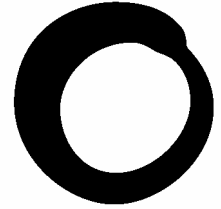


December 2002



**Friends of
the Earth**

Briefing

Incinerator inquiries

**A review of recent public inquiries
considering planning permission for
municipal waste incinerators**

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Public inquiries on municipal waste incinerators

This Briefing is mainly based on three public inquiries and a judicial review hearing which have reported since the government published its waste policy, Waste Strategy 2000. All of these cases concerned planning permission for municipal waste incinerators:

- Ridham Dock, Sittingbourne – Secretary of State’s decision (17 October 2002) and Inspector’s report supporting Kent County Council’s decision to refuse planning permission.
- Kidderminster - Inspector’s decision (10 July 2002) supporting Worcestershire County Council’s decision to refuse planning permission.
- Portsmouth - Secretary of State’s decision (15 October 2001) and Inspector’s report overturning Hampshire County Council’s decision to refuse planning permission.
- Marchwood, Southampton – High Court decision (hearing 14 June 2001) to dismiss an application by Vetterlein & others for judicial review of a decision by Hampshire County Council to allow planning permission.

These cases are referred to in this Briefing as: Ridham Dock, Kidderminster, Portsmouth, and Vetterlein v Hampshire respectively.¹

Inquiries are held where a developer appeals against a planning committee decision to turn down their planning application, or where the Secretary of State calls in a decision. Objectors have no right to appeal to an inquiry if the planning committee approves planning permission. Judicial review arises where objectors or developers complain of an error in law made by the planning authority.

Summary of the main issues covered in the inquiries

The overall conclusion is that objections to incinerators in general are not effective in influencing planning decisions. Objections to a specific incinerator in a specific location may be successful. Arguments that relate to the Development Plan or to waste management principles are more likely to succeed than arguments about toxic emissions or human rights.

(1) Development Plan

Planning decisions are determined in accordance with the Development Plan unless 'material considerations' indicate otherwise. The Development Plan includes the Structure Plan (or Unitary Development Plan), Local Plan, and Waste Local Plan. Development Plan policies, and the criteria they contain, are usually the most important consideration in planning decisions. The strongest arguments are where the site has not been allocated for waste disposal or incineration, or the proposal does not meet criteria set out in these plans.

(2) Impact on surrounding area

Particular consideration should be given to any impacts which might affect the use of adjoining land. This would usually include visual impact, traffic impact, noise, dust, smells, etc. Criteria for considering these issues may be included in relevant policies in the Development Plan. Specific policies relating to green belt, wildlife sites, etc may also be relevant.

(3) Waste management issues

(a) Need for an incinerator

Assessment of the need, or lack of need, for an incinerator was a major issue in all three inquiry decisions. In general, this can be expected to limit the incineration capacity which receives planning permission, but not to eliminate incineration.

(b) Waste Hierarchy

The waste hierarchy requires opportunities for recycling and composting to be considered before energy recovery. This means that any incinerator proposal must be consistent with local authorities at least meeting their targets for recycling and composting. Objectors will need to do more in future to argue that higher rates of recycling and composting are achievable.

(c) Proximity Principle

The proximity principle means that waste management sites should be located so as to reduce the distance that waste is transported.

(d) Best Practicable Environmental Option (BPEO)

It is now clearly established that a BPEO assessment is needed, covering each location at which waste is managed.

(e) Alternatives to incineration

Objectors have generally failed to persuade planning inquiries that there are credible

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alternatives to incineration for dealing with residual waste after recycling targets are met. This is an area that objectors will need to address more effectively in future.

(4) Pollution control

In all four cases considered here, objectors put a lot of effort into arguing that toxic emissions would be a threat to human health and the environment, and would infringe human rights. But in none of the cases were these arguments significant in affecting decisions on planning permission.

Although the environmental impact of emissions is a material consideration in planning decisions, the pollution control regime is expected to limit those impacts. This means that in most cases objectors' arguments will be considered very carefully before being dismissed. Objections can be made separately to the Environment Agency which is responsible for granting Integrated Pollution Control licences for large incinerators. Such objections may result in stricter emissions limits being imposed, but are not likely to prevent incinerators being built.²

Even if these arguments do not succeed, they can help to establish that public concern is well founded.

(5) Genuine fears of the public

Public concern about development proposals is a material consideration in planning decisions. The Kidderminster Inspector concluded that public perception of risk was a negative factor of some significance in that case. He helpfully set out a number of relevant factors.

(6) Human rights

All four cases considered issues relating to the European Convention on Human Rights. There is a growing case law on this. In general, current policies and procedures are usually considered adequate to ensure that people's human rights are respected. If objectors have not won on any of the issues outlined above, they are unlikely to win a case under Human Rights law.

Nevertheless, human rights arguments are taken seriously in planning inquiries and should be examined carefully.

(7) Judicial review

Where a local authority grants planning permission, individuals or communities have no rights of appeal to an inquiry. Their only redress is by asking the High Court for a judicial review. This usually applies only if there has been an error in law sufficiently serious to have altered the decision.

As a general rule it is usually not advisable to apply for judicial review unless you are reasonably sure you are going to win. If you lose, judges can easily establish precedents which may disadvantage people in future cases.

(1) Development Plan

The most effective arguments at a public inquiry are usually those which show that a proposed development does not comply with relevant policies or criteria in the Development Plan or with national policy.

Planning decisions are determined in accordance with the Development Plan unless material considerations indicate otherwise (Town & Country Planning Act 1990 s54A). The Development Plan will normally include the Structure Plan (or Unitary Development Plan), Local Plan and Waste Local Plan. These should be read in the context of national planning policy guidance and regional planning guidance. Government policies, particularly Waste Strategy 2000, are also relevant, as are local waste management policies.

If a proposed development is in accordance with the Development Plan and national policy the onus is on objectors to show compelling reasons why it shouldn't go ahead. If a proposed development is not supported by the Development Plan the onus is on the developer to show compelling reasons why it should go ahead.

The most important factor is whether the site has been allocated in the Local Plan or Waste Local Plan for a waste management facility, or more specifically for an incinerator. Whether the site has been allocated or not, it is always worth carefully examining all policies and criteria in the Structure Plan, Local Plan and Waste Local Plan as well as relevant government policies.

For example, the Kidderminster proposal was found not to comply with the Development Plan in key respects. In particular the Draft Local Plan had allocated the site for B1, B2 or B8 uses (offices, industry or distribution), and not for waste management. It also did not comply with a number of other plan policies including visual intrusion into the green belt, impact on adjoining conservation areas and loss of playing fields which were all very significant in the Inspector's findings.

The Portsmouth proposal did largely comply with the Development Plan. The Local Plan had reserved the site for waste management facilities and listed it as one possible site for an incinerator.

(2) Impact on surrounding area

Where a proposed development can be expected to have a measurable impact affecting the use of adjoining land, this should be taken seriously in planning decisions.

Such impacts will be specific to particular sites. But some types of impacts are routinely considered in most planning decisions, including

- visual impact;
- noise, dust, smells;
- traffic impact.

Both the Kidderminster and Ridham Dock Inspectors concluded that visual impact was a reason for turning down planning permission.

Potential impact on local wildlife sites should also be considered.

(3) Waste management issues

(a) Need for an incinerator

Assessing the need for an incinerator was a major issue in all three inquiries. It is probably the area that objectors performed worst on.

In both the Kidderminster and Portsmouth cases the Inspectors concluded that sending over 50% of municipal waste to an incinerator would not crowd out recycling and composting. In the Portsmouth case, the Inspector said he could see no other way of diverting the large amounts of waste from landfill which would be required without incineration, and the Secretary of State agreed.

In the Ridham Dock case, the Inspector did conclude that if planning permission were granted, the 'provision of greater incineration capacity than necessary would tend to undermine efforts to increase waste recycling and recovery locally, and encourage the transportation of waste from a more widespread catchment area'. But this was only because planning permission had already been given elsewhere for a fluidised bed incinerator to deal with a large part of North Kent's waste.

This is similar to the argument given by the government in turning down expansion of the Edmonton incinerator in London, saying that no waste management proposal, such as a large incinerator, should be permitted which would pre-empt recycling or composting, or reduce the option for recycling for the future, or which might lead to waste being imported from other areas contrary to the Proximity Principle.³

(b) Waste Hierarchy

The waste hierarchy requires that opportunities for recycling and composting should be explored before incineration. However, decisions have generally assumed that it is sufficient for local authorities to just meet their statutory targets for recycling and composting. For example, the Portsmouth Inspector noted that Hampshire intended to double their current recycling/composting of 20% to 40% in the longer term and said 'I therefore see little prospect of much more than that for some time to come'.

The Secretary of State in the Ridham Dock case only went as far as noting that 25% recycled or composted would not be sufficient to meet the national target of 30% for 2010 or 33% by 2015. But he did argue that opportunities for composting should be explored as well as recycling before incineration.

The Kidderminster Inspector helpfully quoted Michael Meacher speaking in the House of Commons (Hansard, 11 December 2001):

"The requirement in our policy is that statutory recycling targets must be met and that no incineration proposal shall be permitted which will pre-empt recycling or reduce the option of recycling for the future. A local authority may be able to demonstrate that it can achieve those targets consistent with small-scale incineration, preferably linked with combined heat and power . . . The Government's proposal is to increase recycling to the fullest degree to which it is environmentally the best option."

The Inspector then unhelpfully concluded that a 225,000 tonne p.a. incinerator (60% of the current arisings of 2 counties) would not be likely to crowd out recycling due to assumed increases in arisings over the next few years.

Clearly, we need to put more effort into persuading planning authorities that recycling shouldn't stop with statutory targets, but that increasing recycling and composting to the fullest degree could and should mean a lot more, and that diversion from landfill is possible without incineration. ⁴

(c) Proximity Principle

The Proximity Principle was a significant issue in the Ridham Dock and Kidderminster inquiries. In the Kidderminster case, the Inspector concluded that the site proposed was not central to the main area it served and other locations would have lower tonne-mileages. He suggested that smaller facilities more closely related to centres of waste arisings should have been considered.

The Proximity Principle was also a significant issue in a successful application for judicial review of an incinerator proposal at Capel, Surrey.⁵ Officers were found to have seriously misled councillors by stating that the Proximity Principle was “not a principal test” and that there was no requirement to apply it below the county level. The judge quoted a previous Court of Appeal decision⁶ which found that it is an obligatory objective established by the EU Waste Framework Directive, and therefore should not be relegated to the status of “AN Other” material consideration. An assessment by the Highways Authority had shown that the Capel proposal would require more miles per tonne of waste than the alternatives and this should have been drawn to councillors’ attention.

(d) Best Practicable Environmental Option (BPEO)

In the Kidderminster case the BPEO assessment, or lack of such assessment, was perhaps the most important factor in causing the incinerator proposal to be rejected. The Inspector set out a number of criteria which should be required for a BPEO assessment – these are summarised below.

In the Ridham Dock case, the Secretary of State also made a number of points which could be important in future cases:

- PPG10 and Waste Strategy 2000 advise that decisions on waste management proposals should be assessed on: consideration of BPEO for each waste stream; regional self sufficiency; the proximity principle; and the waste hierarchy.⁷
- Waste Strategy 2000 advises that the BPEO procedure should establish the option that provides most benefits or least damage to the environment as a whole, at an acceptable cost, in the long and short term.
- PPG10, para A52, advises that all locations need to be considered in terms of the BPEO. In the absence of a strategic assessment to demonstrate whether a proposal is consistent with the BPEO, a site specific assessment is appropriate and is a material consideration. (In this case the Waste Local Plan had identified the location as potentially suitable for waste management, but not specifically for an energy from waste plant.)

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- Cost and deliverability are appropriate criteria to include in a BPEO assessment.
- Due to the subjective nature of such assessments and the fact that they do not provide absolute scores, options which are close to the highest score should not be ruled out.

The Kidderminster Inspector made some interesting comments on BPEO. Basically he found that there had been no realistic BPEO assessment and the proposal for incineration with very little recycling would almost certainly not form part of a BPEO. He set out a number of features of BPEO assessment which may be useful in challenging BPEO assessments in future. In particular:

- Waste Strategy 2000 states that
 - the BPEO approach should be comprehensive, flexible, iterative and transparent;
 - local environmental, social and economic preferences will be important in any decision.
- PPG10 states that
 - BPEO is the outcome of a systematic consultative and decision making procedure.

The Inspector noted that there is no set approach for BPEO, and no requirement to use WISARD, but guidance is available from a number of sources. The developer's attempt at BPEO analysis was criticised for:

- no demonstration of the extent to which one objective is sacrificed to achieve another;
- no comparison of the costs or performance of different options;
- not giving numerical weightings to relevant factors in line with their local significance;
- no proper consideration of social acceptability.

He also stated that a BPEO assessment should look at a number of options, and that it was not incumbent on objectors to provide other options or a BPEO assessment. Options which he thought could have been looked at include:

- smaller facilities more closely related to centres of waste arisings;
- less reliance on incineration in the light of EC policy;
- any incinerator should be Combined Heat and Power as advised in Waste Strategy 2000. (The Secretary of State in the Ridham Dock case also suggested that consideration should have been given to the use of waste heat from incineration on site as well as off site.)

Some of the key points established by the Kidderminster Inspector are that

- **the BPEO assessment cannot be carried out behind closed doors, there has to be consultation;**
- **the BPEO assessment should be iterative – it is not good enough just to test the options conceived before BPEO analysis, there should be an attempt to improve on them;**

- **the proximity principle can be used to challenge proposals which involve significantly more tonne-mileage than using other locations.**

(e) Alternatives to incineration

Even if it were accepted that high rates of recycling are possible, the waste hierarchy suggests that the residual waste should not be landfilled untreated. Objectors have not been successful in arguing that there are credible alternatives to incineration for treating residual waste. This is an area that objectors will need to put more emphasis on in future.⁸

It is also relevant that the current draft of the European Biowaste Directive would require separate collection of household biodegradable waste for composting or recycling.⁹ This could achieve Landfill Directive targets for reducing biodegradable waste going to landfill without any requirement for incineration. This does not seem to have been examined in any of the cases considered here, as it is only a consultation paper, but it is likely to become more important in future.

(4) Pollution control

Pollution control and licensing is usually a matter for the Environment Agency, dealt with separately from planning considerations. The relationship between planning controls and pollution controls has caused many difficulties for objectors. The basic position was established in a ruling by the High Court and Court of Appeal in a case involving a proposal for an incinerator in Gateshead:¹⁰

- the environmental impact of emissions is a material consideration at the planning stage;
- the existence of a stringent pollution control regime under the Environmental Protection Act is also a material consideration at the planning stage;
- if there are residual difficulties or uncertainties, the question of whether they can be overcome is a matter of judgment on the facts of each case.

This judgment influenced the government's advice in PPG23.¹¹ This requires those making planning decisions to assume that the pollution control regime will work effectively, and to take advice from the pollution control authorities, i.e. the Environment Agency, on the associated risks.

(There is a separate process for considering the grant of an Integrated Pollution Control licence which is managed by the Environment Agency. It is possible to raise objections as part of that process, but this is much more technical than the process for planning permission.)¹²

Both Kidderminster and Portsmouth Inspectors argued that they would need to conclude that the Environment Agency assessment was materially incorrect in order to consider the risks significant. It was relevant that the Agency had established that each substance assessed would not exceed guidelines. In the Ridham Dock case the Secretary of State concluded that if the Agency granted an IPPC permit 'it is likely that the effect on human health will be minimal'.

Similarly, in the Ridham Dock case, the Inspector accepted advice from English Nature that nitrogen oxide levels would not have significant effects on the integrity of an internationally

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significant site.

The Portsmouth inquiry considered a great amount of detail on potential emissions. (This information may be useful for objectors wishing to put similar arguments in future cases.) The potential for accidents or things going wrong was also considered, but found to be not likely to lead to significant harm if they did happen. The Inspector concluded that there was no great measure of uncertainty so no action was needed under the precautionary principle.

In the Ridham Dock case, the Secretary of State supported the Inspector in arguing that objectors would have to show there were particular features relating to the proposed development in that specific location to indicate that the precautionary principle should be applied. Objections against incinerators in general would not be accepted as valid.

In most cases, national policy is assumed to provide adequate protection. So, for example:

- air emissions would only be considered significant if they were likely to prevent air quality objectives from being achieved;
- dioxin emissions would only be significant if they were likely to be the cause of people's Tolerable Daily Intake being exceeded.

It seems that arguments about the health or environmental effects of emissions are unlikely to prove persuasive. However, arguments that emissions may adversely affect adjoining areas in spite of the pollution control regime are taken seriously. These arguments do serve to ensure that 'genuine public concern' is taken more seriously.

(5) Public concern

All of the inquiries addressed the question of public concern.

The Kidderminster Inspector concluded that the public perception of risk was 'a negative factor of some significance' in that case. He set out a number of factors which exacerbate the public's perception of risk:

- Scientific claims of public safety in the past have proved to be wrong (e.g. BSE).
- The Environment Agency is not able to state categorically that any waste management option is safe.
- Studies can't prove there is no link between incineration and health, only that no link has been proved.
- There are many examples where licence conditions have not been observed.
- There is doubt whether pollution control regimes will be properly applied and enforced and that judgements on pollution control issues are correct.
- The public's perception of risk can be very different from scientific estimates.

He also listed a number of factors adding to perceived risks which had been helpfully set out by the developer:

- involuntary risks (such as pollution);

- whether risks are avoidable by personal precautions;
- where some people suffer the consequences while others gain the benefit;
- forms of death that arouse particular dread, such as cancer;
- danger to small children, pregnant women or future generations;
- man-made rather than natural sources;
- concerns amplified by the media or pressure groups.

The Inspector referred to Guidelines for Environmental Risk Assessment and Management (DETR, July 2000) which lists many of the above, plus:

- risks which are the subject of controversy;
- risks thought to be poorly understood by science;
- risks where consequences are delayed and may cause hidden or irreversible damage;
- factors which play a role in generating media interest;
- widespread exposure to risk, even at a low level;
- presence of a strong visual impact – which serves as a constant reminder.

He also listed some factors specific to this case:

- people had experience of the smell of an emission cloud from a chimney on the same site for many years, and could expect the plume from the incinerator stack to affect the same parts of town;
- the developer had made so many errors that people no longer believed them;
- many questions had not been answered due to contract confidentiality.

In summary, genuine public concern can be important, but it needs to be expressed in relation to the specific location, and not directed against incineration in general.

(6) Human Rights

Vetterlein v Hampshire and the Portsmouth and Ridham Dock inquiries considered arguments relating to the European Convention on Human Rights which is incorporated into UK law in the Human Rights Act 1998. All concluded that there would be no breach of human rights if the incinerator proposals were supported.

The following issues were examined:

- Article 2(1) – right to life;
- Article 6(1) – right to a fair trial;
- Article 8 – right to respect for private and family life;
- Article 1 of the First Protocol – enjoyment of property.

Article 2 is an absolute right, considered to be much more severe than Article 8 and Article 1 where lawful acts (including the granting of planning permission) can override these rights. Article 6 relates to the process by which planning permission is determined.

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Rights under Art 2 were considered in the Portsmouth and Ridham Dock inquiries. Both made use of calculations estimating the numbers of deaths and hospitalisations which might be brought forward as a result of emissions from the proposed incinerator. Both concluded that the average loss of life expectancy in the surrounding population would be of the order of an hour. Although this would be contrary to a literal reading of Art 2, both Inspectors argued that a principle of proportionality has to be applied to the Convention as a whole, and the very small effect of emissions would come below a level at which it would not be proportionate to dismiss the appeal for this reason.

Rights under Art 8 were considered in *Vetterlein v Hampshire* which referred to a number of European precedents, finding that 'generalised environmental concerns do not engage art 8 which is concerned with an individual's right to enjoy life in his own home'. Individuals would have to produce convincing evidence of the probability of a violation concerning him or her personally. One example was where local residents had been evacuated due to 'gas fumes, pestilential smells and contamination' from a waste disposal plant in Spain. By contrast, levels of NO_x at around the WHO limit of 40µg/m³, which might be elevated by upto 0.5 µg/m³ by an incinerator, would not engage Art 8.

Rights under Art 1 were considered in the Ridham Dock and Portsmouth inquiries. Both Inspectors suggested that if there were evidence of property prices falling near to incinerators in the UK this would be relevant, but no significant evidence was available. (Evidence of reduced property prices in the US was not seen as relevant.) The Secretary of State in the Portsmouth case concluded that: any effect on property prices would be small; the reasons for providing the incinerator were sufficient to justify any small interference with rights under Art 8 and Art 1; and no individual person would bear a disproportionate burden.

Rights under Art 6 were considered in *Vetterlein v Hampshire*. This accepted that planning decisions may amount to a determination of people's civil rights for the purpose of Art 6(1). Case law has established that there must be a genuine and serious dispute over a right recognised in law and the proceedings must be directly decisive of that right. For example, this was held to apply where an applicant's well which supplied his drinking water was poisoned by cyanide leaking from a waste tip. By contrast, in the Hampshire case there was considered to be no genuine and serious dispute as the environmental consequences for the claimants would be 'remote in the extreme'. So Art 6 did not apply. Even if it did apply, the procedures adopted by the County Council did afford the opportunity for 'a fair and public hearing'.

In the Ridham Dock case, Iwade Parish Council claimed that its Article 6 rights were undermined by the use of 'black box' techniques incorporated in the WISARD lifecycle analysis software [which contributes to a BPEO assessment]. The Inspector found this claim to be unreasonable, especially as there had been no request from the Parish Council to be involved in the assessment process.

In general, the procedures in place for planning and pollution controls are considered adequate to protect human rights. If objectors haven't won their case on issues raised above such as the health impact of toxic emissions, then they are unlikely to win on human rights grounds.

(7) Judicial review

Where planning permission is granted by a Planning Committee, local individuals or communities have no right of appeal to an inquiry. Their only redress is to ask the High Court for a judicial review on a point of law. It is usually necessary to show not only that there has been an error in law but that this would have made a difference to the decision. The main grounds for judicial review are usually:

- the planning authority failed to take account of relevant factors or to disregard irrelevant factors;
- procedural inadequacies;
- the decision was not reasonable given the factual evidence.

The *Vetterlein v Hampshire* case considered arguments on the first two of these.

The claim of procedural inadequacy in that case related to rights under the Human Rights Convention Article 6, outlined above.

The main issue was the claim that the planning officer's report misled the planning committee by failing to report information in the Environmental Statement that guidelines for nitrogen oxide levels had been exceeded. The judgment recognised that where an environmental statement is required the Council can not lawfully grant planning permission unless they have first taken the environmental information into consideration. In this case, the omission of reference to current breaches might have been of some significance if the environmental statement had accepted this as posing a significant health risk. But there was no such suggestion, and it was expected that guideline levels would be complied with by the end of 2005. The environmental statement also stated that the current breaches were mainly due to traffic, and it was unlikely that NO_x from the incinerator would produce a measurable effect or lead to the guidelines being exceeded. The judgment therefore concluded that the report faithfully summarised both the letter and the spirit of the environmental statement.

The judgment also suggested that it was the responsibility of objectors to bring any inaccuracies which they considered significant to the attention of the planning committee, which they had failed to do in this case until well after the decision was made.

In a more recent case, people objecting to planning permission being given to an incinerator at Capel, Surrey won a judicial review by showing that officers had seriously misled councillors.¹³ The judge in that case stated that

“I am anxious that it should not be thought that any error or omission in an Officer's report to a planning committee will afford a proper ground of challenge by way of judicial review . . . If complaints are to be made about an Officer's report, they have to be focused upon errors of real significance.”

In the Surrey case, the judgment found that officers had wrongly advised that the proximity principle doesn't apply below the level of county boundaries. They failed to refer the decision back to the planning committee after another site had received planning permission for landfill which would have changed the assessment of need for the incinerator. And they failed to appreciate that the County Council had previously established in the Waste Local

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Plan that the purpose of landfill sites (including the Capel site) was to restore mineral sites and not to establish a continuing waste disposal use.

The Surrey case demonstrates that officers need to be very careful not to mislead councillors and to ensure that councillors are given the opportunity to revise decisions where new information is available. The courts will be willing to intervene where councillors may have made a different decision if they had been properly advised.

Endnotes and references

¹ Planning inquiry decisions are available from the Planning Inspectorate, quoting their reference number:

- Ridham Dock, Kent, 17 Oct 02: APP/W2275/A/01/1061392
- Kidderminster, Worcestershire, 10 Jul 02: APP/E1855/A/01/1070998
- Portsmouth, Hampshire, 15 Oct 01: APP/Z1775/A/00/1037287

Reference for the judicial review is: R (Vetterlein & others) v Hampshire County Council [2001] EWHC Admin 560, CO/253/2001.

² Objections to pollution control licences are not considered in this Briefing. See *Friends of the Earth's Incineration Campaign Guide*, 1997 (which can be downloaded from www.foe.co.uk/campaigns/waste/resource/campaigners.html)

³ Statement by Energy Minister Brian Wilson, 23 May 2002.

⁴ For evidence to show that high rates of recycling and composting are possible, see: Community Recycling Network (2002), *Maximising Recycling Rates: Tackling Residuals* www.crn.org.uk/publications/main/index.html

⁵ The Queen on the application of Dino Adriano, Paul Gerber, and John McCall v Surrey County Council, 8 November 2002: [2002] EWHC 2471 Admin CO/2216/2002.

⁶ Court of Appeal in Thornby Farms Ltd v Daventry District Council, Murray v Derbyshire County Council [2002] JPL 937.

⁷ PPG10 is the government's Planning Policy Guidance on waste planning. Waste Strategy 2000 is the government's policy on waste management.

⁸ The Community Recycling Network has recently published a review of methods of treating residual waste (see note 4 above).

⁹ The European consultation paper on biowaste is available on the EU website at http://europa.eu.int/comm/environment/waste/biodegradable2_en.pdf

¹⁰ Gateshead MBC v Secretary of State for the Environment and Northumbria Water Group plc [1994] JPL 255, and Court of Appeal [1994] EGCS 92.

¹¹ PPG23 is the government's Planning Policy Guidance on pollution control.

¹² See note 2 above.

¹³ See note 5 above.