

The Planning Inspectorate

Your Ref:

Our Ref: MWLP Examination

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**By email via Programme Officer**

2 May 2023

Dear Inspectors (N Palmer and R A Bust),

**Re: Herefordshire Council's response to Inspectors' letter of April 2023 – Policy M2**

Further to your letter dated 6 April 2023, I note your outstanding concerns regarding the approach to mineral safeguarding in Policy M2 and the need for a further (virtual) hearing session to discuss these matters.

With regard to the issues you raise, please note the following, in response to points 1 to 3 of your letter:

**1. Evidence on numbers of different planning application types in Minerals Safeguarding Areas (MSA)**

Table 1 below shows the numbers of planning applications received over the past three years of development types (on which data is available<sup>1</sup>) which relate to the exemptions in Policy M2 of the emerging Minerals and Waste Local Plan (MWLP). Numbers have been split to show ones received (validated) both countywide and in the MWLP Minerals Safeguarding Area (MSA).

*Table 1: Planning applications in Herefordshire and in MWLP Mineral Safeguarding Areas (2020 to 2022)*

	Countywide			MWLP Mineral Safeguarding Area		
Year	2020	2021	2022	2020	2021	2022
<b>Total Applications (all types)</b>	3,515	3,809	3,281	1,696	1,823	1,608

<sup>1</sup> Data is not separately recorded in relation to planning applications for alterations and extensions

Householder development	719	907	782	317	423	351
Changes of Use <sup>2</sup> and Prior Notifications <sup>3</sup>	729	286	221	70	101	75
Advertisement Consent	39	40	28	27	30	20
Works to trees and hedgerows	470	436	405	347	308	287

Over the three years between 2020 and 2022, the total number of planning applications validated of the development types (exemptions) listed in Table 1 in the proposed MWLP MSA was **2,356** – some 22% of all applications. This figure would be higher if the applications for alterations and extensions were also to be included in the table, however, this data is not separately collected.

## 2. Reasoning for the selection of the particular types of development given in the list of exemptions to Policy M2.

As set out in the Council’s previous letter (dated 13 December 2022) ‘*the list of exemptions proposed to be presented in a new paragraph 6.1.15 (see MM6.f) has been drafted by reference to the BGS Advice.*’ The BGS Advice is the guidance document, prepared jointly by the British Geological Survey and The Coal Authority, titled Mineral Safeguarding in England: good practice advice (referenced Open Report OR/11/046).

In addition, the list of criteria was ‘sense-checked’ with the development management team within Herefordshire Council that deals with such matters; they agreed the list to be appropriate. The development management team within the Council is keen to have a list of exemptions to ensure that the associated work load of considering applications within the Mineral Safeguarding Areas will be proportionate. This aligns with the BGS Advice, paragraph 4.2.10:

*‘Any concerns regarding the number of planning applications that might be referred to the MPA as a consequence of defining MSAs in urban areas can be managed by simple exemption criteria (see para. 5.2.3 – 5.2.8).’*

Paragraph 5.2.7 of the BGS Advice provides a list of example criteria; which is guidance only and there is no need for local plan policy to follow it exactly. However, it is the source point for the exemption criteria proposed to be included within the MWLP. The relationship between the list in the BGS Advice and how it is addressed within the MWLP of the MWLP is presented in Table 2.

*Table 2: Relationship between exceptions criteria as set out in BGS Advice paragraph 5.2.7 and the Herefordshire MWLP paragraph 6.1.15*

BGS Advice, paragraph 5.2.7	Herefordshire MWLP
Applications for householder development	Paragraph 6.1.15, a. Applications for householder development.

<sup>2</sup> This includes where there has been intensification.

<sup>3</sup> Includes telecoms prior notifications

BGS Advice, paragraph 5.2.7	Herefordshire MWLP
Applications for alterations and extensions to existing buildings and for changes of use of existing development, unless intensifying activity on site	Paragraph 6.1.15, b. Applications for alterations and extensions to existing buildings and for change of use of existing development, unless intensifying activity on site.
Applications that are in accordance with the development plan where the plan took account of the prevention of unnecessary mineral sterilisation and determined that prior extraction should not be considered when development applications in a MSA came forward	Policy M2 has been prepared to prevent the unnecessary sterilisation of mineral. Policy M2(1b) specifically addresses prior extraction. There are no areas within the MSA in which it has been determined that prior extraction should not be considered as appropriate.
Applications for advertisement consent	Paragraph 6.1.15, c. Applications for advertisement consent, for works to trees and for prior notifications (telecoms, forestry, agriculture, demolition).
Applications for reserved matters including subsequent applications after outline consent has been granted	This is not directly addressed within policy M2. However, the issue of mineral sterilisation would have had to have been addressed in determining the outline application, and the applicant can readily rely upon the previous justification.
Prior notifications (telecoms, forestry, agriculture, demolition)	Paragraph 6.1.15, c. Applications for advertisement consent, for works to trees and for prior notifications (telecoms, forestry, agriculture, demolition).
Certificates of Lawfulness of Existing Use or Development (CLEUD) and Certificates of Lawfulness of Proposed Use or Development (CLOPUD)	This is not directly addressed within policy M2 and is not considered appropriate to include. Such forms of development could lead to mineral sterilisation, which, if the lawful development case is not made out, the council could wish to resist. Not including reference to lawful development certificates as an exemption criterion provides the council with that ability in the future. If the Inspectors disagree with this conclusion it can be added to the list.
Applications for works to trees	Paragraph 6.1.15, c. Applications for advertisement consent, for works to trees and for prior notifications (telecoms, forestry, agriculture, demolition).
Applications for temporary planning permission	Policy M2(1c) identifies development of a temporary nature.
Development types already specified in a DPD as exempt from the need for consideration on safeguarding grounds	Paragraph 6.1.15, d. Any other development specified in the local development plan as exempt from the need for consideration on safeguarding grounds.

**3. Part (d) of Policy M2 would exclude strategic development where the development can be demonstrated to outweigh the need for the mineral resource. How would this be demonstrated? Would Mineral Resource Assessments be required?**

A Mineral Resource Assessment is likely to be an efficient route through which the demonstration could be made. However, it could also be addressed within a Planning Statement. Essentially, the demonstration would be expected to address the matters set out in policy M2 as relevant, whilst also reflecting on the nature of the non-minerals development being proposed.

As advised on page 37 of the BGS Advice *'The requirements of a Mineral Assessment are not onerous – they will focus purely on the matters needed to ensure a balanced assessment of the mineral resources within the site at an early stage to ensure that they are not being unnecessarily sterilised.'*

Please advise Herefordshire Council should any further information be required ahead of a virtual hearing to discuss the exemptions to Policy M2.

A date for the Policy M2 hearing is being arranged with the Programme Officer. It will be at least two weeks from the date of this letter.

Thank you for your comment on the schedule of modifications. The alteration has been made. In addition, LUC have produced revised SA and HRA reports in light of the modifications. These have not been sent to you as yet, since there may be further alterations as a result of the hearing session on Policy M2. However, if you would like copies at this time, please let me know.

Yours sincerely

*Victoria Eaton*

**VICTORIA EATON (MRS)  
(SENIOR PLANNING OFFICER)**