



# Independent Examination of the Herefordshire Minerals and Waste Local Plan Matters, Issues and Questions

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## Introduction

Following the initial examination of the Herefordshire Minerals and Waste Local Plan ('the Plan') and supporting material we set out below the Matters (topics) and Issues (points for consideration) that will form the basis for discussions during the Hearing sessions. Matters and Issues may change as the examination progresses, although participants will be given an opportunity to comment on any new issues that may arise.

This note provides questions, principally to the Council that potentially go to matters of soundness and, in some cases, are based on the representations that have been made. In framing the Matters, Issues and Questions (MIQs) we have had regard to the definition of soundness at paragraph 35 of the National Planning Policy Framework and also the principles of plan-making in paragraph 16. This establishes that policies should be clearly written and unambiguous, so that it is evident how a decision maker should react to a development proposal. The Plan should therefore set out clear policies on what will or will not be permitted.

A separate Guidance Note will set out the administrative details for the format, content and the deadline for hearing statements. In answering these questions, the Council should consider whether it might be necessary to prepare any potential main modifications to the submitted plan.

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## **A LEGAL COMPLIANCE**

### **Main Matter 1 – Legal Compliance**

**Issue:** Whether the Plan complies with all relevant legal requirements, including the Duty to Co-operate.

#### **Duty to Co-operate**

- 1 Has the Council engaged constructively, actively and on an ongoing basis with all relevant organisations on strategic matters of relevance to the plan's preparation, as required by the Duty to Co-operate (under s 20(5)(c) and 33A of the Planning and Compulsory Purchase Act 2004)?
- 2 What is the latest position regarding discussions with Natural England about nutrient neutrality in the River Wye Special Area of Conservation (SAC) and other matters? Are there any outstanding unresolved issues?
- 3 Describe the engagement that has taken place with other bodies regarding nutrient neutrality in the River Wye SAC. Are there any outstanding unresolved issues?
- 4 Does the recent Government statement on improving water quality and tackling nutrient pollution dated 20 July 2022 raise any implications? Does the fact that Dwr Cymru/Welsh Water operate the five waste water treatment works that discharge into the Rivers Wye or Lugg have any bearing on the Government statement?
- 5 What is the latest position regarding discussions with Historic England regarding heritage assets? Are there any outstanding unresolved issues?
- 6 Have discussions have taken place with other authorities regarding cross-boundary movements of waste to landfill?
- 7 Is a Statement of Common Ground with Historic England being progressed?
- 8 Is/are Statement(s) of Common Ground with any other organisation being progressed?
- 9 Was the Marches Local Enterprise Partnership consulted on the Draft and Publication Draft versions of the Plan?

#### **Planning and Compulsory Purchase Act 2004, Section 19 and the Town and Country Planning (Local Planning) (England) Regulations 2012 (as amended)**

- 10 Has the Plan been prepared in accordance with the Local Development Scheme?
- 11 Has the Plan been prepared in compliance with the adopted Statement of Community Involvement, allowing for effective engagement of all interested parties and meeting the minimum consultation requirements set out in the Regulations?
- 12 Does the Plan comply with the 2004 Act and the 2012 Regulations in terms of publishing and making available the prescribed documents?

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- 13 Does the Sustainability Appraisal provide clear evidence to indicate why, having considered reasonable alternatives, the strategy in the Plan is an appropriate response? Does the methodology conform to that in the National Planning Policy Framework and Planning Practice Guidance?
  - 14 How does the Plan secure that the development and use of land contributes to the mitigation of, and adaptation to, climate change?
  - 15 Describe how the Plan, and its preparation process meet the requirements of the public sector equality duty in section 149 of the Equality Act 2010.

### **Conservation of Habitats and Species Regulations 2017**

- 16 Has Natural England (NE) responded to the Council's Note on Nutrient Neutrality in the Minerals and Waste Local Plan dated July 2021?
- 17 Has NE responded to the Habitats Regulations Assessment (HRA) Addendum Report (June 2022)?
- 18 Has NE's generic Nutrient Neutrality Methodology and updated catchment calculators been used?
- 19 What is the position with regard to the review of the Nutrient Management Plan and the Interim Phosphate Delivery Plan?
- 20 Paragraph 3.10 of the HRA of the proposed Main Modifications states that, through an absence of impact pathways, there will be no likely significant effect on the River Clun SAC. Please provide further explanation of this finding with reference to the Plan's policies, with particular reference to those policies such as Policy W3 which would allow for development throughout the Plan area.
- 21 Please summarise the mitigation measures that could be taken to ensure nutrient neutrality.
- 22 Should the Key Development Criteria refer to the need for Appropriate Assessment in relation to the Severn Estuary SAC, Special Protection Area (SPA) and Ramsar site as identified in Appendix B of the HRA (2020)?

### **B SOUNDNESS**

#### **Main Matter 2 – Vision, Objectives and Spatial Strategy**

**Issue:** Whether the Vision, Objectives and Spatial Strategy are appropriate, positively prepared and are soundly based and provide an appropriate basis for meeting the future demand for minerals and managing waste sustainably.

#### **Vision, Objectives and Spatial Strategy**

- 23 Should objective 6 in section 4.2 state "to plan for the steady, adequate and sustainable supply ..."?
- 24 Given that Policy SP3 concerns transport within sites, how would the Plan's policies meet objective 8 in terms of reducing the need to travel, promoting

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- alternatives to road transport and ensuring development is served by suitable transport networks?
- 25 How would the Plan's policies meet objective 12 in terms of promoting, utilising and enjoying heritage and cultural assets?

### **Main Matter 3 – Strategic Policies**

**Issue:** Whether the general Strategic Policies adequately address the Plan's Spatial Strategy, and whether they are sound.

#### **Policy SP1: Resource Management**

- 26 As part 1 of the policy is a statement of actions that will be taken by the Council, what is the justification for including this in the policy? What is its relevance to land use planning?
- 27 The supporting text in paragraph 5.5.15 states that a Resource Audit would be required for applications for major development. Should this be stated in the policy? Does the requirement to undertake a Resource Audit for major development have any impacts for the whole plan viability assessment, which is encompassed at present in the Core Strategy Economic Viability Assessment 2014?
- 28 Paragraph 5.5.17 refers to smaller applications including commentary on waste prevention and management measures, and all applications making reference to national and local zero-carbon plans. Are the policy requirements clear?
- 29 How would the policy be effective in minimising waste and driving waste management up the waste hierarchy?

#### **Policy SP2: Access to open space and recreation from minerals and waste development**

- 30 The supporting text refers to the possibility of providing open space on minerals and waste sites. Is part 1 of the policy sufficiently clear in terms of encouraging provision of new open space on restored parts of sites?
- 31 Should part 2 set out how proposals that affect an existing open space would be considered?
- 32 What is meant by "integrating historic context" in this policy and other subsequent policies which contain the same or similar wording?

#### **Policy SP3: Transport within sites**

- 33 Should the requirement for use of conveyors and/or pipelines be subject to a requirement that there is no unacceptable adverse environmental impact? Alternatively, should the policy encourage, rather than require these methods of transport?
- 34 What would electric powered vehicles be an alternative to?

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### **Policy SP4: Site Reclamation**

- 35 Is criterion (a) sufficiently clear in terms of what is meant by the words “any development”?
- 36 Would the requirements of paragraph (b) be practical in all cases?

### **Main Matter 4 – Provision for Aggregate Supply**

**Issue:** Whether the Plan’s policies for the future supply of aggregate minerals would deliver a steady and adequate supply and whether they are sound.

### **Policy M1: Minerals Strategy**

- 37 How has nutrient neutrality affected the development sector and the consequential demand for minerals, in particular aggregates, in the short term and longer term? Does this raise any consequences for the minerals strategy in terms of providing for a steady and adequate supply of minerals?
- 38 How does the policy reflect the requirement to provide a steady and adequate supply of minerals?
- 39 How would the Plan encourage the development of facilities to process alternative materials to primary minerals?
- 40 How would the Plan ensure that developments contribute to the efficient use of resources?
- 41 Part (c) of the policy states that preferred areas are to be allocated. The terminology should be consistent with that in Policies M2 and M4.
- 42 Is the policy consistent with paragraph 215 of the National Planning Policy Framework (NPPF) in terms of encouraging the capture and use of methane from coal mines in active and abandoned coalfield areas?
- 43 Is the policy consistent with paragraph 217 of the NPPF regarding extraction of coal?
- 44 How does the development plan address general matters such as the natural and historic environment, human health and cumulative effects as set out in paragraphs 210 and 211 of the NPPF?

### **Policy M3: Winning and working of sand and gravel**

#### Requirement

- 45 How does the policy provide for increased self-sufficiency in sand and gravel over the Plan period while making a reasonable contribution to the Managed Aggregate Supply System?
- 46 How does the planned provision relate to the highest levels of forecast growth and is there sufficient flexibility to increase provision if this is found to be necessary through a review of the Plan?

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- 47 How do the growth scenarios considered take into account the need for aggregates for development other than housing?
  - 48 Has further discussion with HS2 enabled a better understanding of the likely aggregate requirements of that project for west midlands authorities?
  - 49 Does the increase in sales of sand and gravel in 2019 and consequent increase in the 10 year average sales affect the calculated requirement for sand and gravel over the Plan period?

#### Supply

- 50 Is the Plan sufficiently clear about existing levels of aggregates supply and the level of mineral resource available and deliverable in the Plan period for the specific sites listed in the policy?
- 51 Explain how the provision of 5 million tonnes has been arrived at. What assumptions have been made regarding the available reserve at Shobdon?
- 52 How does the non-inclusion of site M3c (Upper Lyde Quarry) affect the supply of sand and gravel from that location?
- 53 How does the non-inclusion of site M5f (Wellington Quarry) affect the supply of sand and gravel from that location?
- 54 What level of certainty is there that the remaining reserves at Shobdon Quarry will be worked and that the allocated extension is deliverable?

#### Site selection

- 55 How did the scoring matrix in the Spatial Context and Sites report and the Supplementary report influence site selection?
- 56 Has Historic England commented on the Heritage Impact Assessments?
- 57 How have the Preferred Areas of Search been identified?
- 58 Are these 'preferred areas' or 'areas of search' as referred to in the Planning Practice Guidance 27-008-20140306? What level of uncertainty, if any, is there regarding the mineral resources in those areas?
- 59 How have constraints such as designated habitats and heritage assets been taken into account in defining the Preferred Areas of Search?

#### Policy requirements

- 60 In terms of preference does the policy seek to prioritise specific sites ahead of preferred areas of search? In part 2 of the policy is there intended to be any other sub-application of preference between the specific sites or the two areas of search respectively?
- 61 The policy supports sand and gravel extraction at specific sites and preferred areas of search. Paragraph 6.2.8 states an intention to transport mineral away from the preferred locations for processing. Please explain the reasons for this policy approach including details of existing processing facilities that would be used.

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- 62 Should the policy state the need for project level or site-specific Habitats Regulations Assessment and targeted ecological surveys for proposals within Area of Search C?
- 63 Should point 3 refer to 'resource' rather than 'reserve'?

#### **Policy M4: winning and working of crushed rock (limestone)**

##### Requirement

- 64 Taking into account the quality of the crushed rock resource available in Herefordshire and its applications, explain how the policy would enable a move towards self-sufficiency for crushed rock.
- 65 How would the policy provide for a reasonable contribution to the Managed Aggregate Supply System?

##### Supply

- 66 Please provide evidence to support the assumed quantities of crushed rock from the allocated sites. What level of certainty is there that these would provide 9mt?
- 67 Explain the assumptions made to ensure a landbank of at least 10 years for crushed rock is maintained.
- 68 What mechanisms would be used to monitor maintenance of a 10 year landbank for crushed rock?

##### Site and Area Selection

- 69 How did the scoring matrix in the Spatial Context and Sites report influence site selection?
- 70 How have the Preferred Areas of Search been identified?
- 71 Are these 'preferred areas' or 'areas of search' as referred to in the PPG 27-008-20140306? What level of uncertainty, if any, is there regarding the mineral resources in those areas?
- 72 How have constraints such as designated habitats and heritage assets been taken into account in defining the Preferred Areas of Search?
- 73 Has Historic England commented on the Heritage Impact Assessment for Leinthall Quarry?
- 74 With reference to Area of Search D, should text be added to make clear that mineral working and associated infrastructure should not take place within the Area of Outstanding Natural Beauty?

##### Policy Requirements

- 75 In terms of preference does the policy seek to prioritise specific sites ahead of preferred areas of search? In part 2 of the policy is there intended to be any other sub-application of preference between the specific sites or the two areas of search respectively?

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- 76 The policy supports limestone extraction at specific sites and preferred areas of search. Paragraph 6.2.17 states an intention to transport mineral away from the preferred locations for processing. Please explain the reasons for this policy approach including details of existing processing facilities that would be used.
- 77 Should the Key Development Criteria for Perton Quarry include a requirement for a Heritage Statement to consider impact on Stoke Edith Registered Park and Garden?

### **Main Matter 5 – Minerals other than aggregates**

**Issue:** Whether the Plan makes adequate provision for sandstone and whether the policy is sound.

#### **Policy M5: Winning and working of sandstone**

- 78 Should part 1(a) specify the consented sites?
- 79 Should this part state "subject to the key development criteria set out at section 9"?
- 80 Should the supporting text provide guidance as to what is meant by 'small scale' and 'micro-scale'?
- 81 Should the Key Development Criteria for Callow Delve be updated to reflect paragraph 4.6 of the HRA Addendum Report (June 2022)?

### **Main Matter 6 – Safeguarding mineral resources, infrastructure and facilities**

**Issue:** Whether the Plan is effective in safeguarding mineral resources, infrastructure and facilities.

#### **Policy M2: Safeguarding of Minerals Resources and Associated Infrastructure from Sterilisation or Significant Adverse Effect**

- 82 Does the policy look to safeguard the known locations of all mineral resources of local and national importance in line with paragraph 210(c) of the NPPF?
- 83 Is the policy effective at safeguarding mineral resources together with the safeguarding of operational or permitted mineral extraction sites, along with the safeguarding of mineral infrastructure such as wharves? Would implementation be easier and effective if these matters were dealt with in two separate policies?
- 84 As the policy appears to be looking to safeguard existing and permitted mineral workings and potentially minerals infrastructure, how do plan users know which workings or infrastructure the policy applies to?
- 85 How does the policy specifically safeguard infrastructure such as the railheads?



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- 86 Should the policy safeguard minerals infrastructure that is not located within Mineral Safeguarding Areas (MSAs) such as aggregates recycling and concrete manufacturing infrastructure?
- 87 Should the policy provide for buffer zones to be identified around specific sites or MSAs?
- 88 What is the justification for excluding urban areas plus a 500m buffer from the MSA?
- 89 Should the word 'resource' be substituted for 'reserve' in paragraph 6.1.12 and Figure 7?
- 90 What is meant in criterion 1(d) by "the need for the non-mineral development is strategic"?

### **Main Matter 7 – Strategy for Waste**

**Issue:** Whether the strategy for waste management is appropriate, soundly based and meets needs for waste facilities.

#### **Policy W1: Waste Strategy**

- 91 Part 6 of the policy requires safeguarding of existing waste management facilities in locations that are consistent with the spatial strategy and paragraph 7.1.1 also refers to this. The spatial strategy in paragraph 4.3.1 states that waste development will be focussed at Hereford and the market towns but recognises that some waste management development, such as agricultural or construction and demolition waste will be more dispersed. Given that there is policy support for the latter and that these facilities are necessary to deliver the waste hierarchy, please explain further how part 6 would be applied and the justification for this.
- 92 What is the justification for excluding any other facilities that are not in accordance with the spatial strategy in part 6, but which sustainably manage waste in accordance with the waste hierarchy?
- 93 How would any Plan user know which existing waste management facilities are being safeguarded?

#### **Policy W2: Solid waste management requirements**

- 94 Explain how the policy provides for the capacity needs identified in the Waste Need Assessment 2021 and in Table 2 in the Plan. In particular how would the provision for 50,000 tonnes recycling capacity be sufficient to manage the tonnages identified in the table?
- 95 Explain how the policy provides for equivalent self-sufficiency. Given the joint arrangement with Worcestershire County Council for managing Local Authority Collected Waste how has this been considered in planning for equivalent self-sufficiency?
- 96 How would the policy drive waste management up the waste hierarchy?
- 97 What is the existing capacity for food and garden waste in the Plan area?

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- 98 Should the policy provide for recycling as well as recovery of construction and demolition waste?
- 99 Should the quantities in parts 1 to 4 be stated as 'tonnes per annum' and in part 5 as 'filling void spaces at a rate of 30,000 tonnes per annum'?
- 100 Should the figure in part 5 be expressed as a maximum? How would this policy encourage movement of waste up the hierarchy?
- 101 Is the review of the Joint Municipal Waste Strategy (2020/21) available?

### **Policy W3: Agricultural waste management**

- 102 What are the reasons for requiring assessment of wastes from the whole agricultural unit in the case of EIA<sup>1</sup> development?
- 103 What are the reasons for the requirement for anaerobic digestion to manage only wastes generated primarily on the unit in which it is located, and how would the policy be applied?
- 104 Is part 3 intended to be restricted to agricultural waste management?
- 105 Part 3 as submitted requires demonstration of delivery of a net reduction in nutrient discharges contributing to nutrient neutrality, or betterment, within the River Wye SAC. Proposed modification MM7.j would amend this wording to "demonstrate at least nutrient neutrality within the River Wye SAC". Please explain the reasons for this suggested change and how policy compliance could be demonstrated.
- 106 Should the policy state the need for Appropriate Assessment of development proposals under the Habitats Regulations?

### **Policy W4: Wastewater management**

- 107 Should the policy state the need for Appropriate Assessment of development proposals under the Habitats Regulations?
- 108 In the submitted Plan, would the policy requirement that works should contribute to achieving nutrient neutrality be effective?
- 109 How would the requirement to demonstrate at least nutrient neutrality within the River Wye SAC (from proposed modification MM7.k) be achieved?

### **Policy W5: Preferred locations for solid waste treatment facilities**

- 110 Should the term 'industrial estates' be defined in the Plan? (This also applies to Policy W6)
- 111 How would the policy support for small-scale facilities at any industrial estate fit with the Plan's spatial strategy?
- 112 Should the policy refer to the strategic employment areas identified in the Allocated Sites Appendix? (This also applies to Policy W6)
- 113 How would proposals for extension or expansion of small-scale facilities in preferred locations be considered?

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<sup>1</sup> Environmental Impact Assessment

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- 114 Should the policy state the approach to be taken to extension or expansion of facilities that are not in preferred locations?
- 115 In Table 3.2 of the Spatial Context and Sites Report (SCSR), site W11 is noted as being located on an industrial estate but not in a preferred location. How does this assessment fit with the policy?
- 116 In the SCSR, site W18 is dismissed from further consideration and is stated to not be a preferred location, but it is within an industrial estate. Please clarify this position.
- 117 Should proposals at any of the allocated sites demonstrate nutrient neutrality in the River Wye SAC?
- 118 Is there a requirement for Appropriate Assessment in respect of any of the allocated sites?
- 119 Should the Key Development Criteria for the Holmer Road strategic employment area include a requirement to provide a Heritage Statement?

**Policy W6: Preferred locations for construction, demolition and excavation waste management facilities**

- 120 How does the order of preference in the policy fit with the Plan's spatial strategy?
- 121 How would the policy operate in terms of securing development in accordance with the order of preference? How would extensions to existing facilities be considered?
- 122 Please provide further explanation of the reasons for the order of preference.
- 123 Part 1(b) of the policy refers to the key development criteria set out at section 9, but these are not included. Are these to be included?
- 124 Should the term 'active mineral workings' be defined?
- 125 How does this policy in combination with Policies W2 and W7 encourage the treatment of inert waste at the highest level within the waste hierarchy?

**Policy W7: Waste management operations**

- 126 Should there be 'and' after 2(b)?
- 127 Is the policy and the supporting text specific enough in terms of defining the requirement to demonstrate that generation of energy amounts to recovery?
- 128 Is the policy effective in terms of securing heat and power?
- 129 How would proposals for landfill or landraising facilities demonstrate delivery of the waste hierarchy?
- 130 How does the development plan address the range of locational criteria that reflects Appendix B of the National Planning Policy for Waste?

**Main Matter 8 – Delivery, Implementation and Monitoring**

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**Issue:** Whether the delivery, implementation and monitoring arrangements will be effective.

- 131 Would the indicators to monitor effectiveness be sufficiently detailed to enable effective monitoring?
- 132 Does the monitoring process for minerals and waste provide for co-operation and participation and are the appropriate participants involved?
- 133 Does the monitoring process for minerals and waste provide for flexibility? What contingency measures are in place in the event of non-delivery or lower than expected delivery of minerals and waste facilities? What measures are in place to allow for higher than forecast levels of demand for minerals and waste facilities?
- 134 Are suitable arrangements in place for reviews of the minerals and waste sections (either separately or as part of the wider plan) at appropriate sites?
- 135 With reference to Policy SP1 and Table 3 (Monitoring) how will reduction in waste and promotion of a circular economy be measured?

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INSPECTORS