PLANNING

Guidance to explain the planning process and how it affects energy from waste developments

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Planning – for the complete set of guidance please visit www.wrap.org.uk/efwguidance
1.0 INTRODUCTION

Following the development of a business case and initial feasibility work, securing planning permission is the next key step in the delivery of an EfW facility.

Understanding the planning process will help you develop a realistic project programme taking account of:

- time required to prepare a planning application;
- the likely time taken for the planning authority to determine the application; and
- the time required to seek discharge of pre-commencement style planning conditions which are needed before you can commence construction.

This guidance focuses on EfW planning proposals determined under the Town and Country Planning regime for proposals with a power generation capacity of less than 50MW1.

A robust planning application prepared in parallel with an Environmental Permit application2 can be cost effective, assists in securing the necessary consents and minimises the risk of legal challenge to decisions made either by the planning authority or the EA.

The planning system helps ensure that development takes place in a way which balances environmental, social and economic impacts in the public interest.

1.1 Planning - quick checklist

Planning can seem a challenge but you can minimize costs and avoid project delays by understanding the system and following some key steps:

- Make sure your proposal is consistent with the adopted local development plan.
- Establish the key planning considerations – traffic increase, impact on nature conservation, landscape, local residents etc., and make sure these impacts are minimised as much as possible through good quality design of the proposal [Design Council website and BREEAM guidance].
- Consult the planning authority and key statutory consultees, for instance: EA; Natural England; Design Council; Highways Agency.
- If your site is in an area where a new development plan is being prepared, contact the LPA, promote your site for inclusion in the development plan and make representations to ensure that emerging policies support your proposal.
- Consult local people – The Localism Act has introduced a statutory requirement to consult on certain projects, available from the Communities and Local Government Guidance. It is advisable to discuss the approach to community consultation with the LPA.
- Environmental Impact Assessment (EIA): in most cases an EIA is mandatory but you should check with the planning authority at an early stage.
- Allow enough time to prepare a comprehensive Planning Application: agree with the planning authority the information required in support of the planning application to avoid delays at a later stage.

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1 Energy facilities which generate over 50MW of energy are considered nationally significant infrastructure projects and will be determined by the National Infrastructure Planning Unit.
2 See WRAP guidance on Environmental Permitting Regulations.

Planning – for the complete set of guidance please visit www.wrap.org.uk/efwguidance
2.0 THE PLANNING SYSTEM

The planning system helps to ensure that development takes place in a way which balances environmental, social and economic impacts thereby securing sustainable development.

The core elements of the planning system are:
- preparing development plans; and
- managing the development itself.

These activities are mainly led and undertaken at the local authority level by the LPA. The LPA is responsible for deciding whether a proposed development should be allowed to go ahead. In areas where there are two tiers of local authority (county and district councils), planning applications for waste development, including energy from waste facilities, should be made to the higher level (county council rather than district or borough).

Where an LPA:
- refuses planning permission;
- attaches an unreasonable planning condition to a planning approval; or
- delays decision-making beyond a statutory period (13 weeks for a non EIA type proposal and 16 weeks for an EIA type development (See Section 6.2).

then applicants will have the right to appeal to the Secretary of State. Appeals are usually considered by a Planning Inspector who is appointed by the Secretary of State.

3.0 DEVELOPMENT PLAN LED SYSTEM

LPAs prepare development plans through consultation with local communities which set the broad framework for acceptable development in their local area. County Council Waste Planning Authorities (WPA) will prepare waste core strategies and development plan documents which guide waste development in the larger county areas. Unitary authorities will perform both roles. Development plans may allocate specific sites for waste development and should provide guidance as to the type of sites which are considered most suitable.

The planning system is a development plan led system. Planning applications have to be decided in line with the development plan unless there are very good reasons not to (e.g. the plan is out of date or other material considerations should be given more weight). Ensuring a planning proposal is consistent with up to date development plan policies minimises the risk of planning delay or failure.

The Planning Advisory Service and Planning Portal websites provide guidance on the plan making process.

Planning – for the complete set of guidance please visit www.wrap.org.uk/efwguidance
4.0 CHANGES TO THE PLANNING SYSTEM

The Government introduced significant changes to the planning system when the Localism Act received Royal Assent in November 2011.

4.1 What is new?

The Act makes a number of key changes to the planning system:

- a statutory requirement for pre-application consultation;
- neighbourhood planning;
- allows councillors to discuss a planning proposal before it reaches the planning committee;
- abolishes the Infrastructure Planning Commission which previously determined applications for energy facilities over 50 MW; and
- abolishes the regional tier of planning policy. Regional Spatial Strategies will no longer be part of the development plan.

4.2 National Planning Policy Framework

The Government has streamlined national planning guidance by the introduction of the National Planning Policy Framework (NPPF), which sets out the government’s planning policies for England. It replaces the previous Planning Policy Statements (PPSs)/Planning Policy Guidance Notes (PPGs).

The NPPF states that there is a presumption in favour of sustainable development, as well as containing general planning policies which will be relevant to energy from waste development, such as nature conservation, cultural heritage, climate change etc.

Annex 1 of the NPPF explains how it should be implemented. It specifically excludes detailed waste policies as a national waste planning policy and will be published alongside the National Waste Management Plan for England. In the meantime Planning Policy Statement (PPS) 10: Planning for waste management will remain the relevant national policy for waste.

Planning – for the complete set of guidance please visit www.wrap.org.uk/efwguidance
5.0 DESIGN

Good design is now a core part of Government planning policy. When determining planning applications local authorities are required to consider design quality. Where energy from waste proposals involve new buildings or structures a Design and Access Statement will need to be submitted along with the planning application.

Design is a process which should be a defining part of any project and will evolve as the project develops. Good design balances the function, quality and impact of the facility. Further detailed guidance is provided in Designing Waste Facilities - a guide to modern design in waste.

Good quality design which incorporates sustainability principles can minimise planning delay, particularly if the location for the EfW facility is located in a visible and/or sensitive location.

The design needs to be appropriate for the particular site and location. Some planning authorities will have design guidance for planning proposals – this can be checked during pre-application discussions with the relevant authority.

Achieving sustainable design of waste facilities is an important part of the design process. Many local authorities now require sustainability to be considered in planning applications. The Building Research Establishment’s Environmental Assessment Method (BREEAM) is a recognised process to guide the design and assess the facility’s performance in terms of environmental sustainability. Some Local Authorities may have policies requiring developments to achieve a certain BREEAM rating.

Further information is available on the BREEAM website: http://www.breeam.org

Guidance on preparing Design and Access Statements is provided in:


Planning – for the complete set of guidance please visit www.wrap.org.uk/efwguidance
6.0 KEY STAGES OF THE PLANNING PROCESS

The Planning Portal [www.planningportal.gov.uk](http://www.planningportal.gov.uk) provides detailed information on the planning process and allows applications to be submitted online.

It is advisable to develop a realistic planning programme, preferably at the feasibility stage of the project. The period for preparing and determining a planning application can vary significantly according to the level of complexity of the proposal. For example, a development requiring an EIA requires a longer period of time for the planning application to be prepared.

Other key factors which will impact on planning programmes include carrying out ecology surveys in the appropriate season or gathering bespoke air quality data which can be required for EfW projects, particularly if the application site is near sensitive ecology sites.

![Figure 1- Key Stages of the Planning Process](image)

Planning – for the complete set of guidance please visit [www.wrap.org.uk/efwguidance](http://www.wrap.org.uk/efwguidance)
6.1 Initiate pre-application discussions

At the outset, proposals should be discussed with the relevant LPA prior to submitting the planning application. The LPA will be able to provide advice on the requirements for the planning applications including the forms, certificates, plans and supporting information which is required to be submitted with the application. They should also be able to advise on any key planning issues which are relevant to the proposed site for the development, and also provide advice on consulting with the local community and stakeholders prior to the application being submitted, which is now a legal requirement for certain proposals. All LPAs should be happy to engage in pre-application discussions. However, it is now becoming common for planning authorities to charge for this service. It is advisable to check relevant websites or call the authority planning reception for assistance on this matter.

For proposals in London with a waste capacity over 50,000 tonnes per annum it would be advisable to also consult the Greater London Authority (GLA). The GLA provides pre-application advice to developers although there is a charge for this service.

6.2 Confirm whether an Environmental Impact Assessment (EIA) is required.

Certain waste proposals will require an EIA to be carried out. Essentially there are two categories of development for the purposes of EIA:

- ‘Schedule 1’ developments are those where an EIA is always required. This would include incineration of hazardous waste or incineration of more than 100 tonnes per day of non-hazardous waste; and
- ‘Schedule 2’ developments may require an EIA if they fall above certain thresholds and are likely to have a significant effect. This would include development which involves incineration (other than that specified in schedule 1 above) or exceeds 0.5 ha or is in a sensitive area e.g. a National Park or Area of Outstanding Natural Beauty (AONB). Guidance states that an EIA is less likely to be required on waste facilities with a capacity under 50,000 tonnes per annum. The developer can submit a screening opinion request in order to confirm whether an EIA would be required.

The EIA Regulations require an EIA to be submitted in support of a proposal which is likely to have potential significant impacts on the environment. A waste proposal could have transport, ecology, air quality, noise, archaeology, ground condition, landscape/visual and flood risk impacts. Where considered significant these will need to be assessed, with assessments submitted with the planning application to allow the LPA to consider the potential impacts.

If no EIA is needed then supporting information may still be required, such as a transport assessment and ecology surveys.

It should be noted that the proposed connection of the EfW facility to allow electricity or heat off-take does not need to form part of the planning application. However, if the proposal is an EIA type development, any environmental impacts of the transmission line must be assessed separately.

Planning – for the complete set of guidance please visit www.wrap.org.uk/efwguidance
6.3 Undertake pre-application consultation with the local community

EfW proposals can be controversial and cause delays during the planning phase. Local communities can be concerned about a number of issues including:

- increased traffic;
- visual impact;
- noise generation; and
- dust and odour.

Effective communication with the local community and other stakeholders can help significantly reduce the risk of a planning application being refused and is now a legal requirement of the planning process for certain proposals.

It is important to consider consultation early in the process in discussion with the LPA. They may have ideas about who should be consulted and how best to carry out the consultation. Most authorities will have a Statement of Community Involvement (SCI) which will set out guidance on pre-application consultation for developers.

There a number of key points to consider:

- **Develop a consultation plan**: At the outset it is useful to put together a consultation plan which sets out what you are trying to achieve, who should be consulted, when and how.

- **Deciding who to consult**: Different people and organisations will have differing interests in the proposals. In the case of neighbours to the scheme and Parish/Town Councils it can help build trust if they are made aware of the proposals early in the process.

- **Deciding how and when to consult**: The timing and method of consultation needs to be appropriate for the audience. It is advisable to give careful consideration to the way the consultation is carried out, the timing and venue for any events.

- **Feedback**: It is important to show that you are listening to the local community. Consultation feedback will need to be analysed and results communicated back to those involved. Showing how you have taken account of comments and made changes if possible can be very helpful.

- **Managing expectations**: The local community may have their own view of what they can achieve from the consultation process. It is important to manage expectations and be clear about how they can input into the scheme; and

- **Reporting**: Most authorities will require a statement to be submitted with the planning application detailing what pre-application consultation has been carried out and with whom. The results should therefore be written up and submitted as supporting information to the application.

The government provides guidance on consultation good practice.

Planning – for the complete set of guidance please visit [www.wrap.org.uk/efwguidance](http://www.wrap.org.uk/efwguidance)
6.4 Submitting a planning application

LPAs encourage planning applications to be submitted electronically via the Planning Portal – www.planningportal.gov.uk

A planning application fee will be payable to the LPA on submission of the application. The fees will vary according to the type of application made. Guidance can be found at the Planning Portal:

When the application is submitted the LPA will go through the process of validating the applications. This involves checking the forms, plans and the planning fee to make sure the application is complete and valid. If there are any problems the application is unlikely to progress until the necessary details have been received. If the application is complete it is confirmed as valid and formally registered, given a reference number and an acknowledgement letter is sent out.

6.5 Local authority consultation, planning decision & right of appeal

The application is then advertised and internal/external consultations are carried out by the planning authority. The Town and Country Planning (Development Management Procedure) Order 2010 sets out the requirements to publicise and consult on planning applications. The statutory period for consultation is 21 days. The application is also made publically available, and occupiers of properties immediately adjacent to the site should be notified, giving them the opportunity to comment (if they wish). Any written comments received from the public or consultees are available for anyone to see via the authority.

Energy from waste proposals are classed as a "major development" and should therefore be determined within 13 weeks or 16 weeks if an EIA is required. It is not unusual for these statutory periods to be exceeded.

6.6 Community Infrastructure Levy

The Community Infrastructure Levy (CIL) allows local authorities in England and Wales to raise funds from developers undertaking new build projects in their area. The money can be used to fund a wide range of infrastructure that is needed as a result of the development. This includes new roads or safer road schemes, flood defences, schools, hospitals and other health and social care facilities, park improvements, green spaces, leisure centres, etc.

More information about the CIL can be found via the Department for Communities and Local Government.

Planning – for the complete set of guidance please visit www.wrap.org.uk/efwguidance
6.7 Planning application decision

A decision notice will be issued by the LPA to either approve or refuse the application which details the reason for the decision. Where permission is granted the decision notice will include a list of conditions with which the developer must comply. In the case of a refusal, the decision notice will include reasons for refusal.

It is possible to appeal against a refusal or an unreasonable condition within 6 months of the decision notice being issued. The appeal process is dealt with by the Planning Inspectorate. Guidance on the appeal system can be found at the Planning Portal.

You should be aware that planning decisions can be challenged by judicial review. For a challenge to be successful the court would need to be satisfied that the local authority, Planning Inspector or Secretary of State had made an error in law e.g. misinterpreting or misapplying a policy, or failing to take account of an important consideration.

The risk of judicial review can be reduced by ensuring that the planning application is prepared in line with advice received from the planning authority and statutory consultees. It may also be beneficial to have the planning application and EIA documents reviewed by a legal adviser to ensure they are legally robust.

6.8 Discharge of pre-commencement planning conditions

Conditions can be attached to planning permissions which are considered necessary, reasonable, enforceable and relevant to the development permitted. The LPA must give reasons when attaching conditions to consent.

These could be pre-commencement conditions which require additional information to be submitted. Conditions should not be imposed which duplicate other regulatory controls, for example environmental permitting. LPAs do however sometimes impose conditions which duplicate those covered by the Environmental Permit e.g. covering details of odour or litter management.

Planning – for the complete set of guidance please visit www.wrap.org.uk/efwguidance
7.0 HEALTH

Health impacts are frequently cited in connection with proposals for EfW facilities, with the key health concern being the potential risk from emissions to air. Health protection is an inherent feature during the design, assessment and permitting of such facilities, and subject to the most stringent of environmental standards.

The Health Protection Agency (HPA) provides advice on the potential impacts of EfW facilities to government agencies and departments, public health professionals and members of the public. They conclude that:

\[ \text{“while it is not possible to rule out adverse health effects from modern, well regulated municipal waste incinerators with complete certainty, any potential damage to the health of those living close-by is likely to be very small, if detectable”.} \]

Modern EfW plant have a negligible impact on ambient air quality, and operate to environmental standards that significantly reduce potential risks to health.

7.1 Planning, permitting and health

Health protection is an inherent feature of the design, assessment and permitting of EfW facilities. A key issue is the sheer weight of technical information produced, and the ability for the lay person to effectively navigate and comprehend it. As an example, due to the complex multidisciplinary nature of health, it is typically not covered under a single heading within Environmental Statements (ESs), but covered by each technical discipline (i.e. air quality, noise and vibration, transport, socio-economics, water, etc.) to standards set to protect both the environment and human health. Health Impact Assessments (HIA), although not a regulatory requirement to the UK planning process, are increasingly commissioned to help address this issue. These draw out, signpost and build upon technical assessment outputs to more effectively convey health matters to key stakeholders and communities alike.

In order to operate, EfW facilities require a permit that is issued by the EA. The EA considers permit applications through comparing the data for a proposed facility with the strict emission limits set out in the EU Waste Incineration Directive (2000/76/EC). This includes key pollutants such as nitrogen dioxide, sulphur dioxide, dioxins and total dust (including PM10s), the limits for which have been set to protect both the environment and human health. Should a permit be granted then subsequent monitoring reports must be provided to the EA to ensure ongoing compliance.

Community health protection is therefore an underlying design feature for such facilities, enforced through both the regulatory planning and permitting process, and monitored by the Environment Agency.

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1The HPA position statement adopts a generic EfW term to cover all residual waste recovery facilities.
2See WRAP guidance on WID
8.0 OTHER CONSENTS

Depending on the chosen site location and its surroundings, various licences may need to be applied for or considered. Some of the consents, if required, can take a considerable time to obtain or implement. Such as:

- protected species licences;
- grid connection consent;
- building control consent; and
- environmental permit.

8.1 Protected species licences

A licence is required by anyone who wishes to carry out an activity prohibited under wildlife legislation. Examples which may affect a development include:

- licences to carry out surveys or conservation work;
- licences to disturb or damage the habitat of certain strictly protected species; and
- licences to possess or keep certain wildlife.

There are different types of licences for a developer, depending on the activity involved and level of risk to a particular protected species. The licences that need to be applied for relating to developers and commercial companies are listed on the Natural England website.

8.2 Grid connection consent

The connection application is the first step of the regulated process to gain a connection agreement. The connection application results in a Distribution Network Operator (DNO) offer of terms for connection. DNOs are obliged under their licence conditions to process a connection application and issue a formal connection offer within 65 working days.

8.3 Building control consent

The building regulations apply to most building work, therefore it is important to know when approval is needed.

The responsibility for checking that the Building Regulations are met falls to Building Control Bodies (BCBs) - either from the local authority or the private sector as an Approved Inspector. If you choose to use an approved inspector then you should jointly notify the local authority that the approved inspector is carrying out the building control function for the work. This notification is called an “Initial Notice”. If you choose to use a local authority, the procedures are set out in the Building Regulations. Some of them relate to pre-site procedures and others relate to procedures once work is underway on site. Further information is available at the Planning Portal website.

8.4 Environmental Permit (EP)

An EP must be secured from the EA in order to operate an EfW facility in England and Wales. See WRAP guidance on Environmental Permitting Regulations for more detail.
For further information about Energy from Waste please visit: www.wrap.org.uk/EfW

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