

# THE GREAT INCINERATOR SCANDAL

An explanatory paper published by Lewes Liberal Democrats

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One of the biggest news stories in East Sussex over the past decade has been whether an incinerator should be built at Newhaven's North Quay to burn municipal waste.

As the debate has hotted up – and become very heated – it has become increasingly difficult for local people to keep track of all the developments and judge the merits of rival arguments.

This explanatory paper sets out the background, history and arguments in the case, and summarises why Lewes District Council believes East Sussex County Council has made a major mess of its biggest pollution and energy duty. It also sets out an alternative vision for the county, which renders the incinerator unnecessary.

Though written by the Liberal Democrats, this paper reflects a certain amount of cross-



party consensus about the doubts over the incinerator, indeed most candidates standing in the 2007 Lewes district elections, including Conservatives, said they either opposed the incinerator or made no comment.

## Basic background

Most people put rubbish in their bin, put the bin out for collection once a week, and think nothing more of it. But there is a chain of events that follows waste after it has been collected, and in East Sussex some crucial decisions are needed on how to dispose of waste in the future.

In areas where both district and county councils operate, the districts (in this paper the word 'districts' includes councils called 'boroughs') are responsible for *collecting* waste, while the county council is responsible for *disposing* of it. In a 'unitary' authority like Brighton & Hove, the council is both the Waste Collection Authority (WCA) and the Waste Disposal Authority (WDA).

Councils responsible for disposing of waste (WDAs) have to find ways of doing so. The traditional method has been landfill, but we are running out of holes in the ground to put rubbish in, and the government is rightly encouraging local councils to reduce the amount that goes to landfill. With around 350,000 tonnes of waste generated in the area covered by East Sussex and Brighton & Hove councils, that's a big problem! It's given greater urgency by the fact that the Beddingham landfill site will soon be full, at which time it will force the county council to 'export' waste to other counties – at considerable cost.

A large part of the problem could be dealt with by stopping things becoming rubbish in the first place, such as getting shops to cut down on packaging (something the government must do), encouraging people to compost what they can, and recy-

cling as much as possible. Incentives are needed for such activities, but even with the best case scenario, there will still be a lot of rubbish that needs dealing with.

## Incineration as a possible solution

The idea of an incinerator was first put forward in the mid-1990s when it became clear that an alternative strategy to landfill would be needed within 10-20 years. Incineration as a possible part-solution to the county's waste problem was adopted as a policy by East Sussex and Brighton & Hove councils in December 1998, but from the beginning there was strong opposition.

For the two councils to have an incinerator, they must secure five clearances, of which four carry a legal requirement to get the views of the public:

- An incinerator must be consistent with **planning policy**.
- It must have **planning permission**.
- The operators of an incinerator need a **pollution permit**.
- They then need a viable **contract** with the contractor (in this case Veolia Environmental Services Ltd).
- If they can't negotiate a deal for the land, they must apply for a **compulsory purchase order**.

The contract between the council and the contractor is the only part of the process that does not require any public consultation, albeit it still needs to represent a reasonable deal for council tax payers. The public must have its say on the other four processes, and the county council has a duty to take the public's views into consideration.

## The proposed incinerator

The idea of an incinerator to be sited at North Quay in Newhaven had been aired as early as the mid-1990s, and ran into instant opposition. Despite this, in 2001 East Sussex and Brighton & Hove councils formally proposed it. (Note that the two councils work together as they are the two Waste Disposal Authorities in the area formerly covered by East Sussex County Council alone – until Brighton & Hove became a ‘unitary’ council in 1997 – but as the incinerator is on land in ESCC’s patch, it has the bigger responsibility as it is the planning authority for any matters dealing with waste or minerals.)

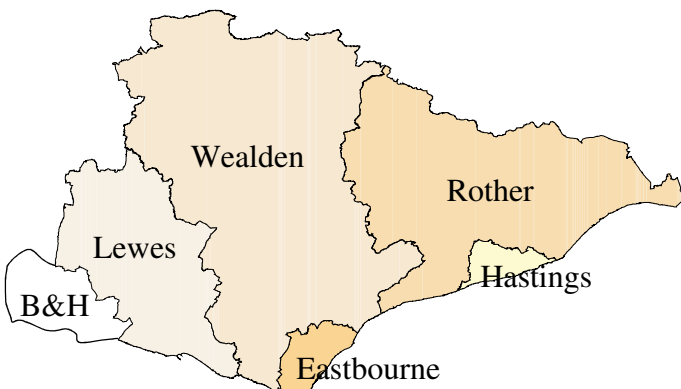
The incinerator is planned to burn 210,000 tonnes of waste per year. Burning that amount is expected to leave 52,900 tonnes per year of ‘bottom ash’, which has to be disposed of carefully – it is sometimes used as an aggregate but is toxic so must be dealt with as a hazardous substance. In addition, there will be 6,300 tonnes of ‘fly ash’: these are chemicals and other residues from the process which are classed as ‘special and difficult’ waste and will have to be ‘exported’ outside the county as there is no facility for disposal in East Sussex (and very few in the whole of Britain). In short, the incinerator will eliminate around 157,100 tonnes of waste (only 75% of the waste put in) and produce a toxic waste stream from materials that were not originally particularly toxic.

## Waste Local Plan

Any waste facility has to comply with the Waste Local Plan. The existing plan was first published in draft form in November 2000, and attracted around 13,500 comments, of which more than 10,000 objected to incineration. It was revised and re-published in April 2002 but incineration remained a central plank. Another 5,800 individuals and organisations made comments, again mostly against incineration, and the plan went to a public inquiry, but again incineration survived into the plan that finally came into effect in February 2006.

The timing of the plan gave rise to suspicion, as it *followed* the signing of the contract between East Sussex County Council and Veolia in March 2003. The Waste Local Plan should have come first, as it replaced several planning policy documents that would have hindered any attempt to get a successful planning application for an incinerator at Newhaven, yet the contract was signed before the plan was approved, thereby removing the usefulness of the public inquiry.

That in turn led to suspicions that the existence of the Veolia contract influenced the two councils following the public inquiry on the Waste Local Plan, for they ignored many of the planning inspector’s recommendations. It also led to a situation where any waste management company wanting to bid for the



*COLLECTORS AND DISPOSERS ... The five district or borough councils of East Sussex, as the Waste Collection Authorities, hand their waste to East Sussex county council to dispose of it. Brighton & Hove does both functions itself but will use the proposed incinerator at Newhaven to dispose of most of its waste.*

East Sussex waste contract was excluded if it wasn’t willing to go down the incineration route. This effectively left Veolia in a monopoly position.

A legal challenge in the High Court by a Newhaven resident Nicola Day in November 2006, claiming the Waste Local Plan was illegitimate because of a lack of transparency by council officials, was unsuccessful.

## Planning application

As the planning authority for waste matters, the county council was in the position of being judge and jury over its own application. The planning application for the incinerator attracted over 16,000 objections and only five comments in support. The council was also forced to advertise that the application conflicted with a number of planning policies, but in February 2007 it approved the application. Because of various technicalities, the application came up for discussion again in November 2007, and was still approved.

A lawyer acting for Lewes District Council told one of the public inquiries: ‘Despite the acknowledged importance of keeping its interests as disposal authority separate from its interests as planning authority, it is very difficult to see how, in making the decisions it has with regards to the incinerator scheme, ESCC has not allowed the former to influence the latter.’

The Newhaven pressure group Defenders of the Ouse Valley and Estuary (DOVE) and Friends of the Earth have applied for a judicial review of the incinerator application, with the results not yet known (early February 2008).

## Pollution permit

One of the biggest concerns in Newhaven and nearby villages such as Ringmer is the possible health impact of burning 210,000 tonnes a year of waste, much of it hazardous. There are two main health issues: the emissions resulting from burning waste, and the presence of harmful substances near a densely populated residential area. Although these impacts are touched on in the planning process, the main vehicle for dealing with them is the Pollution Prevention and Control permit (PPC).

There have been several serious incidents in the UK and mainland Europe whereby ash has been recycled and used in an unsafe or unstable manner, and other instances where permitted pollution levels from incineration plants have been exceeded. The planning application gives assurances on this, but they are only assuring if the plant is properly run, and there is little way the public can check on this.

The PPC operating permit was approved by the Environment Agency in December 2006 in the face of 6,200 objections. Following another challenge by Nicola Day, the pollution permit was quashed in December 2007 at the High Court. This was because the agency had not considered carbon dioxide as a pollutant (technically it isn’t) and therefore hadn’t given sufficient information on CO<sub>2</sub> emissions from the incinerator. But the High Court ruled that as the principal greenhouse gas, it could not be left out. The decision is likely to involve another round of public consultation and probably another challenge.

## Contract

Although the contract for the incinerator doesn’t have to be put to public consultation, the amount of detail East Sussex County Council has refused to divulge has led to deep suspicions about what is in it. This has done nothing to allay suspicions that the council has been trumped by the contractors (originally Onyx, now Veolia) who have got a better deal for themselves than the council has for the public.

The contract, originally worth £1 billion and aimed to run

until 2028, was signed in March 2003. At the time, the Waste Local Plan was in its second draft but had not been approved. Signing the contract was therefore either a tremendous act of faith that the plan would be approved, or an act of reckless folly by the two councils, given that the contract involves commitments to Veolia.

When analysing the contract to assess its potential impact on recycling by the five East Sussex districts, a senior official of Lewes District Council asked to see two of the schedules that had not been made public. He was invited to County Hall to examine these schedules in private, but found that all the relevant information had been blacked out (the schedules were subsequently released after ESCC were instructed to do so by both a planning inspector and a Freedom of Information commissioner). There cannot be any commercial sensitivity over the financial terms of a contract aimed at being valid for 25 or 30 years, so why was the county council withholding this information? The logical deduction was that it had something it didn't want the public to know about.

The contract involves private sector funding. Both Conservative and Labour governments have tried to attract private funding into the public sector to keep public expenditure below a fixed national target, and such funding is handled under the Private Finance Initiative (PFI). But the Treasury has warned that a public authority negotiating a PFI contract is at a high level of risk, particularly when dealing with contractors with more frequent experience of PFI than the authority has.


What we do know about the contract is that it guarantees Veolia a minimum stream of waste. If that stream falls below 300,000 tonnes a year (including waste not for burning), East Sussex has to pay Veolia a 'diversion compensation payment' – in other words, if the five districts increase their recycling levels, tax payers will end up paying more through ESCC's compensation scheme!

The only way of avoiding this would appear to be if Veolia were allowed to 'import' waste from outside the county. This was supposed to be unnecessary when the incinerator was first proposed, and there is no current permission for this). Might a provision for importing waste be among the clauses the county council doesn't want the public to see? If it is, would it replace the compensation payment from ESCC, or would Veolia cash in twice: once from the county and once from other bodies with waste to get rid of? Until the full contract is made public, no-one can be sure.

In addition, the supplement Veolia receives for disposing of general waste would be a minimum of £26.16 per tonne, but it would only receive £13.60 per tonne of recyclable waste. This clearly favours the more environmentally damaging incineration over recycling. Veolia says it can earn additional income from the recycled material by selling it on so does have an incentive to recycle, but it has given no figures for how much it can earn, so this may be anything from next-to-nothing to a lot depending on the variable world market prices.

Worse still, the county wants to fund its compensation scheme to Veolia by setting a limit on the amount it pays the five districts for recycling, both for the quantity of recycled material and the price per tonne. It isn't allowed to do this, but it is still trying to do so. Under government rules, it has to pay an agreed 'waste disposal credit' for every tonne of waste collected for recycling (because the districts as collection authorities are saving the county some disposal costs by giving it less waste to be disposed of) – in fact this is really the only way districts can fund recycling. In 2006 the rules changed to allow an agreement that limits such payments. East Sussex claims it has agreements with the five districts dating from 2003 'capping' these waste disposal credits – all five districts, regardless of

**The firm East Sussex has contracted to run the incinerator is Veolia Environmental Services, a subsidiary of the French company Veolia Environnement. The name is a modern grouping for companies active in four areas: waste, water, transport and energy services.**



**The parent company has 270,000 employees, operations all around the world, and a recorded revenue of €25.2 billion (£18bn, 2005). Veolia in the UK is the country's leading waste management organisation with revenues above £1.1 billion and around 13,000 employees.**

**With such a background, Veolia is obviously very experienced at negotiating waste contracts.**

their political make-up, say it has nothing of the sort. As the agreements the county claim to have date from well before the new rules came into effect, the dates alone mean such an agreement to limit recycling cannot legally exist.

At a public inquiry last November, it emerged why the county is so keen to 'cap' the money it pays to the five districts. ESCC's chief executive Cheryl Miller wrote an email to them on 4 October 2007 in which she said: 'If we were to pay recycling credits above the agreed thresholds, then the residents of East Sussex would, in effect, be paying twice for every tonne as we are now paying Veolia to develop the infrastructure to manage this waste.' In other words, the contract with Veolia includes payments by the county council for services which duplicate the recycling activity in the five districts.

The upshot of this is that there is not just a lack of incentive to recycle, but the funding for recycling disappears once the five districts reach the level of recycling the county has allocated for them. This is totally against government policy, and against the obvious dictates of environmental reality.

Finally, Veolia became worried by the spiralling costs of the incinerator – the latest estimate is £145 million, more than double the original £71 million. ESCC responded by agreeing to extend the 25-year contract by five years (2003-33). This was done with no tendering process, and two MEPs have asked the European Commission to investigate whether this breaks EU rules on fair access to public service contracts. Lewes' MP Norman Baker has also asked the Audit Commission to investigate the county council's use of tax payers' money.

### **Compulsory purchase order**

The land at North Quay is currently used by Frame Investments Ltd, but owned by Rockspring Hanover Trust.

Negotiations between the two and East Sussex have been going on for several months, but in mid-2007 ESCC applied for a compulsory purchase order (CPO) to cover itself in case agreement couldn't be reached. A public inquiry on the CPO was held in November 2007 which ran into January 2008, partly because the county council hadn't released information that was vital to assessing the viability of the project. The council also embarrassed itself by justifying its application under rules that had been superseded.

The rules on CPOs say 'land should only be taken compulsorily where there is clear evidence that the public benefit will outweigh the private loss', that a CPO 'should only be made where there is a compelling case in the public interest', that the acquiring authority must be 'sure that the purposes for which it is making a CPO sufficiently justify interfering with the human rights of those with an interest in the land affected', and that it

'should provide as much information as possible about the resource implications' of the scheme.

Lewes District Council vehemently opposed the CPO application, saying none of these conditions were met, and granting a CPO would commit the county to a scheme that seemed less and less justifiable for every new piece of information unearthed. At the time this paper went to press (early February 2008), the inquiry had finished but the inspector had not given her recommendations to the Secretary of State.

## **Twelve reasons why the incinerator idea is flawed**

Here are a dozen reasons why the incinerator should not be given the go-ahead.

1. Newhaven's North Quay is **contaminated land** with weak subsoil in a relatively deprived area with regeneration plans that the incinerator can only undermine
2. The Waste Local Plan requires a 'Best Practicable Environmental Option' which complies with the 'proximity principle' – Newhaven is a **poor location** for a single waste processing facility, being in a corner of the county remote from the main sources of waste and thus necessitating lots of lorry trips.
3. The whole project is suffering from **spiralling costs** which alone justifies an immediate rethink. The cost of the incinerator has doubled, buying the land will cost £8.2 million (information ESCC tried to keep quiet) and this only for leasehold, and tax payers may have to pay for more costs if Veolia doesn't get as much waste as is in its estimates.
4. There is a **health risk** caused by the filtering system sometimes letting harmful substances through and not being able to catch microparticles of soot (PM<sub>2.5</sub>) which will fall in residential areas. Interestingly, Veolia has been unable to get insurance against the effects of incineration on people's health and the environment.
5. The incinerator would increase **flood risk** for users of surrounding land, and heaven knows what would happen if the incinerator itself flooded (chemicals spreading in water, no waste disposal facility for several months?).
6. The contract for the incinerator has been so **inadequately explained**, and certain sections withheld, that the public and its representatives have not been able to work out whether it is viable or not, or even a good deal for tax payers.
7. The incinerator is often referred to as an 'Energy Recovery Facility' that can generate 'energy from waste', but it is **little more than a waste management facility**. There is no provision for connecting it to the national grid, which deprives the county council of one of the few sources of potential income from the scheme, nor will the heat be used for heating nearby homes. In short, energy will be created and then most of it wasted.
8. The contract clearly takes away incentives and funding for **recycling** beyond a certain level.
9. With an energy efficiency of just 16%, the incinerator will emit large amounts of **greenhouse gases** at a time when waste strategies should be reducing them.
10. It will also use just under a million litres of **mains water** every week (the average person uses 1120 litres a week).
11. The county council talks of the '**social, environmental and economic benefits**' of the incinerator, but when asked to explain what these were at a public inquiry, the responsible ESCC official was unable to do so.
12. There are **alternatives** to incineration, and to Newhaven as a site, that have not been properly explored. For example, anaerobic digestion, a form of highly mechanised separation and composting of waste, is a more environment-friendly

alternative and the government department DEFRA now recommends it as preferable to incineration. ESCC has constantly said there are no alternatives to incineration.

## **An alternative solution**

It is easy to criticise, but such criticism loses its moral authority if it's not accompanied by an alternative proposal – after all, something has to be done with the county's waste. The LibDem group that runs Lewes District Council has an alternative plan which would be cheaper, better for the environment, and not endanger the regeneration of Newhaven.

Under the plan, the central initiative would be a waste avoidance programme, combined with a massive expansion of composting and recycling. This would comply with the government's 'waste hierarchy' which says re-use, composting and recycling should come top of the priority list, with disposal by incineration just above landfill. Research shows the potential for composting and recycling is as much as 80%. This may be an overoptimistic target, but it makes the point that masses of what is currently thrown away shouldn't be waste at all!

The current recycling scheme would have to be expanded, and to this would be added a collection for compostable waste (mainly kitchen). A mechanical biological treatment would be needed to take out more recyclable and compostable materials from the unsorted waste left in the dustbin. The remainder – largely toxic substances – can be isolated and stabilised.

This policy can be implemented almost immediately, as composting and recycling facilities can be expanded far more quickly than an incinerator can be built. The irony is that these plans make sense *whether or not* incineration will ultimately be needed in some shape or form – if incineration does prove necessary, there will be less to burn if more composting and recycling takes place at the first opportunity. Yet the county council has persistently ignored the LibDems' suggestions.

## **A benevolent explanation**

The case against the incinerator seems so compelling that it is only right to seek a benevolent explanation as to why East Sussex County Council and Brighton & Hove City Council are pressing ahead with it regardless of all reasonable opposition.

Though the debate has often pitted LibDem-controlled Lewes district against the Conservative-controlled county, it has never really been an ideological Tory v LibDem battle. For example, the impact of the capping of recycling credits and the low level of payments for each tonne of recycled materials is of concern to all five districts (the Waste Collection Authorities).

The real reason incineration has been pushed probably lies among the county council officials who genuinely believed that a single waste contract with a high level of incineration offered a guaranteed way of getting rid of waste as it was more measurable and controllable than a series of smaller-scale solutions. Add to that a handful of lead county councillors who never grew up with the environmental threat and thus saw waste disposal purely as 'the right mechanics for the right price' and it's easy to see why incineration seemed attractive. And if you've put several years' work into a project and fear it coming to nothing, it is understandable you should want to salvage it.

But times have changed, and given the urgency of the environmental situation, the justification for incineration has diminished. Incineration is yesterday's solution to today's problem. It would therefore be a sign of strength from the two waste disposal councils if they were to pull the plug on the incinerator and enter into a reasoned dialogue with the five waste collection councils on where we go from here.

