

Aymestrey Parish Council

For the attention of Vicky Eaton, Herefordshire Council

By email vicky.eaton@herefordshire.gov.uk and ldf@herefordshire.gov.uk

12 May 2021

Dear Sirs

Herefordshire Minerals and Waste Local Plan - Publication Draft, Aymestrey Parish Council Comments.

Aymestrey Parish Council has several concerns about the draft Minerals and Waste Local Plan, which it raised during the previous round of consultation, but which have not been addressed in the latest revisions.

Aymestrey PC does not consider the plan to be sound because:

- 1) It does not comply with the NPPF requirement to “take account of the contribution that substitute or secondary and recycled materials and minerals waste would make to the supply of materials, before considering extraction of primary materials” and;
- 2) It is not drafted in accordance with statutory requirements, in particular Part 4 of the Town and Country Planning (Local Planning) (England) Regulations 2012.

These concerns are set out in more detail below.

Leinthall Earls Quarry.

Leinthall Earls Quarry is within Aymestrey Parish. The relevant draft policy is M4 as follows:

Policy M4: Winning and working of crushed rock (limestone)

1. Total provision for crushed rock over the plan period to 31 December 2041 will be 9 million tonnes. Additional provision shall be made through the five-year reviews if necessary to maintain a landbank of at least ten years for crushed rock at 31 December 2041, based on an annual rate of provision to be determined through the review.
2. In order of preference, crushed rock extraction shall be supported at the following locations:
 - a. Specific Sites (presented in alphabetical order) subject to the key development criteria set out at section 9:*
 - Leinthall Quarry;
 - Perton Quarry.

Under the current planning permission, quarrying at Leinthall Earls is due to cease in 2027. This policy creates a presumption that the permission will be renewed and extended. Given the multiple and very significant adverse impacts the quarry has on Aymestrey parish, the Parish Council expects that the amount of quarrying is kept to an absolute minimum in accordance with the National Planning Policy Framework (NPPF).

Neither MWLP Policy M4 nor the supporting text make any reference to the NPPF requirement that planning authorities consider the extent to which alternative, secondary and recycled materials can be used before a commitment is made to any mineral extraction. (NPPF Paragraphs 203 and 204). Nor do the policies deliver any real measures to substitute secondary or recycled material for primary minerals.

Having failed to do this, the MWLP potentially allows for the quarrying of more material than necessary from Leinthall and Perton quarries. The same applies to the policies for extraction of other primary materials.

clerk@aymestrey.org

The supporting text to Policy M4 says at at 6.2.17 “In order to reduce the potential for adverse impacts, it is intended that mineral would be transported off-site for processing”. This needs to be written into the policy to have any effect (see comments below).

The “Circular Economy”

The policy that apparently seeks to address paragraph NPPF 203 is SP1 - Resource Management. However, this policy is directed at climate change rather than the reduction of the requirement for primary mineral and while the ambition to promote a “circular economy” is stated, the policy does not provide any means of delivering it.

SP1 1. says:

The use of minerals and waste resources will be directed to contribute positively to addressing climate change through:

1. Herefordshire Council encouraging waste prevention by:
 - a. promoting a more circular economy that improves resource efficiency and innovation to keep products and materials at their highest value for as long as possible;
 - b. maintaining engagement with businesses, community groups, and the general public to raise levels of awareness and understanding of waste issues;
 - c. working in partnership with other public bodies to ensure that waste prevention and the circular economy is addressed in all contracts for works and services; and
 - d. leading by example in its activities.

These are statements of intent, which are not relevant to development management decisions. It is unclear how these aspirations will be delivered or why they have been written into policy.

Policy SP2. 2. Refers to the requirement for a “Resource Audit” but does not say when such an audit will be required or what developers are expected to deliver through such an audit.

The supporting text says at 5.5.15 that “Any application for major development, as defined in the Town and Country Planning (Development Management Procedure) (England) Order 2015 (as may be amended) will be required to be accompanied by a Resource Audit”,

at 5.5.17 “Smaller applications, accompanied by Design and Access Statements, should include commentary on waste prevention and management measures. All submitted applications should make reference to the national and local zero-carbon plans in place at the time in order to inform best practice measures that can be incorporated into the proposed development”,

and at 5.5.18 “All development should be designed to increase the potential for recycling waste.”

To have any force, these requirements must be written into the policy.

In *R (Cherkley Campaign Ltd) v Mole Valley DC* [2014], the Court of Appeal held that the supporting text of a development plan cannot be interpreted as policy.

The case related to the grant of planning permission for development of a golf course. The supporting text to the development plan policy said that applicants should demonstrate the need for such facilities, but this requirement was not contained in the policy itself and so the applicant was not bound to comply with it.

Importantly, the court questioned whether the development plan was sound at all, because of the way it had sought to introduce policy through the supporting text.

The judgement refers to Planning Practice Guidance PPG12, which says as follows:

“The written statement should also include a reasoned justification of the plan’s policies and proposals. A brief and clearly presented explanation and justification of such policies and proposals will be appreciated by local residents, developers and all those concerned with development issues. The reasoned justification should only contain an explanation behind the policies and proposals in the plan. It should not contain policies and proposals which will be used in themselves for taking decisions on planning applications. To avoid any confusion, the policies and proposals in the plan should be readily distinguished from the reasoned justification (for example, by the use of a different typeface).” (Our emphasis)

Although PPG is now withdrawn, it remains relevant. The online Planning Practice Guidance that replaced the PPGs is much abbreviated but it refers to Regulations 8 and 9 of the Town and Country Planning (Local Planning) (England) Regulations 2012. (Paragraph: 002 Reference ID: 61-002-20190315)

Regulation 8 sets out the form and content of local plans and supplementary planning documents as follows:

Form and content of local plans and supplementary planning documents: general

8.—(1) A local plan or a supplementary planning document must—

(a) contain the date on which the document is adopted; and

(b) indicate whether the document is a local plan or a supplementary planning document.

(2) A local plan or a supplementary planning document must contain a reasoned justification of the policies contained in it.

(3) Any policies contained in a supplementary planning document must not conflict with the adopted development plan.

(4) Subject to paragraph (5), the policies contained in a local plan must be consistent with the adopted development plan.

(5) Where a local plan contains a policy that is intended to supersede another policy in the adopted development plan, it must state that fact and identify the superseded policy.

(Our emphasis)

The supporting text to a policy is intended to justify that policy and explain how it should be interpreted: it cannot be used to introduce additional policy requirements. The draft MWLP, has repeatedly sought to write policy requirements into the reasoned justification and is consequently not compliant with the relevant legislation.

There are a number of statements in both policy and supporting text that apparently seek to deliver the “circular economy”, including the following:

Paragraph 5.5.17: “Such documents (Resource Audits) are expected to have an increasing role demonstrating how new development is delivered and managed in a sustainable manner, explicitly setting out: how the use of raw materials will be minimised...”

Policy M1 b. - development control decisions will:

“ensur(e) new-build and refurbishment developments contribute to the efficient use of resources, increasing the proportion of recycled materials used as an alternative to primary mineral where appropriate;”

Policy M1 : Minerals Strategy:

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

a. identifying sources of alternatives to primary mineral resources, and encouraging the development of facilities to process alternative materials either at the point of production or other suitable locations;

These policies do not explicitly set out how the use of raw materials will be minimised and nor do they include any policy requirements to achieve this. Policy M1 fails to explain whose task it is to identify sources of alternative materials or how this aim fits into the planning decision-making process.

Rather than creating a mere expectation, the policies should facilitate a reduction in demand for primary minerals to comply with the NPPF requirement to ensure best use of and secure the long term conservation of this finite resource.

Neither Policy SP1 nor the supporting text contain any objectives or targets, there is no requirement to use any recycled material - applicants need only provide a description of materials used - and the policy does not indicate that the decision maker will require compliance with the resource audit.

The draft MWLP consequently fails to meet the NPPF paragraph 204 requirement for an account of what role recycled/substitute materials will play in reducing the requirement for continued quarrying. If it is not practicable to provide such an account, the MWLP should explain and justify this.

Policies W2 and W3

Policies W2 and W3 provide unconditional support for various waste developments, livestock units and anaerobic digesters, all of which pose significant risks to the environment.

Policy W2 supports a series of “Solid Waste Management” developments with no qualification whatsoever. The supporting text refers to development that is “well designed, appropriately situated and demonstrated to deliver a sustainable outcome.” This must be incorporated into the policy itself to have any effect.

Policy W3 offers support for livestock units and anaerobic digesters provided they demonstrate nutrient neutrality within the catchment of the River Wye Special Area of Conservation. While this is important, there are several other impacts, including on landscape, air quality, residential amenity and traffic impacts, that should be addressed in the policy, if only by stating that support for these developments is subject to compliance with Core Strategy policies.

The MWLP apparently seeks to overcome the unconditional support offered by these policies by stating that decisions should be taken in conformity with the development plan as a whole. The problem is that these are the ONLY policies in the whole development plan governing these specific forms of development. Due to the unequivocal wording of the policies, compliance with the relevant MWLP policy could reasonably be viewed as compliance with the development plan as a whole.

In offering unqualified support for specific forms of development, the policies are in conflict with those in the adopted Core Strategy seeking to protect the environment, the landscape, residential amenity and so on from inappropriate development. This is a potential breach of Reg. 8 (3) of Town and Country Planning (Local Planning) (England) Regulations 2012.

When considering whether a planning application is in accordance with the development plan as a whole, the decision-maker must make a planning judgement about the weight to be accorded to policies that may pull in different directions. The way that the policies in the MWLP are drafted does not allow for this balancing exercise because they create an unqualified presumption in favour of development.

A similarly constructed policy (albeit a negatively worded one) was discussed in the case of *R (Corbett) v Cornwall County Council* [2020], relating to a policy that precluded development that would harm an area of great landscape value.

Lindblom LJ giving the lead judgement in the Court of Appeal said:

“I acknowledge that the language of Policy 14 is unqualified. A word such as “normally” or “generally” was not inserted to soften the expression “will not be permitted”. Nor is the policy qualified by any reference to the nature or degree of harm likely to be caused. And it says nothing about development expressly supported in other policies of the plan.”

While the Court of Appeal held that Cornwall Council was able to overcome the constraint of that policy by reference to other policies in the development plan, the High Court had taken a different view and quashed

the permission. In the Court of Appeal, Lindblom LJ agreed that a single policy could have pre-eminence over others in the development plan in any planning decision:

“I am not saying that, as a matter of principle, the breach of a single policy of a development plan can never be capable of amounting to conflict with the plan as a whole. I would not go that far. But that general question is not the issue here.”

The court was discussing whether a single policy created a presumption for refusal - and agreed that an individual policy could achieve this. The same is true in reverse, where a policy is stated so unequivocally that it grants a presumption for approval and cannot easily be outweighed by other planning policies.

CONCLUSION

Aymestrey Parish Council would like to see the following amendments to the draft Minerals and Waste Local Plan:

- 1) All policy requirements to be incorporated into the policies themselves, rather than drafted into the supporting text, where they will have no effect. This is particularly critical for policy SP1, which is intended to deliver the circular economy and reduce the demand for primary materials.
- 2) Policies should create a presumption that all new development proposals use recycled materials except where there is convincing justification for the use of any primary minerals/materials. We would commend Policy SR01 of the South Gloucestershire Minerals Local Plan copied at Annex 1.
- 3) Policies should not create an unqualified presumption in favour of any development that has the potential for significant environmental impacts. This is especially applicable to draft policies W1 and W2. Policies should state clearly that all relevant local plan policies are applicable.

*Paragraph 2 of Policy M4 states that the two sites for extraction are listed in order of preference and then in brackets, in alphabetical order. Which is it?

Annex 1) South Gloucestershire Minerals Local Plan Policy SR01 (Adopted March 2020)

Yours sincerely

Maggie Brown
Clerk, Aymestrey Parish Council