

FAO Planning Case Officer,
Planning Development Control Team,
Planning and Development Group,
Surrey County Council,
County Hall,
Kingston upon Thames,
Surrey KT1 2DY
18TH February 2012

From: Hon. Chairman, Lower Sunbury Residents' Association (LOSRA)

Dear Sir/Madam,

Re: Charlton Lane Waste Management Facility, Shepperton, (SP10/0947)

1. Following instructions to Knights Solicitors and the opinion of Peter Village QC submitted in advance of the Planning and Regulatory Committee 30th June 2011, I now write on behalf of the Association to urge refusal of this application in the light of new factors that have arisen since the resolution to grant planning permission on 30th June 2011. It is regrettable that my representation must be so limited as we believe this development to be wrong on so many levels.

Adjudication by the Advertising Standards Authority (ASA)

2. On 26th October 2011 the ASA issued an adjudication regarding complaints about the pre-application public consultation material. It is important to stress that the ASA is a competent authority. It is independent of both Government and the advertising industry; and is recognised by the Government, the courts and other regulators as the appropriate body to deal with complaints of this nature. Its decision must be regarded as a material consideration with respect to consultation; and its judgement was made only after the most careful consideration of detailed evidence from both the complainant and SITA UK.
3. The ASA found the publicity material to be flawed in three very significant respects: (1) It misrepresented that the technologies were proven; (2) It misrepresented that existing facilities "are all operating successfully"; and (3) the artist's impressions of the stack were so flawed to be misleading. SITA UK was ordered not to use the advertisement again.
4. The applicants may well seek to minimise the significance of the ASA adjudication but the Courts have made it clear "*....in any context the essence of consultation is the communication of a genuine invitation to give advice and a genuine receipt of that advice....it must go without saying that to achieve consultation sufficient information must be supplied by the consulting to the consulted party to enable it to tender helpful advice....By helpful advice, in this context, I mean sufficiently informed and considered information or advice about aspects of the form or substance of the proposals, or their implications for the consulted party, being aspects material*

to the implementation of the proposal....and as to which the party consulted might have relevant information or advice to offer¹”

5. SITA’s dissembling cannot be viewed merely as a procedural aberration. It was deliberately misleading in critical areas of public concern. As Chairman of this Association and in common with other local campaigners, I found myself spending an inordinate amount of time challenging the misleading statements of the developer with correspondingly less time to question the principle of gasification and anaerobic digestion in this particular (highly controversial) location. *“Sufficient time must be given by the consulting to the consulted party to enable it to do that, and sufficient time must be available for such advice to be considered by the consulting party. Sufficient, in that context, does not mean ample, but at least enough to enable the relevant purpose to be fulfilled²”.*
6. The law then, is perfectly clear. Sufficient information must be supplied by the *consulting* party to enable the *consulted* party to tender helpful advice, which in my case implies the whole of the LOSRA³ membership. This did not happen. My energies were devoted to correcting the impressions given by the developer. Had the developer been truthful with regard to the proper state of affairs on the technology and stack height then my Association would have been more profitably engaged on the facts – as indeed would the members of the Planning and Regulatory Committee of Surrey County Council who, in good faith, will doubtless have subscribed to the SCC Statement of Community Involvement; *“Consultation allows us to work with you to solve issues and build trust”* and the unambiguous SCC claim that *“Consultation makes the planning process more effective by expanding the evidence”*.
7. As to the misleading publicity, no public apology or explanation has been forthcoming from SITA; indeed as far as the developers are concerned, their original claims remain extant to this day. Many residents, especially the elderly, will still believe that there is no reason to object. They will credit the original publicity to have been written in good faith and at face value. They may not, for example, be aware of the recent Renewable Obligations Banding Review in which the Government has stated that gasifiers (and pyrolysis) are *“still considered to be emerging and unproven technologies for the treatment of waste biomass and mixed municipal waste where there are a number of technical issues to resolve, for example, achieving intended throughput and air emission standards⁴”*. Deference to authority and a reliance on due process may have led our members not to respond to the consultation when they may have done so, had they known the true facts. The same can undoubtedly be said of residents in Shepperton and Charlton Village.

¹ R. v Secretary of State for Social Services, ex p. Association of Metropolitan Authorities (1986) 1 All E.R. 164

² Ibid

³ LOSRA represents residents living in the Sunbury East and Sunbury West & Halliford wards covering some 3,800 dwellings of which 1273 are registered members (membership applies to a dwelling rather than an individual). The annual subscription is £5 and the LOSRA Committee meets monthly. The Association has a sophisticated communications network. In addition to its quarterly newsletters (hand delivered to all households), it has a Website which is regularly updated: www.losra.org and fortnightly e-bulletins are sent to all those who have registered through the Website. The Association can also be followed on Twitter and communication by residents is effected by telephone or through the ‘Contact LOSRA’ menu on the Home Page.

⁴ Department of Energy and Climate Change, October 2011, p.83, para. 12.2

8. Depressingly, SITA's perfidious corporate culture does not end here. On October 19th 2011, Anne-Marie Wilshaw of SITA addressed the Development Control Committee of Perth and Kinross Council who were hearing an application for a gasifier. She said; "We now put our name to this type of technology and have developed it elsewhere in the Country, namely Surrey⁵". Not only is there no comparable technology in Surrey but, at the time of making this statement, no decision notice had even been issued in respect of Charlton Lane – the situation as it exists today.

Air Quality

9. There is also the question of the 'independent' air quality expert who originally provided training and advice to the Planning Committee. It is understood that he is employed by the RPS Group which is known to be 'incinerator friendly' and to work for SITA UK. It was the RPS Group which provided two studies in support of SITA's Environmental Permit application. That expert would be interested to know that a fresh Government-backed study into the potential health risks has been given the go-ahead, sparking concerns that key projects could be derailed. In January 2012, The Health Protection Agency (HPA) confirmed it would begin the study in April 2012, with preliminary results expected in March 2014.⁶
10. At the time of writing, the Environment Agency still has a number of outstanding requests for information. Additionally, The CERC Air Quality Modelling Draft Report for Spelthorne Council, August 2011 provided new mapping of areas of annual average concentration for nitrogen dioxide NO₂ **and shows an increase in the area affected when compared to mapping produced in 2005. In particular, part of the application site and some residential areas to the south now exceed the air quality limit value of 40ug/m³ for NO₂**

Conclusion

11. If fact is to be separated from fiction, we discover that no U.K. gasifier has ever worked for a period longer than a few months without a major technical fault requiring plant shutdown and concentrated engineering expertise and equipment to put the defect right. The implication of the ASA finding is that the proposed facility is reduced in status to that of a prototype. If SITA insist otherwise they should be challenged to disclose where others working efficiently are located. (The Dumfries reference plant has released unfiltered gases directly into the atmosphere through emergency venting on **38** separate occasions). In short, it is simply not true that the technology to be used in the mixed waste gasifier at Shepperton is "proven" as SITA claims.
12. There is necessarily a collusive relationship between County and SITA but this relationship should not be allowed to blur objectivity in deciding the outcome of this application. For the reasons outlined above I urge you to recommend refusal.

Yours faithfully,

John Hirsh,

⁵ <http://www.thecourier.co.uk/News/Perthshire/article/18201/sita-uk-wins-approval-for-gasification-scheme-at-binn-farm.html>

⁶ <http://www.hpa.org.uk/NewsCentre/NationalPressReleases/2012PressReleases/120124Incineratorstudy>

21, School Walk, Sunbury, Middlesex TW16 6RB e: johnphirsh@gmail.com www.losra.org