

1. Introduction

1.1 The Purpose of this report

Response to the Initial Questions

- 1.1.1 Letter dated 9 May 2022 presents initial questions raised by the Inspectors examining the Herefordshire Minerals and Waste Local Plan _ Publication Draft (Publication Draft MWLP).
- 1.1.2 The Initial Questions both requests a review of the Habitats Regulations Assessment (HRA) and poses 10 discrete questions.
- 1.1.3 This document provides that response to those 10 questions (the Initial Questions); the review of the HRA is reported separately.

Minerals and Waste Updates

- 1.1.4 The Minerals Need Assessment and Local Aggregates Assessment and the Waste Need Assessment are all in the final stages of being updated. This response to the Initial Questions has been drafted on the basis of the evidence that accompanied the Publication Draft MWLP [D3.37].
- 1.1.5 The updated assessments will be made available to the Examination shortly and will be accompanied by any consequent revisions to Herefordshire Council's response to the Initial Questions.

Clarification regarding documents in the Examination library

- 1.1.6 The Examination library has given each document a reference. Within this report, this reference is presented in square brackets, for example Publication Draft MWLP [D3.37].
- 1.1.7 The Examination library refers to both:
 - **Preparing the Publication Draft Plan 2021¹ (reference D3.46);** and
 - Preparing the Publication Draft Plan Report 2020² (reference D3.48).
- 1.1.8 The 2020 report is substantially superseded by the January 2021 version and consequently this earlier report is not relied upon within this response.

1.2 Format of this report

- 1.2.1 This report addresses each question as set out below:
 - Section 2 Question 1. The Duty to Co-operate Statement
 - Section 3 Question 2. Restrictions imposed in Policy M1(d) on extraction of hydrocarbons
 - Section 4 Question 3. Policy M2 and safeguarding
 - Section 5 Question 4. The allocated sites in Policies M3 and M4
 - Section 6 Question 5. Shobdon and Upper Lyde Quarries
 - Section 7 Question 6. Policy M4 and the crushed rock tonnage

¹ Herefordshire Minerals & Waste Local Plan, Preparing the Publication Draft Plan, January 2021

² Preparing the Publication Draft Plan Report March 2020, updated August and September 2020

- Section 8 Question 7. Demand from infrastructure projects
- Section 9 Question 8. Areas of search for limestone
- Section 10 Question 9. The Heritage Impact Assessments
- Section 11 Question 10. Policy W1 and existing waste facilities that are not in accordance with the spatial strategy

2. Question 1. The Duty to Co-operate Statement

2.1 The Inspectors' Question

2.1.1 The full text of question 1 is:

'The Duty to Co-operate Statement indicates verbal agreement to preparation of Statements of Common Ground with Worcestershire and Gloucestershire County Councils. Please advise of any progress made with these.'

2.2 Herefordshire Council's Response

2.2.1 Following ongoing meetings with Worcestershire County Council and Gloucestershire County Council, pursuant to cross-boundary cooperation on minerals and waste matters, a Statement of Common Ground is in the process of being drafted. This will update and review the matters contained in the Memorandum of Understanding, which was previously signed by the three authorities in 2019 [D2.19]. It is anticipated that all parties will have the final document signed by the first week of July 2022, after which time it will be sent to the Inspectors (via the Programme Officer) and also added to the Examination library.

3. Question 2. Restrictions imposed in Policy M1(d) on extraction of hydrocarbons

3.1 The Inspectors' Question

3.1.1 The full text of question 2 is:

'Please explain the reasons for the restrictions imposed in Policy M1(d) on extraction of hydrocarbons.'

3.2 Herefordshire Council's Response

3.2.1 Policy M1(d) states:

'The sustainable winning and working of mineral resources in Herefordshire will be delivered through:

d. restricting the extraction of hydrocarbons to within either the Surface Coal Resource areas or PEDL block SO51a (as appropriate to the mineral) and requiring compelling reasons to demonstrate that the use of any hydrocarbon is necessary, acceptable and provides national, local or community benefits which clearly outweigh the likely impacts, including to protected areas and local communities and the greenhouse gas emissions associated with both the extraction and use of hydrocarbons;'

3.2.2 The wording of an appropriate policy framework for both conventional and unconventional hydrocarbons has been considered from the start of preparing the MWLP.

3.2.3 It is first set out at section 4.6 of the I&O Report³ [D3.2] which presented the two options; to include, or not, specific policies relevant to the hydrocarbon exploration, appraisal and extraction.

3.2.4 The matter is further considered in the Preparing the Draft Plan Report⁴ [D3.20] both in addressing the I&O Report consultation responses (from paragraph 2.4.25) and in confirming (from paragraph 4.4.22) the approach to be utilised in the Draft MWLP⁵ [D3.14].

3.2.5 Paragraph 2.4.26 of the Preparing the Draft Plan Report [D3.20] confirms that banning the exploration, appraisal and extraction of hydrocarbons was not an option for the MWLP, whilst recognising, in paragraph 2.4.27, that *'it is widely recognised that neither conventional nor unconventional hydrocarbon extraction is likely to occur over the plan period and consequently no areas will be identified for such development and a criteria based policy is included in the Draft MWLP.'*

3.2.6 The approach to that criteria based policy recognises that two areas within Herefordshire had previously been worked for coal, but that this had ceased (paragraph 4.4.23); and that there was one area of coal bed methane (PEDL SO51a, from paragraph 4.4.25). The likelihood of either of these resources being worked is recognised to be low.

3.2.7 Relevant policy from the contemporaneous NPPF⁶ is quoted within the Preparing the Draft Plan Report [D3.20] and was used as appropriate at that time within the Draft MWLP [D3.14].

3.2.8 Consequently, the Draft MWLP [D3.14] addressed: the extraction of coal within policy M1 of the Draft MWLP (essentially using the same wording as at policy M1(d) of the Publication

³ Issues and Options Report, April 2017

⁴ Preparing the Draft Plan Report, November 2018

⁵ Draft Minerals and Waste Local Plan, December 2018

⁶ National Planning Policy Framework, July 2018

Draft MWLP [D3.37]) and; the exploration, appraisal and extraction of unconventional hydrocarbons in a criteria based policy, policy M7 [D3.37].

- 3.2.9 As explained at section 2.3 of Preparing the Publication Draft Plan 2021⁷ [D3.46] policy within the NPPF that had formerly supported the exploration, appraisal and extraction of unconventional hydrocarbons was subsequently quashed. Consequently, a discrete criteria based policy to enable development proposals for unconventional hydrocarbons to come forward was no longer considered necessary, or appropriate.
- 3.2.10 As explained at paragraph 2.3.11 of that report [D3.46] reference to both conventional and unconventional hydrocarbons remains within the MWLP, with appropriate supporting text, '*to retain flexibility should either resource become workable and of interest in the future. As mineral resources, they would also be protected by policy M2.*'
- 3.2.11 It is widely recognised that addressing the effects of climate change at source requires a reduction in the use of hydrocarbons (both conventional and unconventional). Policy M1(d) has been prepared to provide a clear policy framework to those interested in progressing such a project which reflects current NPPF⁸ policy and national guidance and reflects local priorities within Herefordshire Council, not least to achieve carbon neutrality by 2030⁹.

⁷ Preparing the Publication Draft MWLP Report, March 2020 and updated August and December 2020

⁸ National Planning Policy Framework, July 2021

⁹ <https://www.herefordshire.gov.uk/directory-record/4843/carbon-management-plan>
[20.05.2022@14:19]

4. Question 3. Policy M2 and Safeguarding

4.1 The Inspectors' Question

4.1.1 The full text of question 3 is:

'Should Policy M2 refer to safeguarding of infrastructure, and should it refer specifically to the railheads?'

4.2 Herefordshire Council's Response

4.2.1 It is considered appropriate for policy M2 refer to safeguarding of infrastructure, and to specifically refer to railheads.

4.2.2 Paragraph 210 of the extant NPPF (July 2021) presents eight bullets. Bullet c) requires that mineral resources should be safeguarded, by defining Mineral Safeguarding Areas in planning policy. Bullet e) requires that *'existing, planned and potential sites for: the bulk transport, handling and processing of minerals; the manufacture of concrete and concrete products; and the handling, processing and distribution of substitute, recycled and secondary aggregate material'* should be safeguarded. These elements are referred to as associated infrastructure within policy M2. The NPPF reference to *'bulk transport'* is taken to mean to include rail infrastructure; within Herefordshire there is one operational railhead, actively used for mineral transportation and one rail head that is currently disused but could be brought back into operation.

4.2.3 This matter is considered at section 2.6 of Preparing the Publication Draft Plan 2021 [D3.46].

5. Question 4. The Allocated Sites in Policies M3 and M4

5.1 The Inspectors' Question

5.1.1 The full text of question 4 is:

'Please explain how provision will be made from the allocated sites in Policies M3 and M4, including whether this would be from extensions to the permitted areas of working or extensions of the periods of working. What tonnages are expected from each site?'

5.2 Herefordshire Council's Response

Policy M3

- 5.2.1 Policy M3 presents the policy framework to deliver 5 million tonnes of sand and gravel over the plan period to 31 December 2041. Extraction is supported at the allocated sites and preferred areas of search, with preference given to the former locations.
- 5.2.2 The allocations at Shobdon and Upper Lyde are extensions to the existing permitted areas of working. The allocations at Wellington comprise extensions to the permitted areas (being worked by Tarmac) and additional parcels of land that have been promoted by other parties.
- 5.2.3 Extensions of the period of working at the permitted sites would not deliver additional tonnage to that identified as existing reserve. In addition, neither of the operators suggested that an extended period of working would be required.
- 5.2.4 The Spatial Context and Sites Report¹⁰ [D3.24] provides the tonnage information available for the proposed new areas of working: paragraph 3.2.10 reports c.700,000 tonnes at Upper Lyde; and paragraph 3.2.18 reports 2,250,000 tonnes at Wellington.
- 5.2.5 Section 4.4 of the Preparing the Draft Plan Report [D3.20] considers the level of forecast mineral demand and potential supply, concluding (at paragraph 4.4.10) that *'the approach to site allocation and areas of search are demonstrated to be sufficient to meet the wide range of demand forecast for sand and gravel through the plan period and beyond, to 2035.'*
- 5.2.6 This matter is considered again in Preparing the Publication Draft Plan 2021 [D3.46] (from paragraph 4.2.7). Paragraph 4.2.8 of that Report makes clear that both policy M3 and M4 has been drafted *'to provide a balance between providing for Herefordshire's forecast level of demand and an ability to contribute to the MASS, and not promoting excessive mineral working such that reserves are not worked efficiently.'*
- 5.2.7 Paragraph 4.2.9 confirms that the MNA 2019¹¹ [D3.44] had been updated to reflect the extended end date of the MWLP. It is recognised that the MWLP provides an extended plan period that would enable appropriate levels of landbank to be maintained throughout.

Policy M4

- 5.2.8 Policy M3 presents the policy framework to deliver 9 million tonnes of crushed rock over the plan period to 31 December 2041. Extraction is supported at the allocated sites and preferred areas of search, with preference given to the former locations.

¹⁰ Spatial Context and Sites Report, March 2018

¹¹ Minerals Need Assessment 2019, March 2020

- 5.2.9 The allocations at Leinthall and Perton are both extensions to the existing permitted areas of working.
- 5.2.10 Extensions of the period of working at the permitted sites would not deliver additional tonnage to that identified as existing reserve. In addition, neither of the operators suggested that an extended period of working would be required.
- 5.2.11 The Spatial Context and Sites Report [D3.24] provides the tonnage information available for the proposed new areas of working at paragraph 3.2.22: report around 7 million tonnes at Leinthall; and confirming no information for Perton.
- 5.2.12 Section 4.4 of the Preparing the Draft Plan Report [D3.20] considers the level of forecast mineral demand and potential supply, noting (at paragraph 4.4.16) that *'It is not possible to be definitive about whether these proposed allocations will be sufficient throughout the plan period. If demand for crushed rock from Herefordshire is at the lower end of the forecasts, then it would appear to be so; there is potential that a forecast demand of nearly 21 million tonnes is excessive. Discussions with the operators during the site visits indicated that the crushed rock within Herefordshire is not of a particularly high quality, for example it cannot be used for road surfacing, although it is used in a range of other construction projects.'*
- 5.2.13 Paragraph 4.4.18 concludes that *'the approach to site allocation and areas of search are demonstrated to be generally sufficient to meet the wide range of demand forecast for crushed rock through the plan period and beyond, to 2035. However, if the higher demand for crushed rock does arise over the plan period, there is potential that Herefordshire would not be able to make a material contribution to the MASS, for crushed rock.'*
- 5.2.14 This matter is considered again in Preparing the Publication Draft Plan 2021 [D3.46] (from paragraph 4.2.7). Paragraph 4.2.8 of that Report makes clear that both policy M3 and M4 have been drafted *'to provide a balance between providing for Herefordshire's forecast level of demand and an ability to contribute to the MASS, and not promoting excessive mineral working such that reserves are not worked efficiently.'*
- 5.2.15 Paragraph 4.2.9 confirms that the MNA 2019 [D3.44] had been updated to reflect the extended end date of the MWLP. It is recognised that the MWLP provides an extended plan period that would enable appropriate levels of landbank to be maintained throughout.

6. Question 5. Shobdon and Upper Lyde Quarries

6.1 The Inspectors' Question

6.1.1 The full text of question 5 is:

'How does the current non-operational status of Shobdon and Upper Lyde quarries affect the provision for sand and gravel?'

6.2 Herefordshire Council's Response

6.2.1 Upper Lyde Quarry became operational in September 2019.

6.2.2 Shobdon Quarry benefits from a ROMP¹² (reference DCNW2004/4046/M) granted in July 2005. It has not been operational for several years, although Tarmac has submitted sales of 2,000 tonnes per annum over recent years. The LAA 2019¹³ [D3.43] reports that it is believed the leasehold has not been renewed by the mineral operator, and that there remains 900,000 tonnes of reserve. Condition 3 of the extant ROMP requires the winning and working of minerals to cease by 31 December 2026.

6.2.3 Working the remaining permitted reserve would require a fresh planning consent, potentially through a fresh ROMP and likely seeking an extension to the end date. If the end date is reached with no new permission granted, then a wholly new planning permission would be required; the remaining reserve would no longer sit within the landbank.

6.2.4 However, Shobdon Quarry is identified in the Publication Draft MWLP [D3.37] as an allocated site, with an extension area to the east of the permitted working. The resource in this location has been identified as appropriate, in principle, for the winning and working of sand and gravel.

6.2.5 The Publication Draft MWLP [D3.37] presents a positive planning policy framework for continued sand and gravel extraction in this location.

¹² ROMP, Review of Old Mineral Permission. An application submitted, under the Planning and Compensation Act 1991, not to seek planning permission but to enable the mineral planning authority to review and modernise historical conditions.

¹³ Herefordshire Local Aggregates Assessment 2019 (Incorporating Jan to Dec 2018 survey data)

7. Question 6. Policy M4 and the crushed rock tonnage

7.1 The Inspectors' Question

7.1.1 The full text of question 6 is:

'Please provide further explanation of how the figure of 9mt for crushed rock in Policy M4 has been arrived at.'

7.2 Herefordshire Council's Response

- 7.2.1 The forecast levels of demand and supply of crushed rock is summarised from paragraph 4.3.14 of Preparing the Publication Draft Plan 2021 [D3.46]. This paragraph explicitly recognises the extent of uncertainty within mineral data, and this is particularly felt for crushed rock.
- 7.2.2 Table 4.2 of Preparing the Publication Draft Plan 2021 [D3.46] presents a summary of the crushed rock forecast demand at 2041 (the end of the plan period). It shows the potential for demand to range from 3 million tonnes to over 17 million tonnes; a substantial range that is not readily clarified. Paragraph 4.3.19 recognises that the upper level of that range may simply be excessive.
- 7.2.3 Paragraph 4.3.17 identifies that across the proposed allocation areas, some 9 million tonnes of limestone resource should be available. Both these sites are considered appropriate, in principle, for the winning and working of crushed rock. The indicated reserve, in simple terms, falls neatly within the range of demand forecast (for all its limitations).
- 7.2.4 Consequently, and as noted at paragraph 4.3.20 concludes, this is the amount of tonnage that should be referenced in policy M4 as it *'should provide adequate resource, without placing undue stress on the environment of Herefordshire and can be monitored throughout the plan period.'*
- 7.2.5 The ability to monitor provision and landbank throughout the plan period is an important feature of the MWLP (and of mineral planning in general). The MWLP [D.337] identifies preferred areas of search for future workings and these may be brought forward if a greater level of demand is experienced; they provide the flexibility in the MWLP to enable an appropriate level of provision throughout the plan period.

8. Question 7. Demand from Infrastructure Projects

8.1 The Inspectors' Question

8.1.1 The full text of question 7 is:

'How has demand from infrastructure projects such as HS2 been taken into account in the assessment of need?'

8.2 Herefordshire Council's Response

8.2.1 Section 4 of the MNA 2019 [D3.44] considers future demand for aggregates, outlining four different growth forecasts (paragraph 4.1.2):

- Gross Value Added ('GVA') forecasts;
- population projections;
- household or housing projections; and/or
- Core Strategy infrastructure requirements.

8.2.2 These forecasts are then applied, to the extent that they can be, to both sand and gravel and crushed rock, to calculate a future level of need.

8.2.3 Discrete infrastructure projects have not been considered in isolation within this assessment. For infrastructure located within Herefordshire, the MNA 2019 [D3.44] concludes that *'There is therefore no indication to suppose that there will be a significant change in the demand for aggregates over the life of the Core Strategy when compared to the period since the adoption of the Unitary Development Plan.'* This conclusion indicates that using past levels of demand and supply would not be unreasonable in forecast future levels. For infrastructure located outside of Herefordshire, the Council has no control over what the associated aggregate demand might be, or how much might be sourced from Herefordshire – there is no reasonable evidence on which to base such a forecast.

8.2.4 In any event, infrastructure projects such as HS2 will be a factor in the generation of the GVA forecasts; three discrete GVA forecasts have been used in all the Minerals Need Assessments.

8.2.5 In addition, MNA 2019 [D3.44] explicitly recognised that Herefordshire imports both sand and gravel and crushed rock. Consequently, the analysis considered both the level of demand driven by: current practice (importation); and self-sufficiency (Herefordshire quarries providing 100% of demand). Policies M3 and M4 reflect the level of demand driven by Herefordshire being self-sufficient in mineral supply.

8.2.6 In reality, this will not occur as the full range of construction aggregate is not available in Herefordshire; however, this approach does enable Herefordshire to contribute to MASS and to the demand from infrastructure projects such as HS2.

9. Question 8. Areas of Search for Limestone

9.1 The Inspectors' Question

9.1.1 The full text of question 8 is:

'How have the preferred areas of search for limestone been identified and how have constraints been taken into account in identifying these? Area D includes part of the AONB. What is the justification for this?'

9.2 Herefordshire Council's Response

9.2.1 The Spatial Context and Sites Report [D3.24] presents the approach to the identification of preferred areas of search, from paragraph 2.2.18.

9.2.2 The two preferred areas of search identified have focussed on the two key locations of limestone resource, gained by reference to BGS data. These areas already host the sites proposed to be allocated and are demonstrated to be appropriate in principle for future mineral working.

9.2.3 Area D has been drawn in a simple rectangular shape and can be amended to avoid the AONB. There is no justification intended to promote mineral working within the AONB.

10. Question 9. The Heritage Impact Assessments

10.1 The Inspectors' Question

10.1.1 The full text of question 9 is:

'Please explain how the Heritage Impact Assessments justify the proposed allocations.'

10.2 Herefordshire Council's Response

- 10.2.1 The Heritage Impact Assessments¹⁴ [D3.71, D3.72, D3.73 and D3.74] were completed in early 2021, and their influence on the MWLP is discussed (at section 2.3) in the Preparing the Plan Report _ Update¹⁵ [D3.70].
- 10.2.2 The Heritage Impact Assessments were undertaken in response to a specific request from Historic England and were used to review the information relevant to, and the conclusions made on, heritage in regard to the proposed allocations.
- 10.2.3 The Assessments confirmed the conclusions drawn to date; that the proposed sites are appropriate to allocate, albeit with some modifications the key development criteria that have been made to the Publication Draft MWLP [D3.37].
- 10.2.4 Reference to both the Preparing the Publication Draft Plan 2021 [D3.46] and Supplementary Sites Report¹⁶ [D3.58]; not least the list of heritage resources at paragraph 2.2.4 and paragraph 3.3.4 of the Supplementary Sites Report [D3.58] demonstrates that heritage matters have consistently been an element of the site analysis, including gaining advice from relevant officers at Herefordshire Council.

¹⁴ Undertaken separately for Quarries: Leinthall Earls, July 2021; Shobdon, August 2021; Upper Lyde, August 2021; and Wellington August 2021.

¹⁵ Herefordshire Minerals and Waste Local Plan Preparing the Plan Report – Update pre-Examination, February 2022

¹⁶ Supplementary Report to the Spatial Context and Sites Report, March 2020 and updated.

11. Question 10. Policy W1 and existing waste facilities that are not in accordance with the spatial strategy

11.1 The Inspectors' Question

11.1.1 The full text of question 10 is:

'In Policy W1, existing waste facilities that are not in accordance with the spatial strategy would not be safeguarded. What is the justification for this?'

11.2 Herefordshire Council's Response

11.2.1 This is the intention of policy W1, which has been drafted to focus waste management to locations within the spatial strategy.

11.2.2 It remains within the developer's gift to demonstrate why development of a type and location proposed should be permitted even though there would be some conflict with development plan policy.