

Minerals and Waste Local Plan

Main Issues Statement

Main Matter 1 – Legal Compliance

Part A: Questions 1 to 9

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

Duty to Co-operate

Question 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 s33A of the Planning and Compulsory Purchase Act 2004)?

Response

- 1.1 Herefordshire Council has engaged, constructively, actively and on an ongoing basis with all relevant organisations prescribed in section 33A(1)(c) of 2004 Act and Reg 4 of the 2012 Regulations, and continues to do so, in accordance with all relevant statutory requirements.
- 1.2 The *Duty to Co-operate Statement* ("DtCS") (Examination Library ref: [D3.67](#)) provides details of the cooperation that has taken place on key strategic matters relevant to the production of the Minerals and Waste Local Plan ('MWLP' or 'the Plan') up until submission. The DtCS includes, at Table 1, a schedule of all prescribed public bodies that were consulted on the emerging Plan.
- 1.3 Cooperative working has not ended with the production of the submitted Plan. Ongoing collaboration is taking place with Natural England, the Environment Agency, Natural Resources Wales and Dwr Cymru/Welsh Water on issues relating to nutrient neutrality; and with Historic England on the assessment of impact on designated heritage assets. In addition, Herefordshire Council has active and ongoing engagement with both neighbouring minerals and waste planning authorities, national and regional bodies and industry representatives on strategic minerals and waste matters in the West Midlands and further afield, where appropriate.

Questions 2: What is the latest position regarding discussions with Natural England (NE) about nutrient neutrality in the Rive Wye Special Area of Conservation (SAC) and other matters? Are there any outstanding unresolved issues?

Response

- 2.1 The *Preparing the Plan Report - Update Pre-Examination* (Feb 2022) (Examination Library ref. [D3.70](#)) addresses those representations to the Publication Draft MWLP consultation that are considered to be key matters, i.e. those that the Council considers would be appropriately addressed through main modifications to the Plan. This includes section 2.2 of the report, which discusses the River Wye SAC and River Lugg SAC catchment and which should be read in conjunction with this response.
- 2.2 NE's representation to the Publication Draft MWLP (Examination Library ref. [D3.91](#)) was broadly supportive. However, certain concerns were raised both to the Plan and its *Habitats Regulations Assessment (HRA)* (Examination Library ref. [D3.34](#)), as summarised in the following paragraphs. A meeting was held with NE in July 2021 to discuss these.

- 2.3 NE sought clarity over the use of the term 'betterment'. The Council agreed to propose that this term be removed from the Plan and policy wording changed to achieving 'at least nutrient neutrality'. Also the glossary of the Plan would be updated to include definitions of 'nutrient' and 'nutrient neutrality'.
- 2.4 NE also raised concerns in relation to the HRA (Examination Library ref. D.3.34). At the meeting in July 2021, it was agreed that wording in regard to HRAs likely to be required for each planning application would be proposed to be strengthened, for example, within the key development criteria. The proposed modifications [MM9.d.1 to 23] set out this suggested re-wording.
- 2.5 There was also discussion with NE about the geographic area over which the test of achieving 'at least nutrient neutrality' could be extended. NE's position was that this test can only be applied in projects that would link to a SAC catchment that was failing its water quality objectives. The Council considers that the approach in the MWLP of requiring nutrient neutrality from development proposals with the River Wye SAC generally, should be retained. This is because the upper River Wye SAC catchment (above its confluence with the River Lugg) has been close to failing its water quality objectives in recent years and the Plan seeks to play a material role in reducing nutrient release into the River Wye SAC in its totality.
- 2.6 Since the summer of 2021, there has been further, more recent, correspondence with NE, following up on the Council's note to Natural England in July 2021 on the approach to nutrient neutrality in the MWLP. Natural England has also been given the opportunity to view and comment on the proposed modifications to the Plan and the HRA of these.
- 2.7 Consequently, Natural England has produced a position statement (Examination Library ref. D3.86) on the approach that Herefordshire Council has taken regarding nutrient neutrality in the MWLP, containing updated advice, as at Sept. 2022. There are several key points that Natural England raise:
- a) concern that applying nutrient neutrality to matters other than residential and agricultural development requiring planning permission would neither be possible nor appropriate and could risk undermining the national approach set out by Natural England (latest update published in June 2022, see Examination Library ref. D1.38).
 - b) the nutrient neutrality requirement should be removed from Policy W4: wastewater management, since it is unclear what aspect of this policy nutrient neutrality would be applied to;
 - c) the nutrient neutrality requirement should be removed from Policies M3: winning and working of sand and gravel, M4: winning and working of crushed rock (limestone) and M5: winning and working of sandstone. Risks to water quality could be dealt with via planning conditions, other regulatory frameworks and/or other statutory assessments. To require a bespoke approach to calculating nutrient generation would be challenging and possibly unnecessary.
 - d) it is agreed that nutrient neutrality should be required in policy W3: agricultural waste, including the wording of the proposed modifications; and
 - e) the Council's decision to apply nutrient neutrality across the Wye catchment is noted.
- 2.8 NE's comments (Examination Library ref. D3.90) to the *HRA addendum report* raise points of clarity:
- the conservation status of the River Clun SAC has not changed since 2021;

- nutrient neutrality is not currently required across parts of the Wye SAC catchment that are not exceeding their nutrient limits; and
- the *HRA Addendum Report* could show the updated baseline information on water quality targets in the Wye SAC in England.

These additional points do not relate to the points of concern outlined in NE's position statement.

- 2.9 Herefordshire Council is continuing to seek to discuss these matters with NE and will update the Examination as soon as possible.

Question 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?

Response

- 3.1 In addition to engagement with Natural England, both the Environment Agency (EA) and Natural Resources Wales (NRW) have been consulted during the Plan's development up to submission.
- 3.2 Local water companies Dwr Cymru/Welsh Water and Severn Trent Water have also been consulted, along with the National Farmers Union (NFU), although none of these organisations submitted a response to the regulation 19 consultation.
- 3.3 The EA made extensive comment on nutrient neutrality (NN) and phosphorous recovery in their response to the Publication Draft MWLP consultation. Whilst comments were generally supportive of policies W3 and W4, some points were raised which did not fall within the remit of the MWLP, or which misunderstood the context within which the text of the Plan is provided.
- 3.4 More recent correspondence with the EA, in September 2022 (Examination Library ref. D3.92), has sought to identify if there are any outstanding matters around NN and county's SACs and the MWLP's policy approach, including with reference to the proposed modifications. Comments received in response raised a number of points:
- rationale and justification around requiring NN in the Wye SAC as a whole is acknowledged, with no further comments;
 - NE's position statement (Examination Library ref. D3.86) reference to the complexities of applying NN to non-residential development is acknowledged;
 - suggested modifications providing greater detail on NN in the waste section of the MWLP are welcomed;
 - policy W3 (agricultural waste management): re-wording of this policy (and of the key development criteria), seeking to ensure at least NN is welcomed;
 - policy W3: development proposals which cannot demonstrate NN could be refused, leading to stalled planning applications and uncertainty around what and when development can come forward;
 - policy W3: where NN may be difficult to achieve, could wider (off site) options be provided to deliver NN, e.g. environmental projects or improvement works?
 - schemes linked to the Nutrient Management Plan (integrated wetlands and phosphate credits) are supported.
 - Acknowledge the development of an Agricultural Development Supplementary Planning Document (SPD), which will further consider nutrient pollution mitigation options.

- 3.5 Since the River Wye's source and its upper reaches flow through Wales before entering Herefordshire, Natural Resources Wales (NRW) has been consulted during the Plan's production. Its comments and advice on the phosphate sensitive River Wye SAC catchment were generally supportive and were considered, along with those of NE and the EA when preparing the MWLP for submission.
- 3.6 There has been more recent correspondence with NRW to obtain an up to date position on matters relating to nutrient neutrality and the River Wye SAC catchment. In September 2022, NRW confirmed that there were no outstanding unresolved issues to raise, and an outline was provided of the main areas of NRW's engagement on nutrient neutrality in the River Wye SAC catchment:
- the All Wales Planning Sub Group – with representatives from planning authorities (including those with interests in the Wye catchment), Planning and Environment Decisions Wales, Welsh Government, Dwr Cymru Welsh Water, the Home Builders Federation and NRW. The Sub Group provides a forum to discuss issues and share progress on actions/developments undertaken by members.
 - the Wye Nutrient Management Board (NMB) – consisting of local representatives of public and private organisations with associated development of the Wye Nutrient Management Plan and Phosphate Action Plan (Examination Library refs. [D2.35](#), [D2.36](#) and [D2.37](#)) in which catchment specific actions have been identified for delivery by members.
 - regular SAC River Policy Liaison Meetings between NRW, Natural England and the Environment Agency – monthly meetings held to share information on cross border policy and guidance development including nutrient neutrality.
 - bilateral meetings with Local Planning Authorities on case specific issues.
- 3.7 Herefordshire Council also plays an active and ongoing role in these listed groups/meetings, as it seeks to tackle the problem of poor water quality in the River Wye SAC catchment. This is in relation both to emerging planning policy development and development management issues.

Question 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?

Response

- 4.1 The Government's Statement on improving water quality (Examination Library ref. [D1.39](#)) is intended to help safeguard protected sites such as SACs by reducing levels of pollution, thus allowing sustainable development to take place. This includes placing a new legal duty on water companies to accelerate the upgrade of wastewater treatment works by 2030, in areas with protected sites that are in an unfavourable condition due to excess nutrients. Some of the River Wye SAC is currently in such a condition, and other parts of it are close to becoming unfavourable.
- 4.2 Since the Government's statement was issued, Herefordshire Council has been in discussions with Dwr Cymru/Welsh Water (DC/WW) to understand what implications this will have on future programmed works. The following quote is taken from an email that DC/WW sent to Herefordshire Council on 14.09.22 (Examination Library ref [D3.88](#)):

'At the current time, it is unclear how the UK Government statement on improving water quality and nutrient pollution will play out in the context of Welsh Water's role as the statutory sewerage undertaker for large parts of Herefordshire. We are however committed to playing our part in ensuring that we are investing in those assets that are causing the most adverse impact on the environment, and have and continue to work collaboratively with our environmental regulators (Natural Resources Wales and the Environment Agency) on our investment plans.

To this end, we are investing £836 million on improving our wastewater assets during our current investment plan (AMP7 – 2020-2025), including a specific £250 million National Environment Programme (NEP) developed in conjunction with our environmental regulators. For the River Wye and River Lugg SAC catchment area specifically, we are investing £70 million within this AMP to increase phosphorous removal at wastewater treatment works (WwTWs) across the area including at the two major Hereford city WwTWs (Eign & Rotherwas) and Leominster. As a point of clarity, we are responsible for over 75 WwTWs within the Wye and Lugg SAC area.

As a Company we are fully supportive of partnership working and in the Herefordshire area we are a stakeholder to the Wye Nutrient Management Plan (NMP) and have been a fully engaged member of the Nutrient Management Board (NMB) since its inception. This reflects our ongoing commitment to working with other stakeholders to achieve favourable condition status for the SAC, whilst seeking to enable development. You will also be aware that we are working in partnership with Herefordshire Council who aim to deliver up to eight nutrient polishing wetlands at WwTWs on the River Lugg by 2025.'

Question 5: What is the latest position regarding discussions with Historic England regarding heritage assets? Are there any outstanding unresolved issues?

Response

- 5.1 Recent discussions with Historic England (HE) regarding heritage assets have been held. Consequently HE have issued a formal position statement (Examination Library ref. [D3.89](#)) in relation to the proposed main modifications and have indicated that they intend to appear at the hearings.
- 5.2 HE's comments on the *Heritage Impact Assessments* (HIAs) for the site allocations at Leinthall, Shobdon, Upper Lyde and Wellington Quarries (Examination Library refs. [D.3.71](#), [D3.72](#), [D3.73](#) & [D3.74](#)) have also been received (Examination Library ref. [D3.93](#)).
- 5.3 An unresolved issue relates to:
 - the wording used for heritage assets in the key development criteria (KDC) for site allocations; '*...need to demonstrate less than substantial harm...*' suggests that the Plan cannot demonstrate that the allocation is compatible with the Council's own policies for the protection of the historic environment or the requirements of the *National Planning Policy Framework* (NPPF).
- 5.4 HE is happy to continue to discuss the issue of wording in the KDCs and to follow up on any HIA issues through further discussions with the Council and through a Statement of Common Ground, as necessary. Therefore the Council will continue to work collaboratively with HE; providing timely updates to the Inspectors, as appropriate.

Question 6: Have discussions taken place with other authorities regarding cross-boundary movements of waste to landfill?

Response

- 6.1 The MWLP's waste strategy is to achieve sustainable waste management, delivering; a reduction in wastes generated, an increase in wastes re-used, recycled or used to recover energy; and a decrease in waste disposed to landfill.
- 6.2 Local authority collected waste is, primarily, managed through jointly contracted residual waste management facilities in Worcestershire, which will operate for the foreseeable future. A Statement of Common Ground has been signed with Worcestershire (and Gloucestershire) on, *inter alia*, the cross-boundary movements of waste (Examination Library ref. D2.30).
- 6.3 Tonnages of non-hazardous waste calculated for disposal are low and emanate from a variety of sources. No currently viable locations have been identified through the MWLP and the industry made no submissions for new non-hazardous disposal facilities. Since movements and tonnages of such wastes out of the County vary year on year, and the Plan's strategy is to reduce the amounts of waste going to landfill, there have been no specific discussions with other local authorities on this type of waste disposal.
- 6.4 Submissions have been made for inert waste disposal to be used in the restoration of mineral workings and this is generally considered to be an acceptable approach. Plan policy W6: preferred locations for construction, demolition and excavation waste management facilities, paragraph 7.3.9 and policy SP4: site reclamation refer. Therefore there have been no discussions with other local authorities in respect of disposal matters related to this waste stream.
- 6.5 Consultation on the MWLP more generally, including with waste planning authorities in the West Midlands, takes place through Herefordshire Council's ongoing and active involvement in the West Midlands Resource Technical Advisory Body. Details of this and of other duty to cooperate activities that have taken place over the Plan's period of preparation are detailed in the *Duty to Cooperate Statement* (Examination Library ref. D3.67)

Question 7: Is a Statement of Common Ground with Historic England being progressed?

Response

- 7.1 It is Herefordshire Council's intention to prepare a Statement of Common Ground with Historic England to address any unresolved matters.

Question 8: Is/are Statement(s) of Common Ground with any other organisation being progressed?

Response

- 8.1 It is Herefordshire Council's intention to prepare a Statement of Common Ground with Natural England to address any unresolved matters relating to nutrient neutrality.

Question 9: Was the Marches Local Enterprise Partnership consulted on the Draft and Publication Draft versions of the Plan?

Response

9.1 The Marches Local Enterprise Partnership was consulted at both Draft and Publication Draft stages of the Plan's production. No representations were received from that organisation.

[Note: for Matter 1 questions 10 to 22, see Part B]