’s rebuttal evidence, bat survey in quarry, Mr Nuttall’s bat experience, and otter risk from traffic on site access.
- ID 47 Letter from Dr Sarah Wollaston MP, dated 2 July 2013.
- ID 48.1 Statement by Stephen Bamford.
- 48.2 References.
- ID 49 Errata to M74 Mr Miles’ proof of evidence concerning noise limit proposed and that imposed under the ROMP.
- ID 50 Agreed note between appellant, Devon County Council and BCF concerning Review of Mineral Permission Provisions in the Environment Act 1995 Schedule 14. [requested by Inspector]
- ID 51 Dartmoor National Park Development Plan Document Inset Maps 3 and 4 showing settlement boundary.
- ID 52 URS water feature location plan.
- ID 53 Plan showing site of former coating plant, St Catherine’s Well and Cave Passages.
- ID 54 Buckfastleigh Parish Boundary: Neighbourhood Plan boundary.
- ID 55 Statement by David Field, Dartmoor Otter Sanctuary.
- ID 56 Statement by Andrew Rowell.
- ID 57 Statement by Cllr Philip Vogel.
- ID 58 Statement by Dr Jean Harris-Hendriks.
- ID 59 Statement by Andrew Rudgley.
- ID 60 Statement by Jennie Godwin.
- ID 61 Statement by Colin Kilvington, including appendices CK1-5.
- ID 62 Statement by Daniel Murphy, including appendices 1-18.
- ID 63 Statement by Alex Rube.
- ID 64 Statement by Richard Christy.
- ID 65 Statement by Jessica Stacey and petition.

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- ID 66 Statement by Cllr Peter Smerdon.
  - ID 67 Assessment of plans and projects significantly affecting Natura 2000 sites, Methodological guidance on the provisions of Article 6(3) and (4) of the Habitats Directive 92/43/EEC.
  - ID 68 Pond sites within 1 km of Whitecleave Quarry.
  - ID 69 Statement of Robin Williams, including water sample analysis.
  - ID 70 Statement by Cllr Jacqi Hodgson, including attachments.
  - ID 71 Appeal Decision and extract from Inspector’s report Westbury Bypass APP/K3930/V/07/1201863.
  - ID 72 *Do Bat Gantries and Underpasses Help Bats Cross Roads Safely?* PLoS ONE, June 2012.
  - ID 73 *The effect of a major road on bat activity and diversity*, J of Applied Ecology 2012, 49, 82-89.
  - ID 74 Extracts *Times* July 10 2013 re traffic fumes, *Mid-Devon Advertiser* 7 June 2013 re proposed plant.
  - ID 75 Emails dated April 2013 concerning disposal of street sweepings.
  - ID 76 Health effects of pollutants – particulates, extract from Health Effects of Incineration.
  - ID 77 National Exposure Reduction Target, Target Value and Limit Value for PM<sub>2.5</sub> Official J. of the European Union, 2008/50 Annex xiv.
  - ID 78.1 Appellant’s submission on retrospective application.
  - 78.2 Devon County Council’s submission on retrospective application.
  - 78.3 BCF submission on retrospective application.
  - ID 79.1 Devon County Council’s note on alternative sites suggested by Mr Goldsworthy.
  - 79.2 Appellant’s note on alternative sites suggested by Mr Goldsworthy.
  - ID 80 Plan showing alternative sites proposed by Mr Goldsworthy.
  - ID 81 Devon County Council Guidance Note *Planning applications for proposals located within or adjacent to Conservation Areas*, November 2006.
  - ID 82 Appellant’s note on Natural England’s position re Devon County Council’s Habitat Regulations Assessment.
  - ID 83 Statement by Cllr Stuart Barker.
  - ID 84.1 Appellant’s note on consultation for *Waste Management Plan for England* 2013.
  - 84.2 Consultation document - *Waste Management Plan for England* July 2013.
  - ID 85 Appellant’s note on sequential test and vehicle queuing.
  - ID 86 Appellant’s ecology clarification; errata Appendix 12 Mr Mellor’s rebuttal, Tree planting in Potter’s Wood SSSI.
  - ID 87 Note by Dr Gray on PM<sub>2.5</sub> emissions and effects on health, air flow and dust deposition, and Health Protection Agency Response, including HPA response to the British Society for Ecological Medicine report.
  - ID 88 Extract from Environment Agency website showing aquifer data.
  - ID 89 Suggested condition by Mr Kilvington concerning radioactive waste.
  - ID 90 Statement by Tim Stacey and attachments.
  - ID 91 Statement by Neil Smith and attachments.
  - ID 92 Further Statement by Dr Harris-Hendriks.
  - ID 93 Statement by Dr Maxey.
  - ID 94 Evidence by Leaf Lovejoy with attachments.
  - ID 95 Draft conditions suggested by Hannah Fraser.
  - ID 96 Comment on conditions by Robin Williams.

- ID 97 Response by Mr Goldsworthy to Devon County Council's and appellant's replies on alternative sites.
- ID 98 Statement by A Whitestone.
- ID 99 Note from Devon County Council on *Waste Management Plan for England 2013* Consultation Document.
- ID 100 BCF Note on Defra Consultation Paper *Waste Management Plan for England*.
- ID 101 Supplementary statement by Mr Goldsworthy concerning Lee Moor.
- ID 102 Appellant's response to evidence by Mr Goldsworthy about alternative sites.
- ID 103 Note by Devon County Council about advisory HGV sign on A38.
- ID 104 Closing Submission by Buckfastleigh Community Forum.
- ID 105 Devon County Council Closing Submissions.
- ID 106 Closing Statement on behalf of the MVV Environment Devonport Limited.
- ID 107 Application for costs on behalf of the appellant.
- ID 108 Devon County Council response to costs application.

#### LIST OF AUTHORITIES REFERRED TO IN CLOSING SUBMISSIONS

*R v Rochdale MBC ex parte Milne (No.2)* [2001] ENV. L.R.22.  
*Tesco Stores Limited v Dundee City Council* [2012] UKSC13.  
*Trusthouse Forte Hotels v Secretary of State for the Environment* (1987) 53 P.&C.R.293.  
*R (oao J (A Child) v North Warwickshire BC* [2001] EWCA Civ 315.  
*Mount Cook Land Limited v Westminster City Council* [2003] EWCA Civ 1346.  
*R (Blewett) v Secretary of State for the Environment* [2004] 1 Env L.R. 29.  
*Newport BC v Secretary of State for Wales* [1998] Env.L.R. 174.  
*Bovale Limited v Secretary of State for Communities and Local Government and Hereford Council* CO/5244/2007.  
*Derbyshire Dales DC Peak District National Park Authority and Secretary of State for Communities and Local Government Carsington Wind Energy Limited* CO/10280/2008.  
*Tewkesbury BC and Secretary of State for Communities and Local Government Comparo Limited Welbeck Strategic Land LLP* CO/8962/2012 and CO/10438/2012.  
*Hart DC v Secretary of State for Communities and Local Government Luckmore Limited Barratt Homes Limited and Taylor Wimpey Developments Limited Natural England* CO/7623/2007.  
*Morge v Hampshire CC* [2011] UKSC 2.



LIST OF PLANS

D134633-PA01 Rev B  
 D134633-PA02 Rev A  
 D134633-PA03 Rev B  
 D134633-PA04 Rev B  
 D134633-PA05 Rev C  
 D134633-PA06 Rev E  
 D134633-PA07 Rev E  
 D134633-PA10-1 Rev A  
 D134633-PA10-2 Rev A  
 D134633-PA10-3 Rev A  
 D134633-PA10-4  
 D134633-PA11 Rev C  
 D134633-PA12 Rev B  
 D134633-PA13 Rev B  
 D134633-PA14 Rev A  
 D134633-PA15 Rev A  
 D134633-PA16A  
 D134633-PA16B  
 D134633E01RevE  
 D47065964-004-RevB Revised Access Arrangements

CORE DOCUMENTS

A1	Planning Application Form and Certificates
A2	Planning Application Supporting Statement and appendices: <ul style="list-style-type: none"> <li>• Design and Access Statement;</li> <li>• Statement of Community Involvement;</li> <li>• External Lighting Assessment; and</li> <li>• Transport Statement</li> </ul>
A3	Site Plan and Planning Application Drawings
A4	Environmental Statement Volume 1: Main Text
A5	Environmental Statement Volume 2: Figures
A6	Environmental Statement Volume 3: Appendices
A7	Environmental Statement Volume 4: Non Technical Summary
A8	Planning Application Further Information External Lighting Assessment Drawings
A9	Environmental Statement Further Information incorporating: <ul style="list-style-type: none"> <li>• Updated Phase 1, 2 and 3 figures;</li> <li>• Updated Chapters 9 and 10;</li> <li>• Updated hydrology and hydrogeology figures to accompany Chapter 10;</li> <li>• Further information in respect of Transport (Chapter 11); and</li> <li>• Flood Risk Assessment</li> </ul>
A10	Planning Application Further Information Letter from Gilpin to DCC

A11	Environmental Statement Further Information incorporating: <ul style="list-style-type: none"> <li>• Updated Non-Technical Summary;</li> <li>• Updated Phase 2 and 3 figures;</li> <li>• Report on Bat Hibernation Caves Monitoring;</li> <li>• Report on Trial Blasts;</li> <li>• Ecological Mitigation and Monitoring Plan;</li> <li>• Updated figure 10.7;</li> <li>• Supplementary Briefing Note – Junction Analysis of A38 Off-slip Roads; and</li> <li>• Supplementary Report on Environmental Assessment of Traffic</li> </ul>
A12	Addendum to Planning Application and Environmental Statement together with revised figures (including updated Landscape and Ecological Management Plan)
A13	DCC Screening Opinion, June 2010
A14	DCC Scoping Opinion, April 2011
A15	PINS Screening Opinion
A15b	Email from PINS regarding answers to questions 2A and 2B in PINS Screening Opinion
C1	Devon County Council; Engineering Design Group Road Traffic Noise Assessment, February 2012
C2	NHS Devon, NHS Plymouth and Torbay Care Trust; A Rapid Prospective 'Desk-Top' Health Impact Assessment, January 2012
E1	Public notice advertising application
E2	Statutory consultation responses to application
E3	Bundle of third party representations received in response to application
E4	Devon County Council Development Management Committee Report, 25.04.2012
E5	Devon Country Council Development Management Committee Minutes, 25.04.2012
E6	Dartmoor National Park Committee Report and correspondence to DCC, 13.09.2011
E7	Notification of appeal letters, 31.10.2012 05.11.2012
E8	Bundle of third party and BCF representations since appeal
E9	Public notice advertising Addendum, 19.04.2013
E10	Statutory consultation responses to Addendum
E11	Bundle of third party and BCF representations received in response to Addendum
F1	Decision Notice, 03.05.2012
F2	Letter from Dickinson Dees to DCC and response from DCC to Dickinson Dees, 29.08.2012 07.09.2012
F3	Appeal Form and Grounds of Appeal, 15.10.2012
F4	Appeal Questionnaire, 22.11.2012
F5	Notes of Pre Inquiry Meeting, 10.04.2013

G1	SoCG between MVV and Devon County Council, 22.03.2013
G2	Statement of Case of MVV, January 2013
G3	Statement of Case of DCC, February 2013
G4	Statement of Case of BCF, Undated
G5	Revised SoCG between MVV and Devon County Council, 24.05.2013
H1	Devon Waste Local Plan, 2006
H2	Devon Minerals Local Plan, 2004
H3	Teignbridge District Local Plan (Saved Policies), 1996
J1	The Planning Inspector's Report on the Examination into the Devon Waste Local Plan, 07.06.2006
J2	Draft Devon Waste Plan – Preferred Strategy, Site Options and Draft Policies Consultation Document 2012
J3	Draft Devon Minerals Plan – Options Consultation Paper 2011
J4	Plan Teignbridge (pre-submission document), November 2012
J5	Plymouth Core Strategy, 23.04.2007
J6	Devon County Minerals and Waste Development Framework Monitoring Report 2011/12
J7	Plymouth Waste Development Plan Document 2006-2021, 2008
J8	Devon County Waste Local Plan Schedule Of Omission Sites - Initial Response Of Devon County Council
K1	National Planning Policy Framework (NPPF), March 2012
K2	Technical Guidance to the NPPF, March 2012
K3	Planning Policy Statement 10 – Planning for Sustainable Waste Management 2011 together with Companion Guide 2006
K4	The Planning System – General Principles 2005
K5	Ministerial Statement – Planning for Growth 2011
K6	Government Review of Waste Policy 2011 and Action Plan, June 2011
K7	Waste Strategy for England 2007 and Supporting Annexes, May 2007
K8	Circular 03/2009: Costs Awards in Appeals and other Planning Proceedings together with December 2012 addendum
L1	Town and Country Planning (Environmental Impact Assessment) Regulations 1999
L2	EU Directive 2008/98/EC on Waste (Revised Waste Framework Directive)
L3	Waste (England and Wales) Regulations 2011
L4	Town and Country Planning (Development Management Procedure) (England) Order 2010
L5	<i>Not Used</i>
L6	Conservation of Habitats and Species Regulations 2010
L7	Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (Habitats Directive), 21.05.1992
L8	Town and Country Planning (Inquiries Procedure) (England) Rules 2000
L9	Planning and Compulsory Purchase Act 2004 (Part 3)

N1	British Standard 5228-1: 2009 Code of practice for noise and vibration control on construction and open sites – Part 1 Noise
N2	International Standard 9613-2 Acoustics – Attenuation of sound during propagation outdoors – Part 2: General Method of Calculation
N3	Calculation of Road Traffic Noise, 1988
N4	WHO; Guidelines for Community Noise, 1999
P1	Plymouth Energy from Waste facility: Plymouth City Council Decision Notice 11/00750/FUL, officer report to Planning Committee and Addendum to officer report, 03.02.2012
P1b	Plymouth Energy from Waste facility: Environmental Statement submitted as part of planning application 11/00750/FUL (Chapter 6 of the Main Text), May 2011
P1c	Plymouth Energy from Waste facility: Environmental Statement submitted as part of planning application 11/00750/FUL (Chapter 5 of the Main Text: Alternatives to the Proposed Development)
P1d	Plymouth Energy from Waste facility: Appendix 5.1 of the Environment Statement – Alternative Sites Appraisal
P1e	Plymouth Energy from Waste facility: Appendix D.5.1 Revised Environmental Statement Chapter 5 - Alternatives to the Proposed Development
P1f	Plymouth Energy from Waste facility: Appendix D.5.2 Revised Environmental Statement Appendix 5.1 - Alternative Sites Appraisal
P1g	Plymouth Energy from Waste facility: Planning Application and Environmental Statement Further Information
P2	IBA Recycling Records, Reporting and Marketing Method Statement together with Addendum, July 2012 and August 2012
P3	"Eastcroft decision" – Inspector's Report and SoS Decision Letter in relation to an Energy Recovery Facility at Eastcroft, Nottingham, 12.02.2009
P4	"Cornwall decision" – Inspector's Report and SoS Decision Letter in relation to a waste to energy plant including a bottom ash facility and a bulking up facility at land at Rowstowrack Farm and land at Wheal Remfry and Goonvean and Parkandillick Dryers, St Dennis, Cornwall, 19.05.2011
P5	"Shrewsbury decision" – Inspector's Report and appeal decision in relation to an Energy from Waste facility and Household Recycling Centre at Battlefield Enterprise Park, Vanguard Way, Shrewsbury, Shropshire, 10.01.2012
P6	"Lostock decision" – Inspector's Report and SoS Decision Letter in relation to consent for a 60MW generating station at Lostock, Northwich, Cheshire, 02.10.2012
P7	"Hartlebury decision" – Inspector's Report and SoS Decision Letter in relation to an energy from waste facility for the combustion of non hazardous waste and the recovery of energy at Plot H, 600 Oak Drive, Hartlebury Trading Estate, Hartlebury, Worcestershire, 19.07.2012
P8	"Sinfin Lane decision" – Inspector's Report and appeal decision relating to a waste treatment facility at land adjacent to 1-5 Railway Cottages, Sinfin Lane, Sinfin, Derby, 21.09.2012

P9	"Middlewich decision" - SoS decision to dismiss an appeal against the refusal of planning permission for an energy from waste facility at land off Pochin Way and land to the south of Erf Way and North of Cledford Lane, Middlewich, 20.07.2012
P10	"Kings Cliffe decision" – Inspector's Report and SoS Decision Letter in relation to the disposal of low level radioactive waste by landfilling at ENMRF, King's Cliffe, Northamptonshire, 24.05.2011
P11	"Wadlow Farm decision" – Inspector's Report and SoS Decision Letter in relation to the erection of thirteen wind turbines at Wadlow Farm, South Cambridgeshire, 09.11.2009
P12	"Liverpool decision" – Inspector's Report and appeal decision relating to a Resource Recovery Park (RRP) including building construction and plant installation for the treatment, recycling and recovery of municipal and commercial wastes with an annual processing capacity of 150,000 tonnes at Land adjacent to Stalbridge Dock, Dock Road, Port of Garston, Liverpool, 05.10.2010
Q1	EA; H1 Environmental Risk Assessment Framework: H1 Annex A – Amenity and accident risk from installations and waste activities, December 2011
Q2	Air Quality Expert Group; Fine Particulate Matter (PM2.5) in the UK, December 2012
Q3	DEFRA; The Air Quality Strategy for England, Scotland, Wales and Northern Ireland, July 2007
R1	Decision Notice 98/3304/32/9DCC, 05.02.2002
R2	Approved Plans forming part of ROMP, 05.02.2002
R3	Management Schemes/Approval of Planning Conditions document, 10.07.2009
R4	Approved Review of the Approved Schemes, 11.07.2012
R5	Appropriate Assessment Management Scheme, 18.05.2009
S1	EA Consent to Discharge Quarry Water –NRA-SW-3026, August 1991
S2	Covanta – Ince Marshes Permit number EPR/TP3836FC, 03.05.2012
S3	EA; EPR – H1 Environmental Risk Assessment Annex D, December 2011
S4	EA; Standard Rules SR2012 No 13, 2012
T1	DfT; DMRB Volume 5; Section 1 Part 3 TA 79/99; Traffic Capacity of Urban Roads, May 1999
T2	IEA; The Guidelines for the Environmental Assessment of Road Traffic, 1993
T3	DfT; Annual Report on Reported Road Casualties, 2010
T4	DfT; Annual Report on Reported Road Casualties, 2011
T5	<i>Not Used</i>
T6	DfT; Local Transport Note LTN 1/95 The Assessment of Pedestrian Crossings, 1995
T7	DfT; Guidelines for Transport Assessments, 2007
Y1	NE; South Hams SAC – Greater Horseshoe Bat Consultation Zone Planning Guidance, 2010

Y2	Bat Conservation Trust Bat Survey Good Practice Guidelines, 2007
Y3	Bat Conservation Trust Bat Survey Good Practice Guidelines, 2012
Y4	Dormouse Conservation Handbook, January 2006
Y5	Dormouse Licence together with Application 05.10.2012, Method Statement and Reasoned Statement, 09.05.2013
Y6	IEEM 2006 Guidelines for EcIA in UK

## ABBREVIATIONS

AGLV	Area of Great Landscape Value
BCF	Buckfastleigh Community Forum
CD	Inquiry Core Document
CEMP	Construction Environmental Management Plan
C&D	Construction and demolition
DCC	Devon County Council
eDWP	emerging Devon Waste Plan
eDMP	emerging Devon Minerals Plan
ePT	emerging Plan Teignbridge
EA	Environment Agency
EfW	Energy from Waste
EIA	Environmental Impact Assessment
EP	Environmental Permit
EPS	European Protected Species
ES	Environmental Statement
ESA	ES Addendum
<i>Framework</i>	<i>National Planning Policy Framework</i>
HGV	Heavy Goods Vehicle
IBA	Incinerator Bottom Ash
IBAA	Incinerator Bottom Ash Aggregate
ID	Inquiry Document – document submitted during the Inquiry
LEMP	Landscape and Ecological Mitigation Plan
LP	Teignbridge Local Plan 1996
MLP	Devon County Minerals Local Plan 2004
MRF	Materials Recovery Facility
NE	Natural England
PIM	Pre-Inquiry Meeting
PPS10	Planning Policy Statement 10: <i>Planning for Sustainable Waste Management</i>
ROMP	Review of Old Mineral Permissions
rWFD	revised Waste Framework Directive
SAC	Special Area of Conservation
SoCG	Statement of Common Ground between Council and appellant
SGDL	Sam Gilpin Demolition Limited
SSSI	Site of Special Scientific Interest
SWDWP	South West Devon Waste Partnership
tpa	tonnes per annum
WLP	Devon County Waste Local Plan 2006
WMPE	<i>Waste Management Plan for England 2013</i>