

THE CENTRAL AND EASTERN BERKSHIRE JOINT MINERALS AND WASTE PLAN

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Examination webpage:
www.hants.gov.uk/landplanningandenvironment/berksconsult/examination-library

INSPECTOR'S EXAMINATION GUIDANCE NOTE 1

Purpose

1. This Note is intended to assist those who have made representations on the Central and Eastern Berkshire Joint Minerals and Waste Plan as part of the pre-submission consultation process and those who wish to appear in person at the Hearings. It provides guidance to participants on the procedural and administrative arrangements for the Examination process.
2. It should be kept for reference throughout the Examination and read in conjunction with the **Procedure Guide for Local Plan Examinations by The Planning Inspectorate February 2021 (7th Edition)** which is available at <https://www.gov.uk/government/publications/examining-local-plans-procedural-practice> or from the Programme Officer on request.
3. Two documents are available with this note:
 - **Matters, Issues and Questions for the Examination (MIQs)** – which sets out the issues and questions we have identified for discussion at the Hearing sessions.
 - **Draft Hearing Programme** – this sets out the matters and issues to be discussed at each Hearing session. Details may change.

Examination Hearing

4. The Examination hearing will open on **Tuesday 28 September 2021** at Town Hall of the Royal Borough of Windsor and Maidenhead in Maidenhead. The oral Hearing forms part of the overall examination process.

The Inspector's Role

5. We have been appointed by the Secretary of State for the Ministry of Housing, Communities and Local Government to conduct the examination process.
6. The Plan to be examined is the Central and Eastern Berkshire – Joint Minerals and Waste Plan ("the Plan") which was published in August 2020 for the six-week consultation period which began on 3 September and ended at 5pm on 15 October 2020.
7. Our task is to examine the soundness of the Plan and whether it meets the requirements of the Planning and Compulsory Purchase Act 2004 (as amended) and associated regulations.
8. The National Planning Policy Framework 2021 (paragraph 35) which makes it clear that in order to be found sound the Plan must be:
 - (a) **positively prepared** – providing a strategy which, as a minimum, seeks to meet the area's objectively assessed needs;
 - (b) **justified** – an appropriate strategy taking into account the reasonable alternatives, and based on proportionate evidence;
 - (c) **effective** – deliverable over its period and based on effective joint working as evidenced by the statement of common ground; and
 - (d) **consistent with national policy** – enabling the delivery of sustainable development in accordance with the NPPF's policies.
8. There are three possible outcomes to the Examination:
 - the submitted plan is sound and legally compliant;
 - the submitted plan is not sound and/or legally compliant but could be made so by changes (known as **Main Modifications**), if necessary, following the preparation of additional evidence; or
 - the submitted plan is not sound and could not be made sound by changes. If so, we would be likely to recommend that the Authorities withdraw the plan. The same would apply if there is a failure of legal compliance which cannot be remedied (for example, a failure to comply with the Duty to Cooperate).
9. Following the close of the Hearings, we will prepare a Report for the Authorities with our conclusions.
10. The Report will deal with the main issues of soundness and legal compliance, taking into account the representations made but without responding to each individual representation. We are not required to consider each, and every point made in every objection or to report on them, but to use the representations as the starting point in considering the Examination. It is not part of our role to make it 'more sound' by improvements to the Plan, provided that it is sound and legally compliant.

Changes to the plan

11. The starting point is that the Authorities have submitted what they consider to be a sound Plan. At this stage therefore there are only two means by which changes can be made to the submitted Plan:
 - (a) **Main modifications** recommended by the Inspectors; and
 - (b) **Additional modifications** made by the Authorities on adoption.
12. We can only recommend **Main Modifications** if they are necessary to resolve problems that would otherwise make the submitted Plan unsound or not legally compliant.¹ Main Modifications are changes which, either alone or in combination with others, would materially alter the Plan or its policies. Any potential Main Modifications must be subject to consultation and in some cases further Sustainability Appraisal might also be needed.
13. **Additional modifications** are those changes which do not materially affect the policies in the Plan². They are made by the Authorities on adoption and are sometimes also referred to as "Minor Modifications." As such they do not fall within the scope of the examination and the Authorities are accountable for any Additional Modifications that are made.

Modifications Proposed by the Authorities

14. The Authorities have indicated that they are preparing proposed modifications³.
15. It is possible that further changes may be proposed during the Hearing sessions. As such we would ask that the Authorities keep an up to date scheduled of all **Main Modifications** during the Examination.

Scope for Modification – Alternative or 'Omission' Sites

16. It is not for Inspectors to improve the Plan or make it 'more sound'. We will make recommendations for **Main Modifications** only where necessary to ensure soundness or legal compliance.
17. Often representations refer to sites which are not allocated in the Plan for development, and these are generally known as 'omission sites.' There will accordingly be no session on 'omission sites.' It is not for Inspectors to recommend specific alternative sites. In the event that the Plan were to be found unsound with the sites it allocates, the Authorities would be asked to consider and propose additional or alternative sites as **Main Modifications** to the Plan for further consultation.
18. Nevertheless, Representors promoting sites not allocated in the Plan have a right to be heard in support of a duly made objection. An objection to the 'omission' of a site is, in effect, an objection to the site selection process, or the Plan requirement, or the deliverability of development land or the Plan

¹ Under section 20(7B) & (7C) of the Planning and Compulsory Purchase Act 2004

² S23(3)(b) of the PCPA 2004 "... if the additional modifications (taken together) do not materially affect the policies ..."

³ The Authorities' Response to the Inspector's Initial Observations, dated 13 May 2021

strategy and will be redirected and heard, as such, in the appropriate sessions reserved for those issues or, if necessary, in a general session.

The Programme Officer

19. **Stephanie Street** is the Programme Officer (the PO) for the Examination. She is working under our direction. Whilst she works for Hampshire County Council, she has not been involved with the Plan preparation either directly or indirectly.
20. The Programme Officer can be contacted as follows:
Stephanie Street – Programme Officer
The Central and Eastern Berkshire – Joint Minerals and Waste Plan
Elizabeth II Court
Winchester
SO23 8UD
Email: stephanie.street@hants.gov.uk
Telephone: 0370 779 2422
21. The main tasks of the PO are to act as the channel of communication between the Inspectors, the Authorities and all the other participants, to liaise with all parties to ensure the smooth running of the Examination, to ensure that all documents received are recorded and distributed and to run the Examination Library. The PO is the first point of contact for those with queries about the process and participation in the Hearing sessions.
21. Any procedural questions or other matters that you wish to raise should be directed to the PO.
22. All documents for the Examination, including the evidence base and the procedural material, are published on the Examination website which is hosted by Hampshire County Council, www.hants.gov.uk/landplanningandenvironment/berksconsult/examination-library. All content should be agreed by me or the PO on my behalf.
23. Please regularly check the examination website for the latest information regarding the examination progress, particularly if you wish to be actively involved in the examination.
24. Any participant who does not have access to the internet should contact the PO so that alternative arrangements can be put in place.

Progressing your Representations on the Plan

25. Only those seeking to change the plan have a right to participate in the Hearing sessions.⁴ However, the Hearing sessions are open for anyone to observe.
26. Those who have made representations also indicated at the time whether their views should be dealt with in a written form or whether they feel that they need to discuss them orally at a Hearing session. Normally you may

⁴ Section 20(6), Planning and Compulsory Purchase Act 2004

only take part in the Hearing session(s) that are relevant to your original representation(s).

27. Written representations carry the **same weight** as those made orally at a hearing session. We will have equal regard to views put in writing as well as those expressed orally at the Hearing sessions. As such, attendance at the Hearing sessions will only be useful and helpful if you wish to participate in the discussion concerning the soundness or legal compliance of the Plan. Those who wish to proceed by written means can reply upon what they have already submitted.
28. The accompanying **Matters, Issues and Questions for the Examination** will form the basis for the discussion at the Hearing sessions. If you have any comments on the list of Matters, Issues and Questions (for example, because you feel there may be a significant omission), you should contact the PO as soon as possible, but by no later than **19 August 2021**.
29. The **Draft Hearing Programme** that accompanies this includes a draft list of issues for discussion at each Hearing session. All representations will be taken into account, whether or not you participate at the Hearing.
30. In order that the programme can be finalised, those Representors wishing to take part should contact the PO by **26 August 2021** stating your intention to appear and on which Matter(s) and Issue(s) you wish to speak, including, if possible, which question(s). You must do this regardless of what you may have indicated in your original representation(s). Please note that if you do not contact the PO by that date, it will be assumed that you do not wish to appear and be heard, and you will not be listed as a participant. This is in the interests of fairness to other participants and to assist with the arrangements for the Hearing.
31. Where several people or organisations wish to speak on the same issue, it would be of great assistance to the efficiency of the Examination process if there were either one or two spokesperson(s). The PO will assist in such arrangements.
32. The **Finalised Hearing Programme** will be published on the Examination website around two weeks before the start of the Hearing sessions. It will be for individual participants to check the progress of the Hearing, either on the website or with the PO, and to ensure that they are present at the right time. We intend to issue an Agenda to structure the discussion at each Hearing session, normally shortly before the date that the Hearing session is due to take place. The Agenda will often identify which speaker may be invited to open the discussion on any given points.
33. Where Representors have raised a matter of soundness not identified by the Inspectors but still wish to appear, a suitable item can be added to an appropriate Hearing session. If any Representor considers that an additional item is required, this should be raised with the PO at the earliest opportunity.
34. Representors who are not seeking changes to the Plan, including those who have made representations supporting it, do not have a right to take part in the Hearings. However, we may invite additional participants to take part in the Hearings if their participation would assist in determining the soundness and legal compliance of the Plan.

The Format of Hearing Sessions

35. From 13 September 2021 Councils will once again organise and host events taking place, with these being in-person, complemented by virtual elements where needed by the Inspector or someone with a right to participate. In case pandemic restrictions change, a backup of an entirely virtual event will also be necessary. The Inspectorate's default position is that, from 13 September 2021, local authorities should provide safe and suitable venues that facilitate face-to-face events, but also cater for virtual participation, where this is necessary. Virtual events (or events with a virtual element) will therefore take place where:
- LPAs are unable to meet our requirements for safe physical venues;
 - The Inspector needs to take part virtually; or,
 - Someone needs to present their evidence virtually for accessibility reasons.
36. The venue will be the Town Hall of the Royal Borough of Windsor and Maidenhead on St Ives Road Maidenhead SL6 1RF.
37. At this stage it would be helpful to let the PO know if you have any specific needs regarding your attendance and participation at the hearing session(s), again by the same deadline of **26 August 2021** for responding to the PO regarding your attendance. If participants have reasonable adjustments which would indicate that they need to attend virtually from a remote location, we shall prepare a second guidance note with details and advice for participants who would require the virtual method.

The Hearing Sessions

38. The Hearing will open on Tuesday 28 September 2021.
39. The Hearing sessions will normally run between 1000hrs and 1300hrs and 1400hrs and 1700hrs each day. A short break will usually be taken mid-morning and mid-afternoon.
40. Details of the sitting days are set out on the Draft Programme which accompanies this Guidance Note. Updates to the Hearings programme, will be available on the examination website. It is the responsibility of individual participants to check the latest timetable and to ensure that they are present at the correct time.
41. Only one participant is allowed per Representor. However, in view of this Plan being a joint Plan prepared by Hampshire Services on behalf of the four constituent Authorities; two representatives from the Authorities may take part in a Hearing session, depending on the subject under discussion. Those attending may, if they wish, bring professional experts with them. Barristers and solicitors, if present, will be treated as part of the respective team.
42. The Hearing sessions will be based on the identified **Matters, Issues and Questions**. Each Hearing session will deal with these by way of a structured discussion which we will lead. The Hearing sessions will focus on the issues that we need to hear further discussion about, in order to reach conclusions on the soundness and legal compliance of the Plan, and on any potential need for Main Modifications. We will make a few brief introductory comments on

the issues to be covered and then invite individuals to respond to specific questions. We will have read all the relevant representations and statements beforehand and will expect other participants to have done so as well. The Hearings are not an opportunity to repeat a case already set out in written representations. There will be no formal presentation of cases or cross-examination.

43. The Hearings will be inquisitorial, rather than adversarial. We will endeavour to progress them in an effective and efficient manner, keeping a tight rein on the discussion and the time taken. In this way the aim is to conduct short, focussed Hearings and to produce a short, focussed report.

Hearing Position Statements

44. Whilst original consultation responses were made and summarised generally on a policy-by-policy basis, the programme of Hearings will be arranged over a series of main issues and matters for discussion which, invariably, range over several sections and policies of the Plan document.
45. Accordingly, in order to assist all participants preparing for the Hearings and to facilitate focussed discussion, the Council and all Representors scheduled to appear are invited to submit a **Hearing Position Statement** for each issue they are invited to discuss.
46. Statements should be concise and focussed to set out the Authorities or Representor's areas of concern. Statements should be no more than 3,000 words for each Matter. They should:
 - only answer the specific questions which are of relevance to the original representation;
 - clearly identify the number(s) of the question(s) being answered;
 - state whether any Main Modifications or Additional Modifications would resolve the concerns and make the Plan sound;
 - indicate whether any other changes are needed to make the Plan sound (providing detailed suggested wording for the change and if appropriate, any changes sought to the Policies Map); and
 - include the name of the Representor and the Hearing session to which they relate.
47. Appendices should only be included if they are directly relevant and necessary and should not be used as a means of increasing the word count. If you need to refer to a large document that is not on the examination website, please contact the PO as it may be more efficient for it to be added to the website rather than attached to a statement.
48. Supporting material in the form of appendices to statements should be limited to that which is essential and should not contain extracts from any publication that is already before the Examination, such as evidence base documents and nationally available Government guidance – a paragraph or page reference will suffice. Any appendices should have a contents page and be paginated throughout. Whilst the word limit does not include text in appendices, the aim of succinctness should be respected. Anyone submitting appendices should indicate in their statement which parts they are especially relying upon.

49. We emphasise the need for succinct submissions with the avoidance of unnecessary detail and repetition of the original representation. It is the quality of the reasoning that carries weight not the bulk of the documents. There is no need for verbatim quotations from sources of policy guidance. It is vital that the fundamental elements are set out clearly and succinctly – the Hearing sessions are not the place for surprise contributions!
50. Please submit a separate Hearing Position Statement for each Matter covered, if your statement covers multiple matters please do not combine the content into a single statement, each statement should specifically address questions covered within an individual matter. This will assist with publication and understanding during the Hearing sessions.
51. Hearing Position Statements will only be accepted if they are prepared on A4 paper and not bound in any way but just stapled and hole punched. No photographs should be submitted. Any plans or diagrams should also be folded to A4 size and listed as Appendices.
52. Three paper copies and an electronic version (in PDF or word format) of Hearing statements need to be received by the PO **by 12 noon, 14 September 2021**. If you are unable to email your statement, please contact the PO so that alternative arrangements can be made.
53. It is stressed that this deadline refers to the receipt of both electronic and paper copies of statements by the PO. It is not sufficient to send an electronic copy by this deadline to be followed by paper copies at a later time.
54. Hearing Position Statements will be uploaded to the Examination website after the submission date, so that they are available to all participants and anyone else who wishes to read them. As such statements will not be circulated directly to participants. Anyone who is unable to access them on the webpage should contact the PO.
55. Once the date for submitting Hearing Position Statements has passed, no other written evidence will be accepted, unless we specifically request it. Late submissions or additional information can cause disruption and potentially result in unfairness for participants. If material is not received by the deadlines, the PO will assume that you are relying on your original representations.

Statements of Common Ground

56. In the context of the duty to co-operate, the National Planning Policy Framework (paragraph 27) expects one or more Statement(s) of Common Ground (SoCG) to be produced documenting the cross-boundary matters being addressed and progress in co-operating to address them.
57. It is often also useful for SoCGs to be drawn up between the Authorities and other public bodies, other participants or site promoters to confirm specific matters that have been agreed, particularly if those matters have previously been the subject of representations raising soundness or legal compliance issues. SoCGs can also helpfully highlight matters that remain in contention, or the position regarding individual allocated sites.
58. The suite of SoCGs under preparation by the Authorities plus any additional SoCGs should be submitted to the PO **by 12 noon, 7 September 2021**.

They will be published as Examination documents so that other representors are aware of their contents before submitting their Hearing Position Statements. This should not preclude the Authorities from continuing to engage on outstanding issues with other bodies and updating any SoCGs as necessary.

Site visits

59. Insofar as we consider it necessary to the assessment of the soundness of the Plan, we will visit sites and areas referred to in the representations before, during or after the Hearing. We will do these on an unaccompanied basis unless we need to go onto private land and in which case arrangements will be made through the PO.

Close of the Examination

60. The examination will remain open until our Report is submitted to the Authorities. However, no further representations or evidence will be accepted after the hearing sessions have finished unless we specifically request them. Late or unsolicited material may be returned by the PO.

Summary of the Examination Programme

12 August 2021	Matters, issues and questions, Inspector's Guidance Note and draft programme of hearing sessions published
26 August 2021	Deadline to confirm with the PO whether you wish to exercise your right to appear at one or more Hearing sessions and on which matters; and also whether you have a specific need to attend virtually.
7 September 2021	12 noon deadline for submission of any Statements of Common Ground
14 September 2021	12 noon deadline for submission of any Hearing Statements
14 September 2021	Finalised Hearings programme published
28 September 2021	Hearing sessions open at 10am

Rachael A Bust

INSPECTOR

Nick Palmer

INSPECTOR

12 August 2021

Further information about the preparation and examination of Local Plans

Procedure Guide for Local Plan Examinations (7th edition, February 2021), published by the Planning Inspectorate

<https://www.gov.uk/government/publications/examining-local-plans-procedural-practice>

The National Planning Policy Framework

<https://www.gov.uk/government/publications/national-planning-policy-framework-2>

Planning Practice Guidance, including the section on Plan-making

<https://www.gov.uk/guidance/plan-making>

Relevant legislation, available at <http://www.legislation.gov.uk/>

Planning and Compulsory Purchase Act 2004, as amended by Greater London Authority Act 2007

Planning Act 2008

Local Democracy, Economic Development and Construction Act 2009

Localism Act 2011

Deregulation Act 2015

Housing and Planning Act 2016

Neighbourhood Planning Act 2017

The Town and Country Planning (Local Planning) (England) Regulations 2012, as amended by The Town and Country Planning (Local Planning) (England) (Amendment) Regulations 2012, 2016 & 2017