MMAG Remarks to Bedfordshire Councils Planning Consortium - November 10th, Rufus Centre, Flitwick

Thank you for the invitation to be here tonight.

Clearly everyone who fought the Covanta proposal will be deeply disappointed and angry to learn that despite overwhelming local opposition the IPC have imposed the monster incinerator on the Marston Vale.

MMAG's initial response was that the IPC consent came with conditions which we would and will ensure are met.

And of course the Environment Agency are yet to give its approval and to date Covanta have no significant customers so the economics of the incinerator still don't stack up.

The fight goes on and every avenue is being explored - some of which I should like to share with you tonight.

First, however let me quote to you an example, typical of local reaction; "Dear MMAG, I wanted to let you know at the soonest opportunity that I am with you and other supporters in the continued fight against this totally inappropriate and unwanted incinerator. I opened the IPC's email moments after it arrived yesterday, and disappointment and anger were exactly what I felt. Along with a sense of total disbelief that all of those clearly articulated, rational objections were swept aside, for a trickle of electricity and a lazy, unimaginative solution to dealing with residual waste. The IPC's 'decisions and reasons' document reads like a 'this-is-a-sound-objection-but-we'll-ignore-it-in-the-light-of-national-interests'. The IPC's decision flies in the face of common sense, justice, democracy and morality. What a shame."

MMAG have now had the opportunity to examine the IPC ruling in more detail and I should like to share with you some observations on the issues which arise from the IPC judgement.

In a Campaign Briefing for a meeting held on Nov 9th, 2009 @ Stewartby, MMAG observed then that "at the national level strategic issues about energy production, waste disposal and carbon emission, will trump local considerations..."

Nevertheless it was still a shock to see on October 13th such stark reliance by the IPC on EN-1 - one of the key documents amongst the energy national policy statements and which significantly was designated on July 19th 2011, just days after the IPC Examination closed on July 15th thereby giving the IPC the power to make a decision.

Indeed a reliance especially on the 'urgency' of the need for new energy infrastructure & that the 'starting point of determination is a presumption in favour of granting consent to energy NSIP's applications'

The IPC noted there was no general requirement to consider alternatives or establish whether the proposal represents the 'best option'.

The IPC also noted that the nature of energy infrastructure would limit how it will enhance the quality of an area - presumably this is quango speak for its big, its square, its ugly and it comes with a tall chimney.

There was a touching assumption that environmental control regime will be enforced by the Environment Agency.

There was copious reference to European Legal Requirements such as the Renewable Energy Directive 2009, Revised Waste Framework 2008, Waste Incineration Directive 2000, and the East of England Plan, Milton Keynes South Midlands Sub Regional Strategy, Bedford Luton Minerals and Waste Local Plan and the Bedford Core Strategy (which had helpfully identified Rookery Pit as a suitable waste site) - all of which refer to the Northern Marston Vale growth area.

We had assumed that all these plans were to have been swept away by the localism agenda but the IPC, the zombi quango stumbled on as do the plans !

As regards the Impact on the waste hierarchy the IPC concluded there was enough waste available and whether the catchment area is a guide or a clearly limited area remains vague.

The 'proximity principle' was dismissed as creating artificial barriers and the IPC preferred a larger plant that multiple local ones.

Whereas we saw a landscape, now rural and peaceful and where reference to the physical industrial legacy was out dated the IPC saw distribution warehouses on edge of Bedford, the upgraded A421, the existing old brickwork chimneys, (why oh why did we leave those standing ?) pylons, NIRAH, (not yet built but if so-48m high) and the Millennium Country Park wind turbine - (again not yet built at 120m).

Nevertheless the IPC saw 'not a scarred heavy industrial landscape into which a major new development can be easily inserted' and that the impact would be most marked in short distance views.

The Councils were quoted as stating they had no objection to a waste plant in Rookery Pit but were concerned over the size of the proposal.

Of course we had been previously advised that even a 200,000tpa plant would require a building of same height as a 600,000tpa - essentially these buildings get wider not taller.

As regards transport the IPC was happy to rely on the highway authorities being content.

Similarly the IPC was happy to rely on the requirements of EN-3 being enforced by the Environment Agency.

All these IPC comments highlights the essential dilemma of our campaign ; we saw an incinerator the IPC saw a power station, mindful that the need for infrastructure is now pressing with a predicted supply shortfall due to decommissioning and no new build in the pipeline in time.

The panic amongst the 'energy' technocracy should not be underestimated.

We may now have passed beyond the point at which the supply can be met in time and for a period there will be a shortfall leading to energy rationing either through price or availability.

We may have to depend on a secondary back up system to be available when the grid defaults - hence a network or patchwork quilt of energy from waste plants, wind farms and solar energy - so very useful on a winters evening.

Whilst not disputing the need for new sources of power we predict an inevitable dash for gas power stations in which the Rookery Pit plant will make an insignificant contribution.

Its insurance nevertheless against nothing at all but insurance for whom: politicians whose energy policy may lead to the lights being switched off?

Nadine Dorries MP has apportioned blame to the previous Labour Government for this monstrosity but her own party's Energy Minister - Charles Hendry has welcomed the decision!

Commenting on the IPC decision, energy minister Charles Hendry said: “It is vital for investors and for local communities that when it comes to major energy projects, we have a planning process that people can have confidence in. I am very pleased that the IPC’s first decision has been delivered on time. A new energy from waste plant at Rookery South is an important development for energy security and for the environmental recovery of waste that would otherwise have gone to landfill.”

I will return to this contradiction at the heart of government later.

Attention has focused on judicial review and what that would involve. Judicial review is where the Courts supervise the exercise of power by a public authority.

A major issue is when the timetable of 6 weeks which is the statutory deadline under the Planning Act 2008 for appeals runs from.

We understand - a view apparently shared by Friends of the Earth and Central Bedfordshire Council - that because the local authorities objected to the compulsory purchase orders, they must go through a special parliamentary procedure on that point. The development

consent order won't be finally published until that procedure is completed, and the 6 weeks for challenge of the IPC's decision will run from that point - rather than 6 weeks from October 13th.

MMAG has reservations over what we term the issue of the 'silent party': essentially the Government decreeing that there should be new energy infrastructure and empowering the IPC to be both judge, jury, advocate and 'enforcer' of government policy - so starkly evident in the IPC reliance on the need for 'urgency'.

If the need was so urgent the government should have been a declared party to the proceedings and in so doing it would have been starkly obvious that local people were being patronised by the IPC.

If the need was urgent the IPC was always going to give approval.

Was there an institutional bias in that the chief commissioner was previously the Chief Planning Officer and a leading architect in hard wiring fast tracking into the Planning Act? Having created Frankenstein were they determined to pull the switch?

Grounds for review could include:

Illegality:

- Was the decision taken by the wrong person (unlawful sub-delegation)?
- Was there an error of law or error of fact?
- Were the powers used for the purpose different from the one envisaged by the law under which they were granted?
- Were relevant considerations ignored or irrelevant considerations taken into account. Did the IPC unduly fetter its discretion?

Irrationality:

- Was the decision so outrageous in its defiance of logic that no sensible person could have arrived at the same conclusion - did the decision make sense?

- Was the decision out of proportion to the aim it seeks to achieve?

Procedural impropriety:

- Were the statutory procedures followed?
- Was there a breach of natural justice in that there was bias or the 'real possibility of bias'?
- Was there a fair hearing ?
- Did the IPC give satisfactory reasons for its decision?

Now, of course the remedies can vary from setting aside the order or referring the process back to the IPC - difficult as it is soon to disappear - or will it?

A not insignificant issue is the cost of any judicial review.

Currently there is a cost-protection-litigants-consultation being conducted by the Ministry of Justice which is an EU proposal for limiting costs on environmental judicial reviews arising from the Aarhus convention.

However we should bear in mind this is a proposal subject to consultation (which goes into 2012) and does not as of now grant a protected limit.

http://www.justice.gov.uk/downloads/consultations/cost-protection-litigants-consultation.pdf

If there is a case for judicial review we should pursue it but the difficulties here should not be underestimated. We should only embark on this if we have clear decisive grounds. Much of our dissatisfaction with the IPC decision have roots in the energy statements and in our view this remains basically a matter for the politicians.

We are also looking into the Parliamentary Special Procedure which could prove to be a significant issue or a false hope.

This is significant because following on from the decision, arising from the fact that 46 out of the 93 plots of land to be compulsorily acquired are owned by statutory utilities or local authorities, and they have made representations about the project. In such a situation, the Planning Act requires the project to be subject to 'Special Parliamentary Procedure' (SPP) before it can go ahead.

SPP can involve a committee of MPs having to be convened to consider objections to the project, and this could delay it by 6-9 months before it can be implemented, despite the IPC having given it the green light.

Apparently this hangover from previous planning regimes is still included in the Planning Act procedure. This issue is likely to affect any project where the promoter is not itself a statutory undertaker or local authority.

It may be that this procedural issue is addressed in Parliament when amendments to the Localism Bill are to be considered that would replace this requirement with one where no separate procedure is needed, but instead the acquisition of statutory undertakers' or local authority land is given special regard when a decision is made.

The Planning Act, 2008, section 128 specifies the circumstances in which an order granting development consent that authorises the compulsory purchase of land belonging to a local authority or statutory undertakers is to be subject to special Parliamentary procedure. If a representation has been made by the local authority or statutory undertakers about an application for such an order and this has not been withdrawn, any order allowing compulsory acquisition would be subject to special Parliamentary procedure. The special Parliamentary procedure, and the system which governs it, is contained in the Statutory Orders (Special Procedure) Acts 1945 and 1965.

We understand there will be a Joint MP's representation directly to the PM.

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Nadine Dorries MP has put the following question to David Cameron at Prime Ministers Questions on October 26th (its worth remembering this is the 3rd such PMQ) "The Infrastructure Planning Commission has made one decision to grant planning permission for the giant American waste company Covanta to build a 600,000 tonne incinerator in Mid Bedfordshire. Thousands of people in Bedfordshire responded to the consultation, saying that they do not want this. The small print of the decision says that the decision is subject to special parliamentary procedure. Will the Prime Minister please let the people of Bedfordshire know that this Government are not like the previous Government, that we listen to local concerns and that we will ensure that that monstrous rubbish-guzzling atmosphere-polluting incinerator will not be imposed upon the people of Bedfordshire?"

The Prime Minister replied: "My hon. Friend makes an important point. There are difficult planning decisions that have to be made, but what the Government have done is made sure that the planning system is more democratic and reports to Parliament, and that Ministers have to take decisions and be accountable. I cannot speak for how those Ministers have to make those decisions. They have to make them in their own way, but we have ended the idea of the vast quango with absolutely no accountability, as my hon. Friend rightly says."

Clearly there exists a a 'political' problem : in May 2010 a government committed to localism was formed, yet now in Nov 2011, the IPC made its decision despite localism and the governments commitment to a zero waste strategy.

Campaigns apart moving forward we need to plan for the future - if that involves the plant being in Rookery Pit.

A key boil which needs to be lanced is our relationship with the Millennium Country Park and Trust

- People are justifiably outraged at
- Neutrality v contributions ?
- Neutrality v strength of local feeling?

- Neutrality v 'impact would be major and adverse - (the IPC's words')?

The Park needs to recognise the depth of anger felt over what people see as the Trust effectively stabbing in the back those who care about the local environment.

Now obviously the Trust has its curious Trust Deed, its history, legacy and relationships with developers. It has to pay its way in the world and let us not forget that if the Park were not here what might by now have taken its place - but is appeasement of developers a rational way to take the Park forward?

We need to ensure that the inspection regime over Rookery Pit is robust and that the governance regime is democratically accountable.

Currently there exists a community liaison forum - due to next meet in December 12th.

And there is the issue of what comes next ? Rookery South Pit is approx 95ha - the operations area of the plant is 14ha. We believe the remainder will be earmarked for further development.

And yet the sums still don't add up.

Our original dread was that the sales pitch for the plant would be seductive to surrounding authorities. Despite this they continue to have no significant customers.

There is a view that alternative proposals remain available which are more economical in respect of tip fees / gate prices and respectful of the environment.

So in conclusion this fight is not over by any means.

Thank you for listening. Any questions welcome.