

# **North London Waste Plan to 2035**

## **Hearing Statement**

### **B Soundness**

#### **Main Matter 1 – Legal Issues**

##### **Question 5**



#### **The Pinkham Way Alliance**

##### **Representor No 36**

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This Hearing Statement is submitted on behalf of the Pinkham Way Alliance (PWA).

Pinkham Way Alliance is a community campaign group which came together in early 2011 when residents living in the surrounding area of the Pinkham Way site became concerned about plans by the North London Waste Authority (NLWA) to develop the site for a large scale MBT waste facility.

Since then, PWA has taken an active interest in and has participated in the preparation of the original Submission version of the North London Waste Plan, the Haringey Local Plan: Strategic Policies document and the Haringey Site Allocations DPD, having made representations to and appeared at the examinations in public of all those plans.

PWA has approximately 3000 supporters

# Main Matter 1: Question 5

## 1 Sustainability Appraisal

1.1 In relation to its assessment of the Pinkham Way SINC, the SA was based on incorrect and incomplete information that led to inaccurate scoring<sup>1</sup> resulting in unreliable evidence about the suitability of the site for waste uses: See paragraphs 9.22 – 9.25 and 9.45 – 9.56 (pages 231 – 237) NLWP Submission Regulation 19 Representations – August 2019.

## 2 Is the strategy in the Plan an appropriate?

2.1 To conclude that the strategic response in the Plan is appropriate requires that the alternatives considered were themselves reasonable and based on proportionate evidence. This latter requirement is not evidenced.

2.2 Strategy formulation and development should commence with an analysis, covering all assessable needs and influences, now and over the intended term, actually, or potentially capable of influencing plan outcomes. Fundamental needs to consider for the NLWP would certainly include the London Plan as well as clearly identifiable major trends and issues, such as climate change.

2.3 Viable options would be generated and, via a clear process, based on key plan-relevant factors, previously identified and specified<sup>2</sup>; the most appropriate then being chosen<sup>3</sup>.

2.4 The “reasonable alternatives” in this case are the generated options.

2.5 Generating options is a crucial step in a strategic planning process yet there is no evidence of a methodology revealing how options were generated and why; and equally if any options were considered but excluded<sup>4</sup>, and again why. A transparent process and supporting audit trail should be evidenced. “Most popular”<sup>5</sup> might work for the X Factor but is not an acknowledged strategy formulation methodology.

2.6 As a fundamental step in the development of a strategy, the exclusion of this process step, including the absence of any evidence / audit trail is unfortunate, for the point had been highlighted earlier in the NLWP consultation process.

2.7 Such an audit trail may have also helped light-up why four “Behavioural Options”<sup>6</sup> became three assessed “Management Strategy Options”<sup>7</sup> and in doing so simply discarded one possibility, somewhere, for some unstated reason.

Separately, this confluence between “behaviour” and “management” stands as a key question for the actual deliverability of the plan, for considering LACW as an example: a

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<sup>1</sup> PWA MM5 Q 63 Appendix 11 – Inconsistencies in SO Evaluation

<sup>2</sup> Clearly linked to the objectives of the plan (not the SA) and expected to be representative of a theme running throughout into the monitoring arrangements.

<sup>3</sup> The alternate is when a desired outcome is pre-determined, such as seeking to place a man on the moon, or to facilitate a particular development.

<sup>4</sup> R (Moseley) v Haringey London Borough Council [2014] UKSC 56, [2014] 1 WLR 3947 concluded that public bodies will now need carefully to consider giving details of rejected options and the reasons for the rejection

<sup>5</sup> R19 NLWP 6.4

<sup>6</sup> Waste Data Study Part 2 Capacity 2019 Executive Summary VII

<sup>7</sup> Options Appraisal January 2019 Section 2

well-established 50% recycling target for 2020<sup>8</sup>. Compares with a 29% latest actual position<sup>9</sup>. Evidently the target will be missed by a country mile<sup>10</sup>. (The 2018/19 outturn figure is 30%, and is subject to an adverse trend.)<sup>11</sup> It raises the issue for the plan as to whether targets are being / expected to be “managed”, or the belief is simply the need to report “behaviour”. The latter would have substantive implications for the effective deliverability of the plan.<sup>12</sup>

2.8 Major trends and issues, forming part of the reasonable evidence base, appear to have been excluded from any option generation process and the evaluation stage, eg:

- In creating the evidence base from which to generate options it would be reasonably expected to consider climate change on eg behavioural influences effecting both individuals and organisations; potential legal / regulatory movements; and material type substitution, for its possible influence.
- In a similar, issue-excluded, manner the draft London Plan carries a clear theme regarding the intensification of current waste sites. It may be that such an approach, perhaps capturing enhanced process productivity alongside optimal land use, could have come forward as an option in its own right – and may well have conclude that no extra land at all was required. As an overlay to all the listed options its inclusion should be undoubted.
- Nor is there an evidence base of where particular waste is generated, or is likely to be generated over the plan’s term and so permitting building out to include the fundamental implications that surely brings to any waste plan.
- Against such a background it becomes unclear how the chosen option, indeed any of the options, meet the areas objectively assessed needs and hence can be classed as reasonable alternatives.
- It then becomes impossible to conclude that the chosen option can itself then become the appropriate strategy, for without being evidently rooted in the clear and stated needs of the area it cannot fall to be an appropriate strategy developed with the specific purpose to satisfy them.

2.9 With the options actually brought forward, as well as the absence of a consistent approach to their fair appraisal based on pre-identified plan-crucial criteria, the conclusions of the appraisal itself show significant shortcomings, which are detailed in the Appendices attached to this .<sup>13 14 15</sup>

2.10 The aggregation of these three separate appraisal areas (Management / Growth / Capacity) becomes the chosen strategy. In it, the London Plan’s apportionment is ignored; the London Plan’s waste stream recycling targets are ignored; the London Plan policy on optimising existing sites is ignored; the London Plan’s approach to C&I waste is not followed; while the technical principles underlying the London Plan’s long standing, tested, apportionment

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<sup>8</sup> R19 NLWP 7.9

<sup>9</sup> 2016 baseline (R19 NLWP Table 5)

<sup>10</sup> “It is highly unlikely that the partners will reach the Strategy target of 50% recycling by 2020” NLWA Annual Report 2089/19 2.9

<sup>11</sup> NLWA Authority Meeting 21/6/19 Head of Strategy and Services, Services Update 2.2

<sup>12</sup> A thorough baseline analysis would include an assessment of the capabilities of the organisation(s) tasked to deliver.

<sup>13</sup> PWA MM1 Qn 5 Appendix 1 – Weaknesses in Option Appraisal

<sup>14</sup> PWA MM1 Qn 5 Appendix 2 – Weaknesses in Growth Assumption Options

<sup>15</sup> PWA MM1 Qn 5 Appendix 3 – Weaknesses in Capacity Strategy Options

methodology is undermined in the desired spatial principles' equal geographical spread approach.

- 2.11 Since North London represents close to one quarter of all-London on key metrics, each stand as a reasonable need to be represented in the NLWP.

### **3 Conclusion**

- 3.1 It is not possible to conclude from the available evidence that the strategy is based on all of the area's objectively assessed needs. By not having considered all reasonable alternatives and then by going on to not consider those actually brought forward fairly against a consistently applied set of pre-determined criteria, the resulting strategy cannot be a justifiable, appropriate, response.

- 3.2 The overall approach is neither Positively Prepared not Justified.

#### **Suggested Approach**

Presenting a sound plan will require more depth and breadth to the currently presented position:

- a) A transparent option generation process should be developed and presented as a step in the process linking the evidence base to the option assessment stage;
  - b) Within this, the plan is made clear in how and why particular options were generated, and why, any were then excluded pre formal appraisal, and why;
  - c) Option assessment criteria are determined, clearly linked to the plan's needs, and employed consistently across all generated options. The related option assessment should include, as a minimum, criteria obviously linked to the aim, strategic objectives and spatial principles of the plan. Where these do not capture fundamental needs, eg site intensification and the achievement of key targets such as recycling levels, then such matters should additionally be assessed for each option;
  - d) The Options Appraisal report should be clear and fair in analysing each option on a consistent basis;
  - e) Options raised elsewhere (see Main Matter 2 question / answer 16: "netting" and apportionment) should form part of the analysis to ensure reasonable alternatives are captured;
    - o Unless they can be arguably excluded, under II
  - f) Where criteria are deemed to be important enough to be option determinant factors then ongoing monitoring mechanism for them should be in evidence.
- 3.3 Less, if any, land need would be one inevitable outcome.

## **MM1 Q 5 – Appendix 1**

### **Weaknesses in Option Appraisal**

**Options Appraisal January 2019 fails to provide a consistent, robust and thorough analysis of those options brought forward as seemingly reasonable, eg**

Management Strategy Options<sup>16</sup>

Option II: Maximised Recycling<sup>17</sup> is concluded as the chosen way forward. It, “aligns with ... regional and local recycling targets”<sup>18</sup>. It however does nothing of the sort.

The inevitable failure to meet the locally agreed recycling target of 50% by 2020 from its 2018/19 outturn of only 30% has already been mentioned.

Despite the plan’s focus on recycling, the indication from its data is that there is no change at all expected over the term in delivering the draft London Plan recycling target of 65% (by 2030) for municipal waste<sup>19</sup>. It is then unclear how this plan is deemed to be an appropriate response and classifiable as the chosen way forward.

	2018	2021	2026	2031	2036
Source data:-					
WDI	774768	793855	826716	860937	889332
LACW	940781	987205	997425	1012688	1026176
Total HIC	1715549	1781060	1824141	1873625	1915508
Calculated:-					
WDI recycled at 75%	581076	595391.3	620037	645703	666999
LACW recycled at 50%	470391	493603	498713	506344	513088
Total recycled	1051467	1088994	1118750	1152047	1180087
Total recycled %	61.3%	61.1%	61.3%	61.5%	61.6%

Data Source: WDS Part 2 2019 Table 15

(50% and 75% targets assumed flat from 2018 for ease despite lower baseline levels applying early in the table.)

If an option based on the regional recycling targets of 65% was considered before being discounted, then why is not made known.

<sup>16</sup> Options Appraisal Jan 2019 2

<sup>17</sup> Options Appraisal Jan 2019 2.5 – 2.7

<sup>18</sup> Options Appraisal Jan 2019 2.6

<sup>19</sup> Draft London Plan July 2019 Policy S17 A3A

It appears reasonable that an option to include meeting both your own established 50% LACW recycling target and the 65% objective required by your region, of which you constitute close to one quarter on key dimensions, should form some element of your plan(ning).

In planning to undershoot both local and region recycling targets it is not clear if recycling has been “maximised” as the option choice implies.

It may be the case that an unpublished assessment has been made and these lower levels, being in the 61-62% range, are seen to represent the maximum recycling levels achievable over the term in North London. That may be valid, but if so should be made clear in the plan.

## **MM1 Q 5 – Appendix 2**

# **Weaknesses in Growth Assumption Options**

Options Appraisal January 2019 fails to provide a consistent, robust and thorough analysis of those options brought forward as seemingly reasonable, eg

#### Growth Assumption Options<sup>5</sup>

The PWA R19 submission evidences strong reasons to doubt the validity of the claim that detailed modelling leads to LACW forecasts being superior those alternate forecasts available within the London Plan<sup>6</sup>. It shows the chosen forecasts to be inaccurate in their early years versus actuals and draws out many dampening factors<sup>7</sup> neglected in the chosen growth route.

The NLWA and Partner Boroughs have finally acknowledged this established trend:

*4.1.3. Except for 2015/16, residual waste tonnage has been falling for many years although the rate of decline has slowed recently. Based on data to July 2019 the Authority is projecting a total of 581,066 tonnes in 2019/20<sup>8</sup>*

- o NB The chosen underlying Eumonia modelling had forecast a HHLd expectation of 713,615t in 2019/20<sup>9</sup>, a drop of 19% of actuals vs forecast.

AND

*When the NLJWS was published it was envisaged that an increasing population would produce an increase in the amount of waste arising which in turn would require a combination of an increase in the waste treatment capacity provided and intensification in the use of the existing facilities. Unexpectedly the amount of waste produced between 2006/07 and 2012/13 fell despite the increase in population and dwelling stock. It is not certain why the amounts of waste produced declined despite the increase in the number of people living in the area, but this would appear to be related to the economic downturn during this period. 2013/14 saw a return to increasing waste volumes being produced for the first time since 2006/07 but this has not been sustained and the waste produced in the North London area has decreased again in 2017/18.<sup>10</sup>*

Any rationale for planning counter to what is by now an established trend appears to be absent.

Evidenced as being inflationary ambitious in these very early years and the expectation of being one third above equivalent London Plan forecasts<sup>11</sup> suggests a degree of reflection on the evidence base may now be appropriate. Certainly the appraisal's assumption that this is the most appropriate data set "because they are based on detailed modelling and are considered the most accurate<sup>12</sup>" is now challengeable and very likely indicates some weakness in the derivation.

<sup>5</sup> Options Appraisal Jan 2019 3

<sup>6</sup> R19 NLWP Representations Received Representor Order 5.179 to 5.187 inclusive

<sup>7</sup> R19 NLWP Representations Received Representor Order 5.200 to 5.212

<sup>8</sup> NLWA: Report of the Financial Advisor to the Authority Meeting of the NLWA of 3 October 2019

<sup>9</sup> Spreadsheet model Row 81 Column Z, Total for all Boroughs, excludes "additional NLWA waste" and trade waste, Eumonia forecasts for NLWA in support of the Edmonton plant 2014.

<sup>10</sup> NLJWS Annual Monitoring report 2017/18 Section 2

<sup>11</sup> R19 WDS 2019 Part 1 Table 33

<sup>12</sup> Options Appraisal January 2019 3.3

## **MM1 Q 5 – Appendix 3**

### **Weaknesses in Capacity Strategy Options**

**Options Appraisal January 2019 fails to provide a consistent, robust and thorough analysis of those options brought forward as seemingly reasonable, eg**

Capacity Strategy Options<sup>20</sup>

Of the capacity strategy options the first three have a base of the London apportionment, each separate option then incrementally adding more waste streams.

The ruling out of an apportionment based approach due to the risk the NLWP could be found unsound<sup>21</sup> is complex logic to follow, and almost certainly incorrect as presented: the apportionment is a tested element of a sound London Plan. Sub regional plans, such as the NLWP, are expected to be in general conformity with the same. There is no (stated or evidenced) reason for the NLWP to assume an alternate scenario(s) will result elsewhere, as is suggested, and were it to happen then the issue would be one for the Mayor / relevant local waste plan and not for the (conforming) NLWP.

To forecast an unstated 3<sup>rd</sup> party's failure to meet their own submitted and approved plan as a reason to make your own plan unsound before such an event ever happens, if it ever will, is unlikely to pass any reasonable test of appraisal robustness.

- If the NLWP believes this to be a genuine risk then as with any identified risk an assessment and impact / contingency plan would be the appropriate route. Declaring your own plan Unsound is not.

The final two options, four and five, move from apportionment to arisings / net self-sufficiency and again incrementally add waste streams.

It cannot be justifiably claimed that the associated pro / con matrices constitute a robust, thorough, comparable and supportable assessment of the major choices being faced. In each case they are back-end chosen factors rather than pre-determined plan based criteria. As a working example to highlight this weakness the analysis of Option 2 is considered:

**(Capacity) Option 2: Meeting the London Plan apportionment and net-self-sufficiency for C&D waste**

The following are the listed Cons (Options Appraisal January 2019 Table 4.2) to this particular option along with a brief counter commentary.

Higher land takes than Option 1 (ie "Meeting the London Plan Apportionment"). NLWP will need to demonstrate that sufficient land is available over the plan period to meet the identified need.

- The chosen option, Option 5, "Meeting North London's arisings, NSS for C&D and hazardous waste", will clearly have a higher land take than Option 2 with its underlying lower waste levels. If there is sufficient land for Option 5, as the plan goes on to claim, then there will certainly be sufficient for Option 2.

<sup>20</sup> Options Appraisal Jan 2019 4

<sup>21</sup> Options Appraisal January 2019 Table 4.1

- Option 2's land call relative to Option 1 is itself irrelevant.

Doesn't fully address the London Plan's aim for net self-sufficiency or the London Plan's stipulation that meeting apportionment is a minimum requirement. There is a risk that the NLWP could be found unsound.

- The London Plan aims for NSS at a London level. Other than failing to meet recycling targets (see main text), it is not stated, or is evident, what part of the London Plan's aim for NSS Option 2 fails to meet.
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- Option 2 would by definition satisfy the draft London Plan's requirement to meet waste apportionment as a minimum.
  - Duty to Co-Operate Report August 2019 makes the position clearly in several Duties to Co-Operate text, eg Bedfordshire Authorities point 23: " NSS for LACW and C&I waste means meeting the London Plan's apportionment targets."
- While there may be a risk of the NLWP being found unsound, it would have nothing to do with Option 2

Doesn't address the London Plan's requirement to make provision for hazardous waste treatment facilities or the new draft London Plan's requirement for boroughs to work with neighbouring authorities to consider the necessary facilities when planning for hazardous waste. Doesn't take into account Draft Plan representations from WSE WPAs that hazardous waste should be included in the net self-sufficiency. There is a risk that the NLWP could be found unsound.

- Hazardous waste makes up a component of the apportionment, and so would be captured<sup>22</sup>.
- Option 2 does not rule out the area seeking to identify potential facilities for hazardous waste, intra or extra the area, in conjunction with other authorities / councils any more or any less than any other option
- Having been included in the apportionment and so specifically planned to meet, this would more than satisfy these NSS requirements of other authorities / councils.
- While there may be a risk of the NLWP being found unsound, it would have nothing to do with Option 2

To be in line with national policy, the NLWP would need to plan for (and seek agreement for) the continued exports of some LACW and C&I waste, Excavation and hazardous waste through the duty to co-operate and SoCG with WSE WPAs. The WSE WPAs want North London to do more to manage its own waste and there is a high risk of objections if the NLWP does not plan to manage as much waste as possible within its borders. There is a risk that the NLWP could be found unsound.

- The export requirement falls to all options based on the plans expected tonnages / capacity / specialisms / ongoing cross border movements of waste

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<sup>22</sup> Draft London Plan 9.8.15

- While there may be a risk of the NLWP being found unsound, it would have nothing to do with Option 2

To ultimately go on to conclude Option 5, “..because it plans to manage as much of North London’s waste (or an equivalent amount) as possible within North London”, as the preferred option doesn’t address nor prove (justify) versus other alternatives - and also against fair and uniform criteria - the fundamental question – just why is that the optimal planning route?