House of Lords
House of Commons

Joint Committee on the Rookery South (Resource Recovery Facility) Order 2011

The Rookery South (Resource Recovery Facility) Order 2011

First Special Report of Session 2012–13

Ordered by the House of Lords
to be printed 13 February 2013
Ordered by the House of Commons
to be printed 13 February 2013

HL Paper 120
HC 991
Published on 28 February 2013
by authority of the House of Commons
London: The Stationery Office Limited
£0.00

Joint Committee on Rookery South

The Committee was appointed by the House of Commons and the House of Lords to examine petitions relating to the Rookery South (Resource Recovery Facility) Order 2011 in accordance with Section 128(2) of the Planning Act 2008.

Membership

HOUSE OF LORDS

Lord Dear
Lord Geddes
Lord Faulkner of Worcester

HOUSE OF COMMONS

Mr Brian Binley MP (Chair)
Bill Esterson MP
Paul Uppal MP

Powers

The committee has the power to report the Rookery South (Resource Recovery Facility) Order 2011 to both Houses, with or without amendment, or to report that the Order be not approved.

Publications

The Reports and evidence of the Committee are published by The Stationery Office. All publications of the Committee (including press notices) are on the Internet at www.parliament.uk/business/committees/committees-a-z/joint-select/joint-committee-rookery-south/.

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Introduction

1. The Rookery South (Resource Recovery Facility) Order 2011 is an item of secondary legislation produced under the provisions of an Act of Parliament. Rather than being subject to the standard procedures of negative annulment or affirmative approval by Parliament, the parent Act specifies that it is subject to the Special Parliamentary Procedure which is set out in the Statutory Orders (Special Procedure) Act 1945 and the Private Business Standing Orders of both Houses. Unlike other forms of Parliamentary approval, this procedure enables parties who are directly and specially affected by the Order, and who have *locus standi*, to petition against it. The purpose of this Report is to announce and explain our decisions in relation to those petitions previously certified as proper to be received and considered by a joint committee of both Houses.

The Rookery South (Resource Recovery Facility) Order 2011

2. The application to build a 65 megawatt "energy from waste generating station" on the site of former brick works at Stewartby in Bedfordshire was lodged by Covanta Rookery South Limited with the Infrastructure Planning Commission (IPC) on 4 August 2010. The proposal was classed as a "nationally significant infrastructure project" under the Planning Act 2008 because of the size of the proposed plant and, as such, was subject to the provisions of that Act with respect to the grant of development consent.

3. The IPC granted development consent to the scheme in accordance with two National Policy Statements on Energy.[1] These National Policy Statements were approved by the House of Commons on 18 July 2011.[2] In addition to planning consent, the Development Consent Order contains provisions for the compulsory purchase of types of land which under section 128(2) of the 2008 Act trigger Special Parliamentary Procedure, as was the case with this Order.

4. The Rookery South (Resource Recovery Facility) Order 2011 was laid before Parliament by the Secretary of State for Energy and Climate Change on 29 November 2011. In accordance with the 1945 Act, a 21-day joint petitioning process in both Houses commenced on that day. In total, 39 petitions were deposited by the closing date on 19 December, five of which were subsequently referred to this Committee by the Chairman of Ways and Means in the House of Commons and the Chairman of Committees in the House of Lords, as required by the 1945 Act.[3]

Scope of the Joint Committee

5. This Committee first met on 11 July 2012 to consider procedural questions and to determine the scope of our consideration of the petitions. The two Chairmen had

1 Details of the Infrastructure Planning Commission process of inquiry can be found on the website of the former IPC (abolished on 1 April 2012) http://infrastructure.independent.gov.uk/application-process/the-process/ The pages are currently hosted by the Planning inspectorate.

2 (1) Department of Energy and Climate Change: Overarching National Policy Statement for Energy (EN-1), July 2011, and (2) Department of Energy and Climate Change: National Policy Statement for Renewable Energy Infrastructure (EN-3), July 2011.

3 See: Chairman of Committees, House of Lords and Chairman of Ways and Means, House of Commons, *First Special Report of Session 2010-12: The Rookery South (Resource Recovery Facility) Order 2011: Report on petitions against the Order, 1 May* 2012, HL paper 294, HC 1956.

identified an anomaly in the statutory framework governing operation of the Special Parliamentary Procedure, giving rise to an absence of clarity about the scope of this Joint Committee's consideration of the petitions referred to it. That anomaly is dealt with in detail in their Report on the petitions.

6. We chose, after hearing contributions from the parties, to hear the case of each petitioner in full, on the basis of the petitions as submitted to the two Houses and referred to us.

The Joint Committee

7. Private Business Standing Orders 243(1) (HC) and 209(1)(HL) entitle each petitioner to be heard before the Committee in person, or by counsel or agent. A similar entitlement is given to the Minister responsible for the order, or, in certain circumstances, to the applicant for the order, as was the case with this Order for Covanta Rookery South Ltd.

8. The Committee accordingly heard cases presented on behalf of Central Bedfordshire Council and Bedford Borough Council on four petitions (petitions Nos. 36 to 39)—one each of general objection, and one each of amendment—and on behalf of three companies, Waste Recycling Group Ltd, WRG Waste Services Ltd and Anti-Waste Ltd, on one petition of amendment (petition No. 35).[4] The burden of proof in hearings under the Special Procedure lies with the petitioners, and the Committee is required after hearing the case on each petition to decide whether there is a case to be answered

9. Substantive hearings began on 24 October 2012 and concluded on 13 February 2013. The Committee also visited the Rookery South site on 28 November 2012.

Our decisions

10. On 12 December 2012, we reached the following decisions. First, by a majority vote (Lords Faulkner of Worcester and Geddes dissenting), we concluded that there was no case for Covanta to answer in respect of either of the petitions of general objection—petitions Nos. 36 (Central Bedfordshire Council) and 38 (Bedford Borough Council). Secondly, and unanimously, we concluded that there was no case to answer in respect of petition No. 35, a petition of amendment from WRG. Thirdly, and again unanimously, in respect of the petitions of amendment offered by the two Councils—petitions Nos. 37 (Central Bedfordshire Council) and 39 (Bedford Borough Council)—the Committee considered that there was a case to answer only in respect of amendments proposed in relation to the planned Bedford to Milton Keynes Waterway.

11. Covanta and the two Councils (Central Bedfordshire and Bedford Borough) proceeded to reach agreement on how the matters covered by those amendments might be dealt with. In essence, an agreement under section 106 of the Town and Country Planning Act 1990 requires Covanta to provide up to £3,375,000 towards the costs of the works required for construction of the waterway. The full agreement is published on our web pages, along

4 This petition is hereafter referred to as the WRG petition.

with the minutes of evidence.[5] Accordingly, we agreed on 13 February 2013, to report the Order to both Houses without amendment.

Reasons

12. We set out below the reasons for these decisions. We deal first with the two petitions of general objection from Central Bedfordshire Council and Bedford Borough Council (Nos. 36 and 38), and then with the two petitions of amendment from the two Councils (Nos. 37 and 39), and finally with the petition of amendment from WRG (No. 35).

Petitions 36 (Central Bedfordshire Council) and 38 (Bedford Borough Council

13. The two petitions of general objection are close to identical and set out objections to the Order on five broad grounds: the compulsory acquisition of council land; the size and bulk of the facility; the perceived need to source waste from beyond Bedfordshire; the type of technology proposed for the Rookery South facility; and the impact on the Councils' functions as a landowner, local authority, local planning authority and highway authority.

Special land and local authority functions

14. The first of those, the compulsory acquisition of council land, was the trigger for the invocation of the Special Parliamentary Procedure. The land in question is 'special land', but the Councils' ownership of it is restricted to there being vested in them the surface and top two spits of land below the surface in various plots on Green Lane, adjacent to the site. The Order would give Covanta powers to install, keep installed and maintain an electricity transmission line along a strip of that highway land.

15. We chose not to restrict our hearings to matters to do with compulsory purchase. None the less, we were surprised that the case presented by the two Councils did not touch in any significant respect on the matter of the compulsory purchase of its land. Petitions Nos. 36 and 38 suggest that it is unclear whether the compulsory purchase of the land might adversely affect the two Councils' highway functions. In the absence of any direct evidence on that point, we concluded that there was clearly no case for Covanta to answer on it.

16. A similar situation applied in relation to the fifth ground in the two petitions—the impact on the discharge of the two authorities' various functions as landowner, and local, planning and highway authority. No significant evidence was presented to us in direct support of the contention in the petitions that the Order 'seriously undermined' the discharge of those functions. Again, we concluded that there was no case for Covanta to answer in respect of that point.

The Covanta facility

17. The case presented by the two Councils was focused much more strongly on the other three areas identified in petitions Nos. 36 and 38—the size of the facility, the source of

5 www.parliament.uk/business/committees/committees-a-z/joint-select/joint-committee-rookery-south.

waste for the facility, and the technology to be used. In each of these areas, substantial questions were raised, and we considered those as follows.

Size of the facility

18. The facility is of substantial size and, it was clear both from the evidence presented to us and from our visit to the site, that it would have a significant impact on the local landscape, being visible from a number of nearby viewpoints. We agree with the Infrastructure Planning Commission that the size and scale of the facility are important and relevant in assessing its acceptability.[6] We also agree that that size and scale are a major disbenefit.[7] However, it is equally clear to us that the area in which the facility is to be sited has a long history of industrial development and that the landscape contains other visual intrusions, albeit none on such a major scale. Indeed, it became clear in evidence that Central Bedfordshire Council has itself granted planning permission for construction of a single wind turbine near the proposed site. We have noted that, as outlined in paragraph 2 above, Covanta's proposed facility is classed as "a nationally significant infrastructure project" under the Planning Act 2008; by its nature, it would therefore be bigger than average.

19. Although the size and bulk of the proposed facility were a significant factor in our considerations, we concluded that the Councils had not provided any overwhelming reason why the Order should not be permitted in light of the objectives set out in the two National Policy Statements under which permission was originally granted.

Sources of waste

20. We had considerable sympathy with the point that the size of the facility is likely to mean that it will source waste from locations beyond the county of Bedfordshire. The Order, indeed, would permit Covanta to source waste from any location, and not necessarily from within England or the rest of the United Kingdom, although an effective catchment area of six administrative areas surrounding Bedfordshire was much discussed during our hearings.

21. We noted that all waste delivered to the site would arrive by road, in spite of the proximity of a rail line to the site. There was some discussion during our hearings about whether some or all of the waste could feasibly be delivered by rail rather than by road, but none of the four petitions from the two Councils proposed an amendment to the Order to that effect.

22. We noted arguments about the challenge Covanta may face in sourcing enough waste to make the facility an economically viable project, particularly given the award of some municipal waste contracts in the area to other companies and the existing and proposed capacity in the locality. Those considerations are, however, a matter for Covanta and its financial backers rather than for us.

6 Infrastructure Planning Commission, *The Planning Act 2008, Rookery South Resource Recovery Facility Order: Panel's Decision and Statement of Reasons*, 13 October 2001, para 5.49.

7 Ibid, para 5.58.

23. In spite of some misgivings, then, about both the size of the likely catchment area and the impact of increased traffic both in the area surrounding Rookery South and beyond, we were not persuaded that the two Councils had demonstrated sufficient cause.

Technology

24. Finally in the petitions of general objection, the two Councils argued against the technology to be used at the proposed facility. Covanta intend to build a power station with energy provided from waste. We noted arguments about the likely impact on local recycling, and that recycling is higher in the waste hierarchy than incineration is. We note on the other side of the argument, however, that the Covanta plant will provide the substantial benefit of a contribution to national energy policy, and that creation of energy from waste will divert waste from landfill, which is in turn lower in the waste hierarchy. Once again, we concluded that the Councils had not demonstrated sufficient cause.

Petitions 37 (Central Bedfordshire Council) and 39 (Bedford Borough Council)

25. The two Councils each presented a petition of amendment (Nos. 37 and 39). Once again, these petitions were near identical, and the amendments proposed in them absolutely so.

Residual waste

26. The councils sought the inclusion in the Order of a definition of 'residual waste'. While the definition proposed appeared unobjectionable, it also appeared to us to add nothing to existing provision and therefore to be unnecessary.

Catchment area

27. The Councils sought to limit the size of the area from which Covanta could source waste for its facility, dealing with concerns also raised in the two petitions of general objection on this point. The amendment would have limited Covanta to sourcing waste from the administrative areas of Cambridgeshire County Council, Northamptonshire County Council, Milton Keynes Council, Bedford Borough Council, Central Bedfordshire Council, Luton Borough Council, Buckinghamshire County Council, Hertfordshire County Council, and the Royal borough of Windsor and Maidenhead. The Councils argued strongly in evidence that a need to bring waste to the facility from far-flung areas would have significant negative environmental impacts both around the facility and more widely. They argued, too, that Covanta would be required to source waste distantly because of existing, planned and potential local capacity within Bedfordshire and surrounding counties.

28. As noted at paragraphs 20 to 22 above, we had sympathy with these points but noted that the energy from waste facility to be provided as a national infrastructure project will bring benefits as regards power generation and that the economic challenge of sourcing waste is a matter for Covanta.

Bedford to Milton Keynes Waterway Park

29. Finally, the Councils sought to introduce amendments enabling works on a proposed Bedford to Milton Keynes waterway, which would cross the Green Lane land to be compulsorily acquired by Covanta under the Order. In short, completion of necessary works for the waterway would be much more expensive after Covanta had built its facility than would be the case if they were carried out first. We were persuaded that this was a strong point, and ruled that Covanta did have a case to answer in relation to these proposed amendments. On 19 December, Covanta and the Councils jointly told us that an agreement had been reached in principle under which Covanta would supply to Councils a sum of money required to undertake those waterway works, and that this would resolve the matters raised without our having to amend the Order. A detailed proposal, agreed by all parties, was presented to us on 13 February 2013. That being so, we see no need for the Order itself to be amended in this respect.

Petition No. 35 (Waste Recycling Group Ltd, WRG Waste Services Ltd, and Anti Waste Ltd)

30. The fifth petition, also a petition of amendment, came from WRG, which also owns rights in some of the land that Covanta would be entitled compulsorily to purchase under the Order. The petition proposed amendments that would have excluded from the powers over land conferred by articles 17 to 26 of the Order all land and all rights and interests in or over land that were owned by the companies on 22 November 2011.

31. WRG did, to their credit, present a case based on the 'special land' provisions that triggered our proceedings. Their land is not, in fact, 'special land', but some of it is believed to be directly below the special land (the highway authority owns the top two spits of the land, but the subsoil beneath is owned by the companies). They also demonstrated that the introduction of the large Covanta facility would have a substantial impact on the area's waste management market, in which WRG is one of several competitors. They argued, too, that a restrictive covenant that currently applies to part of their land, and which would prevent the Covanta facility from being built, should not be overreached.

32. We do not doubt that the introduction into the area of a new and large-scale competitor will present commercial challenges to WRG and to others in the local waste management industry. That is, however, no reason for us to object to the Order. We note, too, that the Order already contains provision for WRG and the other companies concerned to receive compensation for the loss of rights in the land that Covanta will purchase under the Order. We concluded that there was no case to answer in respect of petition No. 35.

Conclusion

33. **By a majority of 4 to 2, we considered that there was no case for Covanta Rookery South Ltd to answer in respect of the petitions of general objection considered during our hearings from Central Bedfordshire Council and from Bedford Borough Council. We considered that there was no case to answer in respect of the petition of amendment presented by Waste Recycling Group Ltd, WRG Waste Services Ltd and Anti Waste Ltd.**

34. **We did consider that there was a case to answer in respect of the petitions of amendment presented by Central Bedfordshire Council and by Bedford Borough Council, but in respect only of amendments relating to the proposed Bedford to Milton Keynes Waterway. We are satisfied that the agreement reached privately on those points by the two Councils and Covanta Rookery South Ltd answers that case.**

35. We duly report to both Houses the Rookery South (Resource Recovery Facility) Order 2011, without amendment.