



The Planning Inspectorate

---

# **Report to Leicestershire County Council**

**by Elizabeth Hill BSc(Hons) BPhil MRTPI**

**and Stephen Normington BSc DipTP MRICS MRTPI FIQ FIHE**

**Inspectors appointed by the Secretary of State**

**Date: 21 May 2019**

---

Planning and Compulsory Purchase Act 2004

(as amended)

Section 20

## **Report on the Examination of the Leicestershire Minerals and Waste Local Plan Up to 2031**

The Plan was submitted for examination on 23 March 2018

The examination hearings were held between 22 and 23 October 2018

File Ref: PINS/M2460/429/8

## **Abbreviations used in this report**

AA	Appropriate Assessment
AMR	Annual Monitoring Report
APSGS	Assessment of Potential Sand and Gravel Sites 2016
AWP	Aggregate Working Party
DtC	Duty to Co-operate
HRA	Habitats Regulations Assessment
LAA	Local Aggregates Assessment
LDS	Local Development Scheme
MCA	Mineral Consultation Area
MM	Main Modification
MSA	Mineral Safeguarding Area
Mt	Million tonnes
Mtpa	Million tonnes per annum
NPPF	National Planning Policy Framework (March 2012)
NPPW	National Planning Policy for Waste
SA	Sustainability Appraisal
SCI	Statement of Community Involvement
WNA	Waste Needs Assessment

### **Non-Technical Summary**

This report concludes that the Leicestershire Minerals and Waste Local Plan Up to 2031 provides an appropriate basis for the minerals and waste planning of the County, provided that a number of main modifications [MMs] are made to it. Leicestershire County Council has specifically requested us to recommend any MMs necessary to enable the Plan to be adopted.

The MMs were proposed by the Council and were subject to public consultation over a six-week period. We have recommended their inclusion in the Plan after considering all the representations made in response to consultation on them.

The purposes of the recommended Main Modifications can be summarised as follows:

- MM1: Policy M3 – to provide flexibility within criterion (ii) for sand and gravel extraction on unallocated sites where there is a need for further mineral supply.
- MM2: Paragraph 3.83 – to set out further guidance on the information to be provided with planning applications for hydrocarbons to ensure that these would not have any unacceptable impacts on local residents and the environment.
- MM3: Policy M10 – to address ambiguity and non-conformity with the NPPF within the Policy.

## Introduction

1. This report contains our assessment of the Leicestershire Minerals and Waste Local Plan Up to 2031 (the Plan) in terms of Section 20(5) of the Planning & Compulsory Purchase Act 2004 (as amended). It considers first whether the Plan's preparation has complied with the Duty to Co-operate (DtC). It then considers whether the Plan is sound and whether it is compliant with the legal requirements. The National Planning Policy Framework 2012 (paragraph 182) (NPPF) makes it clear that in order to be sound, a Local Plan should be positively prepared, justified, effective and consistent with national policy.
2. The revised NPPF was published in July 2018 and further revised in February 2019. It includes a transitional arrangement in paragraph 214 which indicates that, for the purpose of examining this Plan, the policies in the 2012 NPPF will apply. Similarly, where the Planning Practice Guidance (PPG) has been updated to reflect the revised NPPF, the previous versions of the PPG apply for the purposes of this examination under the transitional arrangement. Therefore, unless stated otherwise, references in this report are to the 2012 NPPF and the versions of the PPG which were extant prior to the publication of the 2018 NPPF.
3. The starting point for the examination is the assumption that the local planning authority has submitted what it considers to be a sound plan. The Plan submitted in March 2018 is the basis for the examination. It is the same document that was published for consultation in November 2017.

## Main Modifications

4. In accordance with section 20(7C) of the 2004 Act the Council requested that we should recommend any main modifications [MMs] necessary to rectify matters that make the Plan unsound and thus incapable of being adopted. This report explains why the recommended MMs, all of which relate to matters that were discussed at the examination hearings, are necessary. The MMs are referenced in bold in the report in the form **MM1**, **MM2**, and **MM3** and are set out in full in Appendix 1.
5. Following the examination hearings, the Council prepared a schedule of proposed MMs. The MM schedule was subject to public consultation for six weeks. We have taken account of the consultation responses in coming to the conclusions in this report.
6. The Council has also put forward a number of minor amendments and corrections, described as Additional Modifications (AMs), that do not address matters of soundness. We make no formal recommendations concerning these.

## Policies Map

7. The Council must maintain an adopted policies map which illustrates geographically the application of the policies in the adopted development plan. When submitting a local plan for examination, the Council is required to provide a submission policies map showing the changes to the adopted policies map that would result from the proposals in the submitted local plan.

In this case, the submission policies map comprises the set of Mineral and Waste Safeguarding documents (SUB2 – SUB8), the Key Diagram, and Appendices 1 and 2 to the Plan.

8. When the Plan is adopted, in order to comply with the legislation and give effect to the Plan's policies, the Council will need to update the adopted policies map to include all the changes proposed in the Plan.

## **Assessment of Duty to Co-operate**

9. Section 20(5)(c) of the 2004 Act requires that we consider whether the Council complied with any duty imposed on it by section 33A in respect of the Plan's preparation. When preparing the Plan the Council is required to engage constructively, actively and on an on-going basis with a range of local authorities and a variety of prescribed bodies in order to maximise the effectiveness of plan preparation with regard to strategic, cross-boundary matters.
10. Details of how the Council has met this duty are set out in the *Duty to Co-operate Report 2018* (Ref SUB11), the *Statement of Consultation 2018* (Ref SUB10) and the Council's written responses to pre-hearing questions. These documents set out where, when, with whom and on what basis co-operation has taken place over all relevant strategic matters.
11. The evidence demonstrates that the Council has worked closely with neighbouring minerals and waste authorities, as well as some further afield where a strategic relationship was identified, the relevant East Midlands Aggregate Working Party (AWP), the East Midlands Strategic Waste Advisory Group and the Leicestershire Development Plans Forum throughout the plan-making process.
12. Also evident is the effective relationship the Council has established and maintained with all of the relevant bodies listed in Part 2 of the Town and Country Planning (Local Planning) (England) Regulations 2012 (as amended). In addition, consultation has taken place with a wide range of organisations and bodies as part of the formal consultation process. It is clear that some of the changes to the Plan that were brought forward by the Council were as a result of consultation with relevant parties to address their concerns in a constructive and proactive manner.
13. Overall, on the basis of the evidence provided in the *Duty to Co-operate Report* (Ref SUB11), the *Statement of Consultation* (Ref SUB10) and the Council's written responses to pre-hearing questions, we are satisfied that where necessary the Council has engaged constructively, actively and on an on-going basis in the preparation of the Plan and that the DtC has therefore been met.

## **Assessment of Soundness**

### **Main Issues**

14. Taking account of all the representations, the written evidence and the discussions that took place at the examination hearings we have identified a number of main issues upon which the soundness of the Plan depends. Under

these headings this report deals with the main matters of soundness rather than responding to every point raised by representors.

**Issue 1 – Whether the Vision and Strategic Objectives are the most appropriate, are soundly based and provide an appropriate basis for meeting the future demand for minerals and managing waste sustainably.**

15. The spatial vision and strategic objectives, informed by the underpinning Sustainability Appraisal (SA), seek to enable the provision of sufficient minerals and waste facilities within the County in locations that meet the economic and social needs of present and future generations whilst seeking to protect and enhance the environment. It is an appropriate basis that guides the policies of the Plan. The strategic objectives of the Plan broadly follow on from the Vision.
16. The strategic objectives do not specifically refer to the need to maintain a steady and adequate supply of minerals. However, Objective 1 aims to make provision of minerals in the County to meet national and local requirements. In this regard it is therefore generally compliant with the objectives of the NPPF in relation to the supply of aggregates and industrial minerals.
17. Strategic Objective 2 seeks to make sufficient provision of waste management facilities in Leicestershire with the capacity broadly equal to the waste generated within the County. This aim to achieve net self-sufficiency in managing waste is consistent with the guidance provided in the National Planning Policy for Waste (NPPW).
18. The remainder of the strategic objectives provide more guidance on how the vision will be achieved and provide a framework to achieve the principles of sustainable development. Some evidence suggests that Objective 9, which seeks to ensure a high quality of restoration of land, may be too onerous. Specifically, that the restoration objectives should be proportionate to requirements for any recreational, economic and community gain weighed in the overall balance as opposed to being necessary.
19. Strategic Objective 9 recognises that these restoration objectives are to be attained 'where possible' and in that regard it provides a degree of flexibility and proportionality. Moreover, the aspirations of Objective 9 do not materially conflict with the requirements of paragraph 109 of the NPPF which seeks to provide net gains in biodiversity 'where possible'. Nothing we have read in the representations or heard in the discussions at the examination hearings persuades us that Objective 9 is either unduly onerous or contrary to paragraph 109 of the NPPF.

**Conclusion on Issue 1**

20. Therefore, we are satisfied that the Vision and Strategic objectives reflect the most appropriate strategic approach for the Plan's administrative area. On this basis, we find this part of the Plan to be sound.

## **Issue 2 - Whether the Plan makes adequate provision for the steady and adequate supply of aggregate minerals.**

21. The NPPF looks to Mineral Planning Authorities to plan for a steady and adequate supply of aggregates and industrial minerals. The Plan identifies that Leicestershire makes a significant contribution to the supply of minerals in the Country, producing 17.5Mt of minerals annually.

### *Sand and Gravel Provision*

22. The quantity of sand and gravel required in the Plan period has been estimated on the basis of the average of 10-year sales (2005 – 2014). This is consistent with the approach set out in the NPPF, which says that an annual Local Aggregates Assessment (LAA) shall be prepared based on a rolling average of 10-year sales and other relevant local information. The period covers the latest 10 years for which published data was available prior to the submission of the Plan, which included periods of both high and low levels of economic growth.
23. The average sales of sand and gravel over a 10-year period were 1.12Mtpa, which gives a total provision over the plan period of 19.04Mt. The permitted reserves in 2015 were 9.51Mt. Therefore, there is a shortfall in provision over the plan period to 2031 of 9.53Mt.
24. Strategic Objective 5 seeks to attain the maximum possible reuse, recycling, and recovery of value from waste materials. The Plan (paragraphs 3.7 -3.10) identifies that the main source of alternative aggregates in the County arises from construction demolition and excavated waste. Although there is no specific policy relating to recycled and secondary aggregates, paragraph 3.10 identifies the Council's support for proposals for the recycling and reprocessing of materials for use as aggregates in appropriate locations and subject to compliance with other policies within the Plan. In this regard, the Plan is consistent with paragraph 143 of the NPPF.
25. The Plan recognises that the bulk of aggregates required for the construction industry are likely to continue to be won from primary sources. No substantive evidence was provided to suggest that recycled and secondary aggregates will significantly substitute for land won aggregates in the short term and result in a need to revise downwards the amount of sand and gravel provided for in the Plan. Policy M1 confirms that the Council will ensure a steady and adequate supply of sand and gravel by making provision over the plan period for the extraction of 19Mt and that priority will be given to proposals for extraction to be worked as extensions to existing sites.
26. Evidence referred to a possible under-provision of sand and gravel resources over the plan period due to the likelihood of increased economic growth in the region. In particular, the East Midlands Aggregate Working Party Annual Report 2016 (revised 2018), published subsequent to Leicestershire's latest LAA, identifies that the last 3-year sales, 2014 to 2016, indicates an annual requirement of 1.46Mt, albeit the average 10-year sales (1.13Mtpa) is similar to the figure (1.12Mtpa) in the Plan.

27. Without dismissing the possibility of significant future growth in the region, we consider that the LAA should be able to identify the consequences and impact there might be on sand and gravel resources, reserves and landbanks and inform the Monitoring and Implementation Framework of the Plan. In particular, paragraph 6.2 indicates that the Council's Annual Monitoring Report (AMR) would report on the effectiveness of the Plan and identify any changes needed to policies if targets are not being met and assist in ascertaining if there is a need to review the Plan. In addition, the more recent increase in sales may not necessarily be reflective of an upturn in construction within the County as evidence indicates a slight downturn in housing completions from 2015/16 to 2016/17.
28. Furthermore, more than 40% of sand and gravel production annually is exported out of the County and therefore sales may not necessarily correlate with economic activity within Leicestershire. Consequently, we see no convincing reason to depart from the advice that 10 years sales data should be the basis of future aggregate supplies to be provided for in the Plan.
29. Policy M3 of the Plan provides general development principles for sand and gravel extraction from unallocated sites. Subject to compliance with other relevant policies in the Plan, this policy provides a degree of flexibility to enable the consideration of sand and gravel development proposals on unallocated sites that are necessary in order to maintain an adequate level of provision and meet any identified shortfall in the landbank.
30. Therefore, we see no reason to consider that the annual provision of 1.12Mt of sand and gravel is unsound. However, **MM1** is necessary to ensure that the second criterion of Policy M3, which provides support for sand and gravel proposals from unallocated sites, takes account of the need for a new quarry to replace an existing site that is nearing exhaustion or when remaining sites cannot maintain the required level of provision. The modification is required for the Plan to be effective and for Policy M3 to provide sufficient flexibility to ensure a steady and adequate supply of sand and gravel is maintained.

*Allocated sites for Sand and Gravel Provision*

31. The existing active sites in the County have a total potential production capacity of approximately 1.7Mtpa, which means that they would be more than capable of producing sufficient material to satisfy the level of provision based on average sales over the last 10 years. However, these sites have insufficient reserves with planning permission to meet the required provision over the plan period without the benefit of extensions to their current permitted operations.
32. Table 2 of the Plan identifies that there would be a shortfall in sand and gravel provision up to the end of the Plan period of 9.53Mt. Policy M2 and the supporting text in paragraph 3.26 identify extensions to four existing operational sites, which would provide 7.2Mt. These proposed extension areas would not be sufficient to meet the identified shortfall of 2.33Mt but the Plan identifies that insufficient suitable sites have come forward in the call for sites process.



33. Paragraph 3.27 of the Plan recognises that a degree of flexibility will be required to ensure that a steady and adequate supply of sand and gravel is maintained over the plan period. The landbank situation would be monitored through the AMR. Therefore, the ability to obtain planning permission during the period outside the areas identified in Policy M2 is not ruled out and this will be considered against the criteria in Policy M3.
34. Each of the allocated sites is shown in detail on the Inset Maps in Appendix 1 of the Plan and was assessed, along with other potential sites, in the *Assessment of Potential Sand and Gravel Sites 2016* (Ref SUB18) (APSGS). The potential sites were then appraised through the SA process which assesses the sites against a range of social, economic and environmental factors. The purpose of this is to determine general conformity with the emerging planning policy approach, identify major constraints and confirm deliverability. Sites and locations that were not in general conformity with these criteria were not taken forward for inclusion within the Plan.
35. Evidence suggests that two sites, an extension to the Lockington Quarry and a new site at North Kilworth, which were discounted in the APSGS, are likely to come forward early during the plan period with sufficient reserves to meet and exceed the identified shortfall. These potential sites are not needed within the initial plan period but could come forward under the provisions of Policy M3 which would enable the consideration of development proposals on these unallocated sites in order to maintain an adequate supply.
36. Although the Plan identifies a slight shortfall in sand and gravel provision, it is subject to continuous review through the AMR which would provide a mechanism for early review of the Plan in the event of an inadequate supply. In addition, there is clear evidence of potential development proposals within the County which would be assessed against the provisions of Policy M3, together with other policies in the Plan, which if permitted would more than meet the identified shortfall. Overall, we consider that despite the slight identified shortfall, the Plan is sound with regard to sand and gravel aggregate provision.

#### *Crushed Rock Provision*

37. The average annual sales of aggregate provision from crushed rock in the ten years from 2005 to 2014 were 13.6Mt giving a total requirement over the plan period of 231.2Mt. Total permitted reserves as at 2015 amounted to 432Mt which provides for a surplus in provision over the period to the end of 2031 of 200.8Mt.
38. Whilst proposals for extensions to sites may come forward during the plan period there is no identified requirement for the plan to make any specific allocations for new sites for crushed rock provision. Policy M4 of the Plan provides general development principles for crushed rock extraction. Subject to compliance with other relevant policies in the Plan, this policy provides a degree of flexibility to enable the consideration of crushed rock proposals that may possibly be necessary in order to maintain an adequate level of provision and meet any identified shortfall in the landbank.

### *Landbanks*

39. The NPPF identifies that provision should be made for a landbank of at least seven years for sand and gravel and at least ten years for crushed rock. National guidance does not state that plans have to allocate sites to account for a landbank at the end of the plan period. Acceptable alternative approaches are to have an enabling policy that allows unallocated sites to come forward to ensure an adequate supply is maintained should the landbank be likely to reduce below the 10 or 7 year period or to undertake a review of the plan. The landbank position would be monitored annually through the AMR.
40. Policies M1 and M4 identify the Council's intention to maintain at least the seven and ten year landbanks. Policies M3 and M4 allow for new proposals for sand and gravel and crushed rock where, amongst other things, they are required to maintain the landbank.
41. The commitment to maintain a landbank is clearly set out in Policies M1 and M4. The Plan does not propose to allocate sites beyond the plan period. However, we consider that adequate provision is made in the Plan, in particular by Policies M3 and M4, and subject to a statutory required review of the Plan, pursuant to the requirements of The Town and Country Planning (Local Planning) (England) (Amendment) Regulations 2017, or as considered necessary as a consequence of the AMR, to demonstrate that adequate provision is made to maintain the required landbanks for aggregate minerals. In this regard the commitment identified in Policies M1 and M4 to maintain the required landbank is sound with the annual position being informed by the AMR.

### **Conclusion on Issue 2**

42. We are satisfied that Plan makes adequate provision for the steady and adequate supply of aggregate minerals and is fully justified by the evidence and soundly based.

### **Issue 3: Whether the objectives of Mineral Safeguarding Areas (MSAs) suitably balance the needs of competing development.**

43. Strategic Objective 6 provides for the safeguarding of mineral resources, mineral sites and associated infrastructure from non-minerals development. This is consistent with paragraph 143 of the NPPF.
44. The Plan identifies that deposits of sand and gravel, limestone, igneous rock, shallow coal, fireclay, brick clay and gypsum are of current economic importance in the County. The boundaries of the Mineral Safeguarding Areas (MSA) have been produced for each District Council within the County.
45. Paragraph 3.97 of the Plan identifies that the Council will define Minerals Consultation Areas (MCA) covering resources within the MSA and associated infrastructure. District Councils are to be supplied with a copy of the MCA along with the development criteria on which the Council wish to be consulted.

46. Policies M11 and M12 provide the framework for the safeguarding of mineral resources, existing sites and minerals infrastructure which are required to be safeguarded from non-mineral development that may cause unnecessary sterilisation of the mineral resource or adversely affect operations at an existing mineral site. The objectives of these Policies are consistent with national policy.
47. The question arises whether MCAs should be included within the MSA documents at a less strategic scale. The Council indicates that MCAs are essentially equivalent to MSAs but are produced in greater detail for the District Councils whereas MSAs have been produced in a less detailed form for inclusion in the Plan. In addition, the MCAs are updated as necessary in line with the Annual Monitoring Report (AMR). Therefore, adequate information is provided to District Council to enable the presence of mineral resources and associated infrastructure to be taken into account in planning decisions by those Councils and no modifications to the Plan are necessary with regard to this matter.
48. Nevertheless, if all non-mineral development proposals were to be subject to the provisions of Policies M11 and M12, the application of the policy would become unwieldy and seem overly onerous. Therefore, a list of development exemptions is included in Table 4 of the Plan to ensure that the implementation of the policy remains practicable. The table lists the types of non-mineral development which, within a MSA, would not be subject to the safeguarding policy. In conjunction with the exemptions set out in Table 4, Policies M11 and M12 are effective and consistent with national guidance without modification.
49. The question also arises whether Table 4 should be amended to include applications for hydrocarbon extraction as being types of development exempt from safeguarding. However, Table 4 refers to the types of development that would be considered by a District Planning Authority and does not include 'County Matters' development that would include hydrocarbon extraction. Therefore, proposals for hydrocarbon development would be a matter for consideration by the County Council in its role as Mineral Planning Authority. As such, it would not be necessary or appropriate to include applications for hydrocarbon extraction as being types of development exempt from safeguarding.
50. The Plan effectively outlines the steps which respective District Planning Authorities would take to implement the policy. In particular, Policy M11 requires planning applications for non-mineral development to be accompanied by a Mineral Assessment providing information to determine the effect of the proposed development on the mineral resource beneath or adjacent to it.

### **Conclusion on Issue 3**

51. The Plan appropriately balances the needs of competing development and makes adequate provision for the safeguarding of mineral resources and associated infrastructure. The proposed consultation arrangements with District Planning Authorities are effective and overall this part of the Plan is sound without modification.

#### **Issue 4 – Whether the Plan makes adequate provision for minerals of significance (other than aggregates) in Leicestershire.**

##### *Brickclay*

52. The NPPF requires that a stock of permitted reserves of at least 25 years is provided for brickclay to support new or existing plant (brickworks). Paragraphs 3.51 and 3.52 of the Plan identify the reserves of clay for the 5 brickworks in the County. These confirm that an adequate supply of brickclay can be maintained over the Plan period.
53. Whilst the Plan indicates that an adequate supply of brickclay can be maintained over the period to 2031, it recognises that there may be a need to release additional reserves to meet any potential identified shortfall in the reserve position. Policy M5 provides an appropriate framework to support the provision of a steady and adequate supply of brickclay to maintain at least 25 years' permitted reserves. This policy supports extensions to sites required to maintain the position of 25 years permitted reserves and allows new sites where production cannot be obtained from existing sites or associated extensions. Therefore, we consider that the provisions in the Plan for brickclay are sound.

##### *Fireclay*

54. Fireclay is associated with the Middle Coal Measures of north-west Leicestershire and is used principally in the production of engineering bricks, clay pipes and ceramics. The current principal source of fireclay in the County is the Donington Island clay stocking facility. In order to maintain a sufficient supply of fireclay during the Plan period, Policy M6 supports proposals for the extraction of fireclay to meet a proven need, establishes the continued temporary use of the part of the Donington Island site as a stocking and blending facility and supports the extraction of fireclays associated with the extraction of shallow coal reserves.
55. There is no evidence to suggest that there is a requirement to allocate any new sites for the extraction of fireclay or that there is any evidence of unmet demand. Therefore, we consider that the Plan is sound in the way that it has dealt with fireclay.

##### *Gypsum*

56. The reserves of gypsum within the County are of national importance and occur in north Leicestershire. The mineral is currently extracted from an underground mine at Barrow-upon-Soar with reserves existing for approximately 20 years production. The current planning permission for extraction from this mine effectively defines the extent of the viable deposit.
57. Potential exists for an extension of the Nottinghamshire Marblaegis Mine into Leicestershire. Policy M7 seeks to make provision for a steady and adequate supply of gypsum to meet a proven need and specifically identifies that provision will be made over the plan period for the extraction of remaining reserves at the Barrow-upon-Soar Mine and an extension to the existing Marblaegis Mine.

58. There is no evidence to suggest that any additional allocations need to be made for the extraction of gypsum. Moreover, there is no evidence to suggest that any other economically viable resources exist within the County. Consequently, taking into account the geological extent of the viable resources, the Plan is sound in the way that it has dealt with Gypsum.

#### *Building and Roofing Stone*

59. Although parts of the County have developed their own distinctive character by the historic use of locally sourced building and roofing stone, the Council does not have sufficient detailed knowledge of the nature and extent of suitable building stone resources to identify any potentially workable minerals to be included in the Plan. However, there is no specific target output required to be identified within the Plan.
60. Policy M8 indicates the circumstances where the extraction of natural building stone would be acceptable and requires demonstration that the material would be primarily used in the conservation and repair of historic buildings and structures or where new development requires the use of such material to maintain or enhance the character of the local area. Policy M8 provides an appropriate basis for the consideration of new extraction proposals. Overall, the Plan is sound in the way that it has dealt with building and roofing stone.

#### *Coal*

61. Coal deposits occur in north-west Leicestershire where they are present both at surface and at depth. Paragraph 149 of the NPPF identifies that permission should not be given for the extraction of coal unless the proposal is environmentally acceptable, or can be made so, by planning conditions or obligations. Otherwise the proposal should provide national, local or community benefits which clearly outweigh the likely impacts to justify the grant of planning permission.
62. Policy M9 provides a criteria-based approach for the consideration of proposals for the extraction of coal and is consistent with the policy provided in the NPPF and therefore the Plan is sound in the way that it has dealt with coal.

#### *Conventional and Unconventional Hydrocarbons*

63. Unconventional hydrocarbons refer to oil and gas which come from sources such as shale or coal seams which act as reservoirs and include Coal Bed Methane and Shale Gas. The latter is most commonly associated with hydraulic fracking. Shale Gas extraction does not currently occur within the County and it is not known if there is any potential for its exploitation at this stage.
64. Policy M10 provides a criteria-based approach for the consideration of proposals for the exploration, appraisal and production phases of hydrocarbon extraction as required by the PPG (ID: 27-106-2014036). The policy requires the well and associated facilities to be sited in the 'least sensitive location' from which the target reservoir can be accessed. There have been concerns that this may be potentially onerous and disproportionate.

65. In some circumstances there may be more than one location that would be technically suitable for a well site. The wording of Policy M10 would allow for sites to be considered which provide the best environmental outcomes and protection of harm to local amenity. In this regard the objectives of the policy are consistent with paragraph 152 of the NPPF subject to the requirement of achieving each of the economic, social and environmental dimensions of the overarching principles of sustainable development. This is also covered in Policy DM1 of the Plan.
66. However, the Plan provides little guidance of how the 'least sensitive location' is to be determined. Paragraph 3.83 of the Plan provides part of the supporting text to Policy M10. In order for the Plan to be effective and sound **MM2** is required. This provides additional text to the paragraph requiring that an assessment of the reasoning for the selected location for the well site and associated facilities should be included to demonstrate as far as practicable that the least sensitive location of potential options has been chosen.
67. The question arises whether reference to an "overall scheme" within Policy M10 is consistent with the policies provided within the NPPF and PPG. Paragraph 115 of the PPG (ID: 27-115-20140306) specifies the information which should be included on a location plan for oil and gas extraction. It requires that at the appraisal or production stage, the location plan should show the area where extraction of oil and gas is likely to take place.
68. In order for Policy M10 to be justified, effective and consistent with national policy, **MM3** is necessary which deletes reference to an "overall scheme" and requires that the appraisal stage is consistent with a scheme for the appraisal and definition of the resource. Subject to the MMs identified above, we consider that the plan is effective and sound in the way that it has dealt with Conventional and Unconventional Hydrocarbons.

#### **Conclusion on Issue 4**

69. The Plan, when considered with the recommended MMs, provides an appropriate basis for the provision of minerals of significance (other than aggregates) in Leicestershire and is positively prepared, justified, effective and consistent with national policy in this respect.

#### **Issue 5 - Whether the spatial strategy of the Plan for waste management is the most appropriate and is soundly based.**

70. An overall objective of the Plan is to enable the delivery of sufficient new waste management capacity equal to the waste arising within the County and to move greater amounts of waste away from disposal. The Plan is informed by the Waste Needs Assessment (WNA) and identifies the shortfall in waste management capacity and new facilities required at three stages in the Plan period (2020/21, 2025/26 and 2030/31) for various waste streams. This is set out in Tables 5, 6, 7, 8, 9 and 10. Policy W1 identifies the Council's commitment to making provision for a sufficient range of waste facilities to manage the predicted arisings in the County to the end of the Plan period.
71. The strategy is to locate the largest waste management recycling and recovery facilities, identified as 'strategic facilities', in close proximity to the

urban populations above 30,000 within the County That is around Leicester and in and around Loughborough/Shepshed, Hinkley/Burbage and Coalville. Policy W3 supports the provision for new strategic waste facilities in these locations, which are shown as Broad Locations on the Key Diagram of the Plan.

72. Smaller non-strategic waste facilities are proposed to be located, in the first instance, within the Broad Locations but also within other key urban areas of Melton Mowbray and Market Harborough and areas of the County that may be subject to major growth. Policy W4 supports the provision of non-strategic waste facilities in these areas.
73. There were concerns that the predicted shortfall in landfill capacity for construction and demolition waste, identified in Table 8, may be underestimated and more new facilities may be required in addition to the number identified in the Table. This is on the basis that Plan is based on the WNA for the period 2007-2014. It does not take into account growth since 2014 and that a five-year average of deposits to landfill sites would show that there is an additional shortfall and more sites would be needed.
74. However, there is some dispute as to whether these calculations include waste inputs for Rutland. In addition, the more recent increase in deposits to landfill for construction and demolition waste, based on the Environment Agency Waste Interrogator for 2015 and 2016, may not necessarily be representative of more recent events, as there has been a slight downturn in housing completions from 2015/16 to 2016/17. Consequently, the five-year average deposits may not constitute a representative trend.
75. We therefore see no convincing reason to depart from the basis of the seven-year average deposits on which the provision for waste management facilities in the Plan is derived. There is no substantive evidence at this stage for the need to allocate any further landfill allocations in addition to the required new facilities identified in Table 8.
76. Furthermore, Policy W8 of the Plan provides general development principles for new waste disposal facilities that may be required if there is an overriding need. Subject to compliance with other relevant policies in the Plan, this policy provides a degree of flexibility to enable the consideration of new waste management facilities that are necessary in order to maintain an adequate level of provision and meet any identified shortfall.
77. The Plan also considers the future waste needs that may arise from Leicester City Council. Similarly, should the AMR demonstrate that additional waste disposal facilities are required in the County to assist in catering for Leicester City's needs then Policy W8 would provide the flexibility to enable the consideration of additional necessary provision.
78. As to whether the Plan provides sufficient capacity for the management of clinical waste which is currently taken outside the County for incineration, nothing we have read or heard suggests that the County is unable to manage the clinical waste arisings effectively.

### **Conclusion on Issue 5**

79. The Plan makes proper provision for waste to be managed and is positively prepared, justified, effective and consistent with the NPPW. We are therefore satisfied that the spatial strategy for waste management is sound.

### **Issue 6 – Whether the identification of Broad Locations for new waste management facilities is soundly based and consistent with national policy.**

80. The NPPW sets out criteria for identifying suitable sites and areas for waste management facilities. They include considering a broad range of locations including industrial sites and giving priority to re-using previously developed land. The areas of focus for waste management facilities identified in Policies W3 and W8 coincide with the areas planned for growth and have taken into account District Local Plan strategies. In addition, Policies W4 and W5 allow for other locations for smaller facilities.
81. The identification of broad locations for strategic and non-strategic waste management facilities is consistent with the guidance provided in the NPPW and offers the opportunity for waste development proposals to come forward in a number of areas of the County that are likely to experience growth. Therefore, it provides for a range of sites which should satisfy all the waste needs of the County.
82. The Plan has been prepared on the basis that there is already sufficient available capacity to meet the waste recycling, composting and recovery targets. Therefore, no specific waste management site allocations are proposed for such facilities. However, as the recovery and recycling targets in the Plan are minima, to encourage the management of waste away from landfill additional facilities that may be required would be guided by Policies W3 – W6.

### **Conclusion on Issue 6**

83. Therefore, we conclude that the proposed broad locations for waste management facilities are suitable and appropriate locations; and, are effective, deliverable, fully justified by evidence and soundly based.

### **Issue 7 - Whether the Development Management policies strike an appropriate balance between seeking to provide sustainable development and protecting people and the environment.**

84. The Plan contains a number of development management policies (Policies DM1 to DM12) that collectively seek to control impacts from future minerals and waste development. These include criteria-based policies and policies addressing sustainable development and local considerations, including local environment and community protection, transportation, natural and historic environment protection, landscape impact, public rights of way, and the cumulative impact of development.



*Policy DM8: Historic Environment*

85. We have considered whether Policy DM8 is inconsistent with the requirements of the applicable NPPF. However, the paragraph numbers referred to appear to be from the revised NPPF 2018. As indicated in paragraph 1 of this report, under the transitional arrangements provided in the revised NPPF 2018, for the purpose of examining this Plan, the policies in the NPPF 2012 will apply.
86. Concerns were raised that the second paragraph of policy DM8 is not compliant with national guidance as it provides for a presumption against mineral and waste development that will be detrimental to the significance of a heritage asset.
87. The NPPF (paragraph 132) makes it clear that when considering the impact of proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. The more important the asset, the greater the weight should be.
88. Paragraph 133 of the NPPF states that "where a proposed development will lead to substantial harm to or total loss of significance of a designated heritage asset, local planning authorities should refuse consent, unless it can be demonstrated that the substantial harm or loss is necessary to achieve substantial public benefits that outweigh that harm or loss....". Whilst the wording of Policy DM8 may not be entirely consistent with that provided in the NPPF, we consider that its objectives are clear. In particular, the second paragraph also states that any harm to heritage assets will require clear and convincing justification. English Heritage raised no objections to this policy.
89. Therefore, whilst the second paragraph of the policy starts from an initial basis of presumption against mineral and waste development that will be detrimental to the significance of a heritage asset, the implications of the next sentence suggest that any harm will need clear and convincing justification. Therefore, although the wording of the policy is not entirely consistent with that provided in paragraph 133 of the NPPF we find that its objectives are consistent with it and on this basis the Policy DM8 is sound.

*Policy DM12: Restoration, Aftercare and After-use*

90. Concerns were raised that the requirements of the second paragraph of this Policy DM12, which requires that site restoration shall attain a net gain in biodiversity, may be inconsistent with the NPPF. This is on the basis that Policy DM12 requires that site restoration shall achieve a net gain in biodiversity whereas paragraph 109 of the NPPF seeks to achieve this objective "where possible".
91. The Council has referred to the mineral's industry guidance (Mineral Products Association – Biodiversity Strategy 2013) and the 'Nature After Minerals' programme which is a partnership between Natural England and the RSPB which is supported by the minerals industry. This programme has produced an advisory sheet on restoration which seeks a net gain in biodiversity from all minerals proposals.

92. Policy DM12 has the same objective as paragraph 109 of the NPPF but is slightly more prescriptive in its application. However, there is clear intent from the minerals industry that restoration of mineral development should provide for a net gain in biodiversity. We also recognise the Council's view that such gain is not quantified in any guidance and can be as straightforward as providing bird boxes.
93. Although the wording of Policy DM12 is not entirely in accordance with the NPPF, against the background of the aspirations of the minerals industry to achieve a net gain in biodiversity we do not consider that this divergence is so onerous or ineffective as to make the Plan unsound.
94. Policy DM12 states that 'sites in the Leicestershire Vales National Character Area shall be expected to manage retained mature hedgerows in a traditional Midlands-style hedge laying technique'. The policy indicates that this is an expectation as opposed to a formal requirement.
95. The purpose of this part of the policy is to reflect the local landscape character of the Leicestershire Vales National Character Area, as defined in Natural England's National Character Area Profile 94. This seeks to address neglect of hedgerows and lack of, or over-management of, them which has led to the decline of the overall structure of the landscape in the area.
96. The requirements of this part of the policy are founded on a robust evidence base that seeks to protect the defined character of the landscape. It does prescriptively require the application of the Midlands style hedge laying technique. However, this part of the policy is effective and we do not consider it to be unduly onerous on developers.

### **Conclusion on Issue 7**

97. In summary, the development management policies and their supporting text reflect a balanced and comprehensive approach to the control and management of development that accords with national policy. Accordingly, we find this part of the Plan to be sound without modification.

### **Issue 8 - Whether the implementation and monitoring arrangements for the minerals and waste sections of the Plan will be effective.**

98. Tables 11 - 16 comprise the Monitoring and Implementation framework that lists the key indicators, targets for corrective and/or mitigation measures for the policies of the Plan and their appropriate link to the Strategic Objectives and the objectives contained within the SA. The supporting text to the tables identifies the co-operation and participation involving appropriate interested parties that is necessary to adequately monitor the effectiveness of the Plan.
99. The Plan provides for Annual Monitoring Reports to be prepared to enable assessments to be made of the impacts of the policies and for reviews to take place should any parts of the Plan be found to need adjustment or replacement. LAAs also provide a monitoring mechanism specific to aggregate landbanks.
100. In conclusion, the Plan contains sufficient realistic indicators to monitor the performance of the policies. It provides for regular, deliverable assessment of

how effective the policies are proving to be in meeting their objectives, thereby facilitating the identification of any changes needed.

### **Conclusion on Issue 8**

101. The Monitoring and Implementation framework provides a comprehensive, effective and sound framework for the delivery and monitoring of the Plan and is sound without modification.

## **Public Sector Equality Duty**

102. An Equalities and Human Rights Impact Assessment was prepared (Ref SUB12). This indicates that the Plan does not lead to any adverse impacts or cause discrimination to any particular groups within Leicestershire. There is no evidence to suggest that the Council failed to appropriately consider and undertake the Public Sector Equality Duty.

## **Assessment of Legal Compliance**

103. Our examination of the legal compliance of the Plan with the legal requirements is summarised below:

104. The Local Plan has been prepared in accordance with the Council's Local Development Scheme adopted in September 2017.

105. Consultation on the Local Plan and the MMs was carried out in compliance with the Council's Statement of Community Involvement.

106. Sustainability Appraisal (SA) has been carried out and is adequate. We do not consider that the MMs require any further revisions to the SA.

107. The Habitats Regulations Screening Assessment Report (June 2017) sets out why an Appropriate Assessment is not necessary.

108. The Plan includes policies designed to secure that the development and use of land in the local planning authority's area contribute to the mitigation of, and adaptation to, climate change.

109. The Local Plan complies with all other relevant legal requirements, including in the 2004 Act (as amended) and the 2012 Regulations.

110. Throughout the examination, we have had due regard to the equality impacts of the Leicestershire Minerals and Waste Local Plan Up to 2031 in accordance with the Public Sector Equality Duty, contained in Section 149 of the Equality Act 2010. This, amongst other matters, sets out the need to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it. There is also no compelling evidence that the Local Plan as a whole would bear disproportionately or negatively on them or others in this category.

## **Overall Conclusion and Recommendation**

111. The Plan has a number of deficiencies in respect of soundness. For the reasons set out above, these mean that we recommend non-adoption of it as

submitted, in accordance with Section 20(7A) of the 2004 Act. These deficiencies have been explored in the main issues set out above.

112. The Council has requested that we recommend MMs to make the Plan sound and capable of adoption. We conclude that with the recommended main modifications, set out in the Appendix, the Leicestershire Minerals and Waste Local Plan Up to 2031 satisfies the requirements of Section 20(5) of the 2004 Act and meets the criteria for soundness in the National Planning Policy Framework (2012).

*Elizabeth Hill and Stephen Normington*

INSPECTORS

This report is accompanied by Appendix 1 containing the Schedule of Main Modifications.

## Appendix 1 – Main Modifications

The modifications below are expressed either in the conventional form of ~~striketrough~~ for deletions and underlining for additions of text, or by specifying the modification in words in *italics*.

The page numbers and paragraph numbering below refer to the submission local plan, and do not take account of the deletion or addition of text.

Ref	Page	Policy/ Paragraph	Main Modification
MM1	19	Policy M3	<p>Amend policy to read:</p> <p>Planning permission will be granted for sand and gravel extraction for aggregate purpose outside allocated areas provided that the proposal:</p> <ul style="list-style-type: none"> <li>(i) is an extension to an existing permitted sand and gravel site that is required to maintain production from that site or is needed to meet an identified shortfall in the landbank; or</li> <li>(ii) is for a new quarry that is required to replace an existing permitted sand and gravel site that is nearing exhaustion where it has been demonstrated that there are no potential extensions to that site <del>and</del> <b>or</b> that remaining sites cannot maintain the required level of provision; or</li> <li>(iii) would offer significant environmental benefits as a result of the exchange or surrender of existing permissions or be significantly more acceptable overall than the allocated sites.</li> </ul>
MM2	33	Para 3.83	<p>Amend para to read:</p> <p>Policy M10 is a criteria-based policy which seeks to ensure that activities related to the exploration, appraisal and production of conventional and <del>and</del> unconventional hydrocarbons (oil and gas) take place in an environmentally acceptable manner. Applications for energy mineral development should contain sufficient information to adequately assess the environmental implications of the proposal including field development plans. <b><u>An assessment of the reasoning for the selected location for the well site and associated facilities should be included in the application demonstrating that as far as practicable the least sensitive location of the potential options has been chosen.</u></b> Conditions and legal agreements will be attached, if necessary, to planning permissions to ensure that the exploration, exploitation and production operations do not have unacceptable impacts on local residents or the environment. Permission for wells will be conditioned for the life of the well.</p>
MM3	34	Policy M10	<p>Amend policy to read:</p> <p>Planning permission will be granted for the <b>exploration</b> of conventional and unconventional hydrocarbons (oil and gas)</p>

Ref	Page	Policy/ Paragraph	Main Modification
			<p>provided that:</p> <ul style="list-style-type: none"> <li>(i) the well site and associated facilities are sited in the least sensitive location from which the target reservoir can be accessed; and that</li> <li>(ii) operations are for a temporary length of time.</li> </ul> <p>Where hydrocarbons have been discovered, planning permission will be granted to <b>appraise</b>, drill and test the resource provided that the proposal adheres to requirements (i) and (ii) above, and is consistent with an <del>overall</del> scheme for the appraisal and delineation of the resource.</p> <p>Planning permission will be granted for the <b>production</b> of conventional and unconventional hydrocarbons (oil and gas) provided that the proposal adheres to requirements (i) and (ii) above, and is consistent with an <del>overall</del> scheme which would facilitate the full development of the resource.</p> <p>Particular consideration will be given to the location of hydrocarbon development involving <b>hydraulic fracturing</b> having regard to impacts on water resources, seismicity, local air quality, landscape, noise and lighting impacts. Planning permission will be granted for proposals which involve the process of "associated hydraulic fracturing" for shale gas, as defined in the Infrastructure Act 2015, provided that it can be demonstrated that the proposal can accord with the above requirements and that surface and underground operations will not be undertaken in "protected groundwater source areas", as defined in the Infrastructure Act 2015 and associated Regulations.</p>