



Ms Victoria Eaton,
Senior Planning Officer
Herefordshire Council

22 November 2022

By email via the Programme Officer

Dear Ms Eaton

Examination of Herefordshire Minerals and Waste Local Plan

Further to the recent hearing sessions, we are writing to clarify our position on two of the issues that were discussed. The views expressed in this letter are without prejudice to our final conclusions on the Plan.

Policy M1(d)

There was discussion at the hearing as to the requirements of Policy M1(d) regarding the use of hydrocarbons and greenhouse gas emissions associated with their use. At the hearing, details of two legal judgments¹ were submitted both of which dealt with similar issues.

The National Planning Policy Framework requires that proposals are environmentally acceptable or that they provide national, local or community benefits which outweigh the impacts. Environmental impacts would arise from extraction of the mineral. While such impacts may also arise from the use of hydrocarbons, national policy does not specifically identify this as a matter to be assessed. The court cases referred to indicate that this is a matter that is capable of being a material consideration in decision making. However, this does not mean that assessment of effects from the use of hydrocarbons should be included in planning policy.

The inclusion of this requirement in Policy M1(d) would, for these reasons go further than national planning policy. The last part of Policy M1(d) from “and the greenhouse gas emissions associated with both the extraction and the use of hydrocarbons” is not therefore justified or consistent with national policy. As such, this part of the policy should be deleted as a Main Modification. This change is necessary to ensure soundness.

Mineral Safeguarding Areas and the use of a buffer

Further to the discussion at the hearing, the Council has agreed that the Mineral Safeguarding Areas (MSA) should be re-defined to include the full extent of the local and national mineral resources, including where these extend across built-up areas. This modification would be consistent with national policy.

¹ [2019] EWHC 3141 (Admin) and [2022] EWCA Civ 187

However, allied to this, there remains a question about the use of a buffer. The Council has suggested the use of a 100m wide buffer around the MSA². There is no requirement in national policy to include any form of buffer. Planning Practice Guidance encourages mineral planning authorities to take a systematic approach to safeguarding mineral resources and specifically cross references the British Geological Survey (BGS) Mineral Safeguarding Good Practice Advice 2011. The BGS advice indicates that buffers can be used to extend the resource boundary thereby avoiding the mineral becoming sterilised by adjacent non-minerals development. In our experience it is accepted good practice to use the BGS advice on buffers to be consistent with the national policy safeguarding requirement in paragraph 210 (c). Accordingly, a number of adopted mineral plans to date have included buffers as part of their MSA.

Having given this matter further consideration, our view is that the Herefordshire MSAs should be modified to incorporate buffers in line with the BGS good practice advice. At present the alternative suggested buffer of 100m is without robust locally specific evidence and so is not justified.

We therefore ask that the Council provides further evidence to justify the 100m buffer referred to in paragraph 6.1.12.

Policy M2 Exemptions

A list of development types that would be exempt from the safeguarding requirements of Policy M2 was also discussed and the Council has suggested a list of exemptions proposed to be included in paragraph 6.1.15³. As stated at the hearing, we ask that the Council provides some evidence for our consideration to justify the list included in that modification. We anticipate that this would be drawn from the planning applications received over the last 5 years together with a summary analysis to test the effect of the policy requirement. Please send this onto the Programme Officer as soon as it is ready for our consideration alongside the schedule of main modifications.

We would be grateful if the Council would place a copy of this letter on the Examination website. However, we need to be clear that we are not inviting or proposing to accept any comments on this letter from any Examination participants. The consultation on the proposed Main Modifications which is the next part of the Examination process will provide the opportunity for any further representations on whether they adequately address any outstanding issues of soundness and legal compliance with the Plan.

We ask that the Council responds, via the Programme Officer giving a timescale for submission of the above further information.

Yours sincerely

Nick Palmer

Rachael A Bust

INSPECTORS

² MM6.a(ii)

³ MM6.a(iii)