

THE HEREFORDSHIRE MINERALS AND WASTE LOCAL PLAN

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Examination webpage:
<https://www.herefordshire.gov.uk/local-plan-1/minerals-waste-local-plan/3>

INSPECTORS' EXAMINATION GUIDANCE NOTE 1

Purpose

1. This Note is intended to assist those who have made representations on the Herefordshire Minerals and Waste Local Plan as part of the pre-submission consultation process and those who wish to appear in person at the Hearings. It provides guidance to participants on the procedural and administrative arrangements for the Examination process.
2. It should be kept for reference throughout the Examination and read in conjunction with the **Procedure Guide for Local Plan Examinations by The Planning Inspectorate 14 February 2022 (7th Edition revised)** which is available at <https://www.gov.uk/government/publications/examining-local-plans-procedural-practice> or from the Programme Officer on request.
3. Two documents are available with this note:
 - **Matters, Issues and Questions for the Examination (MIQs)** – which sets out the issues and questions we have identified for discussion at the Hearing sessions.
 - **Draft Hearing Programme** – this sets out the matters and issues to be discussed at each Hearing session. Details may change.

Examination Hearing

4. The Examination hearing will open on **Tuesday 8 November 2022** at **10.00**. The oral Hearing forms part of the overall examination process.

The Inspector's Role

5. We have been appointed by the Secretary of State for Levelling Up, Housing and Communities to conduct the examination process.
6. The Plan to be examined is the Herefordshire Minerals and Waste Local Plan ("the Plan") which was published in April 2021 for the six-week consultation period which began on 12 April and ended on 24 May 2021.
7. Our task is to examine the soundness of the Plan and whether it meets the requirements of the Planning and Compulsory Purchase Act 2004 (as amended) and associated regulations.
8. The National Planning Policy Framework (paragraph 35) makes it clear that in order to be found sound the Plan must be:
 - (a) **positively prepared** – providing a strategy which, as a minimum, seeks to meet the area's objectively assessed needs;
 - (b) **justified** – an appropriate strategy taking into account the reasonable alternatives, and based on proportionate evidence;
 - (c) **effective** – deliverable over its period and based on effective joint working as evidenced by the statement of common ground; and
 - (d) **consistent with national policy** – enabling the delivery of sustainable development in accordance with the NPPF's policies.
9. There are three possible outcomes to the Examination:
 - the submitted plan is sound and legally compliant;
 - the submitted plan is not sound and/or legally compliant but could be made so by changes (known as **Main Modifications**), if necessary, following the preparation of additional evidence; or
 - the submitted plan is not sound and could not be made sound by changes. If so, we would be likely to recommend that the Council withdraws the plan. The same would apply if there is a failure of legal compliance which cannot be remedied (for example, a failure to comply with the Duty to Cooperate).
10. Following the close of the Hearings, we will prepare a Report for the Council with our conclusions.
11. The Report will deal with the main issues of soundness and legal compliance, taking into account the representations made but without responding to each individual representation. We are not required to consider each, and every point made in every objection or to report on them, but to use the representations as the starting point in considering the Examination. It is not part of our role to make the Plan 'more sound' by improvements to it, provided that it is sound and legally compliant.

Changes to the plan

12. The starting point is that the Council has submitted what it considers to be a sound Plan. At this stage therefore there are only two means by which changes can be made to the submitted Plan:
 - (a) **Main modifications** recommended by the Inspectors; and
 - (b) **Additional modifications** made by the Council on adoption.
13. We can only recommend **Main Modifications** if they are necessary to resolve problems that would otherwise make the submitted Plan unsound or not legally compliant.¹ Main Modifications are changes which, either alone or in combination with others, would materially alter the Plan or its policies. Any potential Main Modifications must be subject to consultation and in some cases further Sustainability Appraisal might also be needed.
14. **Additional modifications** are those changes which do not materially affect the policies in the Plan². They are made by the Council on adoption and are sometimes also referred to as "Minor Modifications." As such they do not fall within the scope of the examination and the Council is accountable for any Additional Modifications that are made.

Modifications Proposed by the Council

15. The Council has started to prepare a Schedule of Main Modifications and Minor Changes proposed pre-examination. This will be published on the examination website. For the avoidance of doubt, we are examining the Plan as submitted and not the Council's Schedule. However, this document will be used and updated as necessary throughout the examination process.
16. It is possible that further changes may be proposed during the Hearing sessions. As such we would ask that the Council keeps an up to date schedule of all **Main Modifications** during the Examination.

Scope for Modification – Alternative or 'Omission' Sites

17. It is not for Inspectors to improve the Plan or make it 'more sound'. We will make recommendations for **Main Modifications** only where necessary to ensure soundness or legal compliance.
18. Often representations refer to sites which are not allocated in the Plan for development, and these are generally known as 'omission sites.' There will accordingly be no session on 'omission sites.' It is not for Inspectors to recommend specific alternative sites. In the event that the Plan were to be found unsound with the sites it allocates, the Council would be asked to consider and propose additional or alternative sites as **Main Modifications** to the Plan for further consultation.
19. Nevertheless, representors promoting sites not allocated in the Plan have a right to be heard in support of a duly made objection. An objection to the 'omission' of a site is, in effect, an objection to the site selection process, or the Plan requirement, or the deliverability of development land or the Plan

¹ Under section 20(7B) & (7C) of the Planning and Compulsory Purchase Act 2004

² S23(3)(b) of the PCPA 2004 "... if the additional modifications (taken together) do not materially affect the policies ..."

strategy and will be redirected and heard, as such, in the appropriate sessions reserved for those issues or, if necessary, in a general session.

The Programme Officer

20. **Rosalind Fallon** is the Programme Officer (the PO) for the Examination. She is working under our direction. She has not been involved with the Plan preparation either directly or indirectly.
21. The Programme Officer (PO) can be contacted as follows:
Rosalind Fallon – Programme Officer
The Herefordshire Minerals and Waste Local Plan
e-mail: programme.officer2@herefordshire.gov.uk
Telephone: 07792 882277
22. The main tasks of the PO are to act as the channel of communication between the Inspectors, the Council and all the other participants, to liaise with all parties to ensure the smooth running of the Examination, to ensure that all documents received are recorded and distributed and to run the Examination Library. The PO is the first point of contact for those with queries about the process and participation in the Hearing sessions.
23. Any procedural questions or other matters that you wish to raise should be directed to the PO.
24. All documents for the Examination, including the evidence base and the procedural material, are published on the Examination website
<https://www.herefordshire.gov.uk/local-plan-1/minerals-waste-local-plan/2>
All content should be agreed by us or the PO on our behalf.
25. Please regularly check the examination website for the latest information regarding the examination progress, particularly if you wish to be actively involved in the examination.
26. Any participant who does not have access to the internet should contact the PO so that alternative arrangements can be put in place.

Progressing your Representations on the Plan

27. Only those seeking to change the plan have a right to participate in the Hearing sessions.³ However, the Hearing sessions are open for anyone to observe.
28. Those who have made representations also indicated at the time whether their views should be dealt with in a written form or whether they feel that they need to discuss them orally at a Hearing session. Normally you may only take part in the Hearing session(s) that are relevant to your original representation(s).
29. Written representations carry the **same weight** as those made orally at a hearing session. We will have equal regard to views put in writing as well as those expressed orally at the Hearing sessions. As such, attendance at the Hearing sessions will only be useful and helpful if you wish to participate in

³ Section 20(6), Planning and Compulsory Purchase Act 2004

the discussion concerning the soundness or legal compliance of the Plan. Those who wish to proceed by written means can reply upon what they have already submitted.

30. The accompanying **Matters, Issues and Questions for the Examination** will form the basis for the discussion at the Hearing sessions.
31. A **Draft Hearing Programme** will be prepared in due course and published on the Examination website. This will include a draft list of issues for discussion at each Hearing session. All representations will be taken into account, whether or not you participate at the Hearing.
32. In order that the programme can be finalised, those Representors wishing to take part should contact the PO by **19 September 2022** stating your intention to appear and on which Matter(s) and Issue(s) you wish to speak, including, if possible, which question(s). You must do this regardless of what you may have indicated in your original representation(s). Please note that if you do not contact the PO by that date, it will be assumed that you do not wish to appear and be heard, and you will not be listed as a participant. This is in the interests of fairness to other participants and to assist with the arrangements for the Hearing.
33. Where several people or organisations wish to speak on the same issue, it would be of great assistance to the efficiency of the Examination process if there were either one or two spokesperson(s). The PO will assist in such arrangements.
34. The **Finalised Hearing Programme** will be published on the Examination website around two weeks before the start of the Hearing sessions. It will be for individual participants to check the progress of the Hearing, either on the website or with the PO, and to ensure that they are present at the right time. We intend to issue an Agenda to structure the discussion at each Hearing session, normally shortly before the date that the Hearing session is due to take place. The Agenda will often identify which speaker may be invited to open the discussion on any given points.
35. Where Representors have raised a matter of soundness not identified by the Inspectors but still wish to appear, a suitable item can be added to an appropriate Hearing session. If any Representor considers that an additional item is required, this should be raised with the PO at the earliest opportunity.
36. Representors who are not seeking changes to the Plan, including those who have made representations supporting it, do not have a right to take part in the Hearings. However, we may invite additional participants to take part in the Hearings if their participation would assist in determining the soundness and legal compliance of the Plan.

The Format of Hearing Sessions

37. The hearing sessions will take place in person. However, the Council should make arrangements for virtual participation should this be required by any party with a right to participate, for example for accessibility reasons.
38. The venue will be The Shell Store, Canary Drive, Skylon Park, Hereford HR2 6SR.

39. At this stage it would be helpful to let the PO know if you have any specific needs regarding your attendance and participation at the hearing session(s), again by the same deadline of **19 September 2022** for responding to the PO regarding your attendance. If participants have reasonable adjustments which would indicate that they need to attend virtually from a remote location, we shall prepare a second guidance note with details and advice for participants who would require the virtual method.

The Hearing Sessions

40. The Hearing will open on **8 November 2022**.
41. The Hearing sessions will normally run between 1000hrs and 1300hrs and 1400hrs and 1700hrs each day. A short break will usually be taken mid-morning and mid-afternoon.
42. Details of the sitting days are set out on the Draft Programme which accompanies this Guidance Note. Updates to the Hearings programme will be available on the examination website. It is the responsibility of individual participants to check the latest timetable and to ensure that they are present at the correct time.
43. Only one participant is allowed per Representor. Those attending may, if they wish, bring professional experts with them. Barristers and solicitors, if present, will be treated as part of the respective team.
44. The Hearing sessions will be based on the identified **Matters, Issues and Questions**. Each Hearing session will deal with these by way of a structured discussion which we will lead. The Hearing sessions will focus on the issues that we need to hear further discussion about, in order to reach conclusions on the soundness and legal compliance of the Plan, and on any potential need for Main Modifications. We will make a few brief introductory comments on the issues to be covered and then invite individuals to respond to specific questions. We will have read all the relevant representations and statements beforehand and will expect other participants to have done so as well. The Hearings are not an opportunity to repeat a case already set out in written representations. There will be no formal presentation of cases or cross-examination.
45. The Hearings will be inquisitorial, rather than adversarial. We will endeavour to progress them in an effective and efficient manner, keeping a tight rein on the discussion and the time taken. In this way the aim is to conduct short, focussed Hearings and to produce a short, focussed report.

Hearing Position Statements

46. Whilst original consultation responses were made and summarised generally on a policy-by-policy basis, the programme of Hearings will be arranged over a series of main issues and matters for discussion which, invariably, range over several sections and policies of the Plan document.
47. Accordingly, in order to assist all participants preparing for the Hearings and to facilitate focussed discussion, the Council and all Representors scheduled to appear are invited to submit a **Hearing Position Statement** for each issue they are invited to discuss.

48. Statements should be concise and focussed to set out the Council's or Representor's areas of concern. Statements should be no more than 3,000 words for each Matter. They should:
- only answer the specific questions which are of relevance to the original representation;
 - clearly identify the number(s) of the question(s) being answered;
 - state whether any Main Modifications or Additional Modifications would resolve the concerns and make the Plan sound;
 - indicate whether any other changes are needed to make the Plan sound (providing detailed suggested wording for the change and if appropriate, any changes sought to the Policies Map); and
 - include the name of the Representor and the Hearing session to which they relate.
49. Appendices should only be included if they are directly relevant and necessary and should not be used as a means of increasing the word count. If you need to refer to a large document that is not on the examination website, please contact the PO as it may be more efficient for it to be added to the website rather than attached to a statement.
50. Supporting material in the form of appendices to statements should be limited to that which is essential and should not contain extracts from any publication that is already before the Examination, such as evidence base documents and nationally available Government guidance – a paragraph or page reference will suffice. Any appendices should have a contents page and be paginated throughout. Whilst the word limit does not include text in appendices, the aim of succinctness should be respected. Anyone submitting appendices should indicate in their statement which parts they are especially relying upon.
51. We emphasise the need for succinct submissions with the avoidance of unnecessary detail and repetition of the original representation. It is the quality of the reasoning that carries weight not the bulk of the documents. There is no need for verbatim quotations from sources of policy guidance. It is vital that the fundamental elements are set out clearly and succinctly – the Hearing sessions are not the place for surprise contributions!
52. Please submit a separate Hearing Position Statement for each Matter covered, if your statement covers multiple matters please do not combine the content into a single statement, each statement should specifically address questions covered within an individual matter. This will assist with publication and understanding during the Hearing sessions.
53. Hearing Position Statements will only be accepted if they are prepared on A4 paper and not bound in any way but just stapled and hole punched. No photographs should be submitted. Any plans or diagrams should also be folded to A4 size and listed as Appendices.
54. Three paper copies and an electronic version (in PDF or word format) of Hearing statements need to be received by the PO **by 12 noon, 7 October 2022**. If you are unable to email your statement, please contact the PO so that alternative arrangements can be made.

55. It is stressed that this deadline refers to the receipt of both electronic and paper copies of statements by the PO. It is not sufficient to send an electronic copy by this deadline to be followed by paper copies at a later time.
56. Hearing Position Statements will be uploaded to the Examination website after the submission date, so that they are available to all participants and anyone else who wishes to read them. As such statements will not be circulated directly to participants. Anyone who is unable to access them on the webpage should contact the PO.
57. Once the date for submitting Hearing Position Statements has passed, no other written evidence will be accepted, unless we specifically request it. Late submissions or additional information can cause disruption and potentially result in unfairness for participants. If material is not received by the deadlines, the PO will assume that you are relying on your original representations.

Statements of Common Ground

58. It is useful for Statements of Common Ground (SoCGs) to be drawn up between the Council and other public bodies, other participants or site promoters to confirm specific matters that have been agreed, particularly if those matters have previously been the subject of representations raising soundness or legal compliance issues. SoCGs can also helpfully highlight matters that remain in contention, or the position regarding individual allocated sites.
59. Any additional SoCGs should be submitted to the PO **by 12 noon, 30 September 2022**. They will be published as Examination documents so that other representors are aware of their contents before submitting their Hearing Position Statements. This should not preclude the Council from continuing to engage on outstanding issues with other bodies and updating any SoCGs as necessary.

Site visits

60. Insofar as we consider it necessary to the assessment of the soundness of the Plan, we will visit sites and areas referred to in the representations before, during or after the Hearing. We will do these on an unaccompanied basis unless we need to go onto private land, in which case arrangements will be made through the PO.

Close of the Examination

61. The examination will remain open until our Report is submitted to the Council. However, no further representations or evidence will be accepted after the hearing sessions have finished unless we specifically request them. Late or unsolicited material may be returned by the PO.

Summary of the Examination Programme

22 August 2022	Matters, Issues and Questions, Inspector's Guidance Note and draft programme of hearing sessions published
19 September 2022	Deadline to confirm with the PO whether you wish to exercise your right to appear at one or more Hearing sessions and on which matters; and also whether you have a specific need to attend virtually.
30 September 2022	12 noon deadline for submission of any Statements of Common Ground
7 October 2022	12 noon deadline for submission of any Hearing Statements
25 October 2022	Finalised Hearings programme published
8 November 2022	Hearing sessions open at 10am

Nick Palmer

INSPECTOR

Rachael A Bust

INSPECTOR

22 August 2022

Further information about the preparation and examination of Local Plans

Procedure Guide for Local Plan Examinations (7th edition, February 2021), published by the Planning Inspectorate

<https://www.gov.uk/government/publications/examining-local-plans-procedural-practice>

The National Planning Policy Framework

<https://www.gov.uk/government/publications/national-planning-policy-framework-2>

Planning Practice Guidance, including the section on Plan-making

<https://www.gov.uk/guidance/plan-making>

Relevant legislation, available at <http://www.legislation.gov.uk/>

Planning and Compulsory Purchase Act 2004, as amended by Greater London Authority Act 2007

Planning Act 2008

Local Democracy, Economic Development and Construction Act 2009

Localism Act 2011

Deregulation Act 2015

Housing and Planning Act 2016

Neighbourhood Planning Act 2017

The Town and Country Planning (Local Planning) (England) Regulations 2012, as amended by The Town and Country Planning (Local Planning) (England) (Amendment) Regulations 2012, 2016 & 2017