

IN PARLIAMENT

HOUSE OF LORDS

SESSION 2010-12

ROOKERY SOUTH (RESOURCE RECOVERY FACILITY) ORDER 2011

PETITION FOR AMENDMENT

To the House of Lords

THE PETITION OF (1) WASTE RECYCLING GROUP LIMITED (2) WRG WASTE SERVICES LIMITED AND (3) ANTI WASTE LIMITED

Declares that:

- 1 Your Petitioners are (1) Waste Recycling Group Limited (2) WRG Waste Services Limited and (3) Anti Waste Limited. The above-named order (“the Special Procedure Order”) would authorise the compulsory acquisition of land or interests in land belonging to your Petitioners, to which they object.
- 2 Waste Recycling Group Limited (parent company), together with their subsidiary companies, WRG Waste Services Limited and Anti-Waste Limited, have interests in land which will be directly and specially affected by the Special Procedure Order, if made in its current form. In particular they own and/or have the benefit of:
 - 2.1 The sub soil of land over which the Special Procedure Order seeks to acquire the right to install and maintain an electricity transmission line and to improve the highway. The specific parcels of land in question are shown as items 22 and 23 on the 'Land Plan', which was submitted to the Infrastructure Planning Commission by Covanta;
 - 2.2 The freehold of land and buildings on the south west side of Wilstead Road, Elstow, Bedford, which benefits from a restrictive covenant;
 - 2.3 A caution against first registration of the freehold of Grog Plant, Stewartby, which is related to the restrictive covenant referred to at 2.2 above.
- 3 In summary, as well as being the owners of sub soil of land that is liable to compulsory acquisition, your Petitioners have the benefit of a restrictive covenant which (if not overreached) would prevent the development which is the subject of the Special Procedure Order from proceeding. If the Special Procedure Order is approved without amendments, your Petitioners' rights specified at 2.1 to 2.3 inclusive would be extinguished.

- 4 Your Petitioners object to the inclusion of compulsory acquisition powers in the Special Procedure Order in respect of its land and interests on the following grounds:
 - 4.1 On the facts of the present case, interference with private rights is not justified.
 - 4.2 In order to justify the use of compulsory acquisition powers, the decision maker must be satisfied that there is a "compelling case in the public interest" (section 122(3) of the Planning Act 2008);
 - 4.3 One facet of the test of "compelling case in the public interest" is that it requires consideration of whether the purpose for which the land is being acquired may be met by other means. In other words, are alternatives available which would allow the objectives to be met by less intrusive means;
 - 4.4 Your Petitioners consider that there is not a "compelling case in the public interest" which justifies the use of compulsory acquisition powers in this case, in respect of its land and interests, on the following grounds:
 - 4.4.1 Waste Planning Policy: granting development consent for the proposed development (comprised in the Special Procedure Order) is in clear conflict with the development plan (both adopted and emerging) and the development plans (both adopted and emerging) of adjoining authorities;
 - 4.4.2 Need: there is no overriding and/or compelling need for the waste management capacity which will be created by the proposed development (comprised in the Special Procedure Order) having regard to waste arisings data, the location of the proposed facility and the scale of the proposed facility. Indeed, the proposed development (comprised in the Special Procedure Order) has the potential to crowd out other, preferable waste management solutions and may contravene the principles of self sufficiency and proximity which stem from the Waste Framework Directive;
 - 4.4.3 Alternatives: there are alternative sites and proposals for alternative facilities which are capable of meeting the same purpose as that which would be met by the proposed development (comprised in the Special Procedure Order). These alternative sites and proposals are realistic prospects which are capable of being delivered within the same timescales as the proposed development (comprised in the Special Procedure Order) and without the need for compulsory acquisition powers to be exercised in respect of your Petitioners' land and interests in the land;

- 4.4.4 Market considerations: the waste industry operates on a market based approach and competition in the market place is a key objective of national planning policy on waste. In the absence of evidence of market failure, the award of compulsory acquisition powers in the present case is unnecessary and may unduly affect competition in this particular marketplace with consequent adverse effects such as limiting the relevant local authorities' choices and bargaining positions when agreeing contracts for the disposal, recovery and/or recycling for current purposes of municipal waste.
- 4.4.5 Having regard to all relevant issues, on the facts of this case, the benefits of the proposed development (comprised in the Special Procedure Order) do not outweigh its disadvantages so as to constitute a "compelling case in the public interest". There is reasonable doubt as to whether the "public interest decisively so demands" the grant of compulsory acquisition powers and accordingly "the balance must be resolved in favour of the citizen", which in this case is the Petitioner (see the judgment of Lord Denning in *Prest v Secretary of State for Wales* (1982) 266 EG 527).
- 4.5 Your Petitioners submitted detailed evidence on all of the grounds listed at 2.4.1 to 2.4.3 above to the Infrastructure Planning Commission during its determination of Covanta's application for a DCO.
- 4.6 Your Petitioners consider that the decision of the Infrastructure Planning Commission (the IPC) to grant compulsory acquisition powers as part of the DCO is unlawful for the following reasons:
 - 4.6.1 The IPC has misdirected itself in respect of the correct approach which is to be taken to waste planning policy in this particular case. Specifically, the IPC has made an error in its determination that, in effect, generic national policy regarding the need for energy generation overrides waste planning policy (including the provisions of the development plan);
 - 4.6.2 The IPC has failed to give adequate reasons for its determination that "there are no alternative sites to Rookery South in terms of delivery and timescale" (see paragraph 7.94 of the IPC's Statement of Reasons). Indeed, this is the only comment of the IPC in respect of a considerable volume of evidence. There are no specific findings about the timing or delivery of the Rookery proposal itself, or for competing sites. It is not possible therefore to understand the IPC's decision in this regard. This is unlawful having regard to the IPC's duty to give reasons (s116 of the Planning Act 2008);
 - 4.6.3 The IPC failed to properly apply the test of "compelling case in the public interest" in that it mistakenly elides the test for the grant of planning permission with the test for granting powers of compulsory acquisition;

- 4.6.4 The IPC identified a number of significant disadvantages and/or harms which would be caused by the proposed development (comprised in the Special Procedure Order), for example, conflict with the development plan, harm to the landscape, potential for pollution of water. The IPC's decision fails to properly balance those issues in its determination to grant compulsory acquisition powers to Covanta and/or fails to give adequate reasons for its decision in this regard.
- 4.7 Your Petitioners are also concerned, particularly having regard to its case that the IPC has made an unlawful determination in respect of compulsory acquisition issues, that there has been an absence of democratic accountability in the decision-making process to date. This is especially concerning given that if made without amendments, the Special Procedure Order will interfere with private property rights.
- 5 Accordingly, your Petitioners request that the Special Procedure Order be amended so that all provisions in the Special Procedure Order which authorise the compulsory acquisition of your Petitioners' land and other property rights are removed.
- 6 The amendments that your Petitioners request should be made to the Order are as follows:
- 6.1 In article 17 (compulsory acquisition of land), after paragraph (4) insert—
- “(5) This article does not apply to any Order land which was, on the date on which the Order was made, in the ownership of Waste Recycling Group Limited, WRG Waste Services Limited or Anti Waste Limited.”
- 6.2 In article 18 (power to override easements and other rights), after paragraph (7) insert—
- “(8) This article does not apply in respect of any interests or rights which were, on the date on which the Order was made, in the ownership of Waste Recycling Group Limited, WRG Waste Services Limited or Anti Waste Limited.”
- 6.3 In article 19 (compulsory acquisition of rights), after paragraph (4) insert—
- “(5) This article does not apply to any existing rights which were, on the date on which the Order was made, in the ownership of Waste Recycling Group Limited, WRG Waste Services Limited or Anti Waste Limited and it does not authorise the acquisition of new rights in respect of Order land which is in the ownership of those companies.”
- 6.4 In article 22 (temporary use of land for carrying out the authorised development), after paragraph (4) insert—
- “(5) This article does not apply to any land which was, on the date on which the Order was made, in the ownership of Waste Recycling Group Limited, WRG Waste Services Limited or Anti Waste Limited.”
- 6.5 In article 25 (temporary use of land for carrying out the authorised development), after paragraph (10) insert—

“(11) This article does not apply to any land which was, on the date on which the Order was made, in the ownership of Waste Recycling Group Limited, WRG Waste Services Limited or Anti Waste Limited.”

6.6 In article 26 (temporary use of land for maintaining authorised development), after paragraph (10) insert—

“(11) This article does not apply to any land which was, on the date on which the Order was made, in the ownership of Waste Recycling Group Limited, WRG Waste Services Limited or Anti Waste Limited.”

Your Petitioners therefore request that, should a joint committee consider this Special Procedure Order, they or someone representing them in accordance with the rules and Standing Orders of the House, be given an opportunity to give evidence on all or some of the issues raised in this petition.

And the Petitioners remain, etc.

(Signature of Agent for the Petitioners)

Monday 19 December 2011

(Date presented)

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(Name of Agent)

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