

Central & Eastern Berkshire Authorities
Hearing Position Statement
Main Matter I – Legal Compliance

Word count: 1350

This Hearing Position Statement should be read in conjunction with the Schedule of Proposed Modifications (MD01).

Issue: Whether the Plan complies with all relevant legal requirements, including the Duty to Co-operate.

Duty to Co-operate

1.1 Have the Authorities engaged constructively, actively and on an ongoing basis with all relevant organisations on strategic matters of relevance to the plan's preparation, as required by the Duty to Co-operate (under s 20(5)(c) and 33A)? On which issues has co-operation taken place? How was co-operation carried out and with what results? Has this been documented? Are there any outstanding issues?

Yes, please refer to the Duty to Cooperate Statement of Compliance (SD05). This documents the Strategic Issues on which cooperation has taken place:

Mineral Issues

1. Provision of minerals outside of the plan area
2. Soft sand supply
3. Sharp sand and gravel supply
4. Dependence on mineral infrastructure outside of the Plan area
5. Major infrastructure projects affecting minerals operations

Waste Issues

6. Waste management treatment capacity within the Plan area
7. Dependence on waste treatment infrastructure outside of the Plan area
8. Major infrastructure projects affecting waste operations

Other Issues

9. Inter connective relationship with Slough Borough Council

Cooperation has taken in place in the form of correspondence, meetings and attendance/participation at the South East Waste Planning Advisory Group and the South East England Aggregate Working party.

This has led to the preparation of a number of Position Statements and Statements of Common Ground. The Table below outlines the status of each of these documents and which parties have 'signed' them. Whilst not all parties have signed them, the general involvement of the parties in the preparation of the Statements demonstrates cooperation.

Buckinghamshire Council indicated that they intend to sign but have been unable to meet the deadline outlined.

Central Bedfordshire have not engaged through the preparation of the Statement on Soft Sand and have not signed. Wiltshire Council has also not engaged to date but made contact on 3.09.2021 requesting copies and stating that they would arrange for them to be signed.

Slough Borough Council have engaged with the process and confirmed in their latest email correspondence (dated 10/05/2021) that "we have taken it as far as we can go and so I'm happy to sign the SCG [Statement of Common Ground] now" but have not responded to more recent requests as to when they would be able to sign the Statement of Common Ground.

Planning and Compulsory Purchase Act 2004, Section 19 and the Town and Country Planning (Local Planning) (England) Regulations 2012 (as amended)

1.2 Has the Plan been prepared in accordance with the Local Development Schemes of the Authorities including content and timescale?

Yes, please refer to the relevant Local Development Schemes for each Authority:

- Bracknell Forest Council (February 2019) (LD19)
- Reading Borough Council (November 2016) (LD18)
- Royal Borough of Windsor & Maidenhead (January 2018) (LD03)
- Wokingham Borough Council (July 2021) (LD13)

1.3 Has the Plan been prepared in compliance with the adopted Statements of Community Involvement (SCI) for The Authorities, allowing for effective

engagement of all interested parties and meeting the minimum consultation requirements set out in the regulations?

Yes, please refer to the relevant Statements of Community Involvement for each Authority (the most stringent criteria of the four were applied):

- Bracknell Forest Council (February 2014) (LD20)
- Reading Borough Council (March 2014) (LD21)
- Royal Borough of Windsor & Maidenhead (June 2020) (LD23)
- Wokingham Borough Council (March 2019) (LD22)

Additionally, the following consultation summaries were prepared:

- Issues and Options consultation statement (2017) (HS23)
- Draft Plan consultation summary report (2019) (HS44)
- Additional Regulation 18 (site specific) Consultation Summary Report: Addendum (2019) (Ref HS50)
- Focused Regulation 18 Consultation Summary Report (2020) (HS56)
- Consultation Statement (Regulation 22) (2021) (SD03)
- Consultation Statement (Regulation 22) Annex 1 (2021) (SD04)

1.4 Does the Plan comply with the 2004 Act and the 2012 Regulations in terms of publishing and making available the prescribed documents?

Yes, please refer to the relevant advert for each consultation which sets out where prescribed documents were made available (please note, when applicable, all coronavirus guidance was adhered to):

- Issues & Options (Regulation 18) (HS09)
- Draft Plan (Regulation 18) (HS26)
- Additional (Site Specific) (Regulation 18) (HS46)
- Focused: Sand & Gravel Provision and Operator Performance (Regulation 18) (HS53)
- Proposed Submission (Regulation 19) (HS58)

1.5 Have the Authorities carried out a Sustainability Appraisal (SA) and prepared a report on the findings of the appraisal? Is there clear evidence to indicate why, having considered reasonable alternatives, the strategy in the Plan is an appropriate response? Does the methodology conform to that in the National Planning Policy Framework and Planning Practice Guidance?

A combined Sustainability Appraisal (SA) and Strategic Environmental Assessment (SEA) approach was undertaken, which provides a systematic and integrated assessment of the Plan's potential impacts. The findings of the assessment are reported in the Sustainability Appraisal (incorporating Strategic Environmental Assessment) Environmental Report (August 2020) (SD06). The SA meets the National Planning Policy Framework (NPPF), Planning Practice Guidance and the requirements and the SEA Directive which is signposted throughout the Environmental Report (please refer to Para 1.14 (page 30) and Table 1.2 (page 31) for specific reference to conformity).

Full details of the methodology employed for the assessment may be found in the Central and Eastern Berkshire Authorities, Joint Minerals and Waste Plan, Revised Scoping Report, 2017 (HS19, Section 5 Developing the Framework) and the Environmental Report (SD06, Section 2). Eleven SA/SEA Objectives were developed. These objectives cover the full range of issues (social, economic, and environmental) as required for SA/SEA. They conform to the NPPF, Planning Practice Guidance and the SEA Directive and were subject to consultation.

Reasonable Alternatives were considered for the Plan in its entirety; alternative waste and mineral policies; and alternative sites (refer Section 3.2 of the Environmental Report, SD06). The full assessment of all reasonable alternatives for the policies are provided in Appendices E, F and G.

Section 4 (Limitations and Difficulties) (Para. 4.22 to 4.29 of the Environmental Report, SD06) states 'given the nature of the JMWP the assessment of alternatives was not straight forward. Unlike a local development plan where typically there are alternative sites with respect allocations required the reasonable alternatives for the policies which make up the Joint Minerals & Waste Plan were limited. Due to the limited number of options, the approach was taken to assess the sites on their own merit / constraints allowing the plan-makers to determine whether the site should be considered as an allocation taking all factors into consideration'.

1.6 Is the Plan consistent with national policy, including the National Planning Policy Framework and also Planning Policy Guidance? Are there any significant departures from national policy? If so, have they been justified?

Yes, the Plan has been prepared in accordance with the National Planning Policy Framework, National Planning Policy for Waste and relevant Policy Guidance. These are referenced where relevant through-out the Plan.

1.7 What are the potential implications of the revised National Planning Policy Framework published on 20 July 2021?

There are no fundamental implications on the Joint Minerals & Waste Plan. However, it is recognised that some minor policies may need to be updated to reflect changes (these are noted elsewhere in response to the relevant Matters, Issues and Questions) and reference updates required in the text and/or footnotes. These changes (albeit not all of the footnote updates at this time) are set out as proposed Main Modification (MM1).

1.8 Is it clear how the Plan secures development that contributes to the mitigation of, and adaptation to, climate change?

Yes, the Plan outlines a commitment to the mitigating of, and adaptation to climate change in the Vision and Plan Objective 4. This is then implemented through Policy DM2 which requires all development proposals to be supported by a Climate Change Assessment.

1.9 How have issues of equality been addressed in the Plan? How will the Plan help to advance equality of opportunity between people who share a "protected characteristic" as defined in the Equality Act 2010¹ and those that do not share it and further the other two aims of the Act?

An Equalities Impact Assessment (EqIA) has been prepared to inform the following stages of plan-making:

- Issues & Options (Regulation 18) (HS17)
- Draft Plan (Regulation 18) (HS40)
- Proposed Submission (Regulation 19) (HS77)

The EqIAs mostly concluded neutrality although there were some instances whereby a protected characteristic might end up with a certain group being disadvantaged, particularly in terms of having the same opportunity to be engaged in the Plan preparation. To overcome this, engagement/involvement suggestions were provided such as offering the option of producing documents in different formats or languages and consulting voluntary organisations representing marginalised groups in society. Further, it was recognised the (proposed) sites in the plan could

¹ "Protected characteristics" are age; disability; gender reassignment; marriage and civil partnership (in employment only), pregnancy and maternity; race; religion or belief; sex; and sexual orientation.

provide employment opportunities and access to open and/or green space.

Regard was had to the aim of fostering good relations, however it was not considered that the Plan had a particular role to play in this area.

Conservation of Habitats and Species Regulations 2017

*1.10 Does the Plan meet the requirements of the Conservation of Habitats and Species Regulations 2017, including any relevant case law [in particular the ruling of 12 April 2018 by the Court of Justice of the European Union (CJEU) *People over Wind, Peter Sweetman v Coillte Teoranta*, Case 323/17] to consider the likely significant effects of projects or plans on European protected sites, individually or in-combination? In particular, have Appropriate Assessments been undertaken under the Regulations? If not, has a screening exercise shown that there is no need for such assessments?*

Yes, please refer to the following reports which demonstrate that the Habitats Regulations Assessment undertaken to support the plan meets the requirements of the Habitats Regulations 2017 (as amended) and takes into account the relevant case law:

- Habitats Regulations Assessment Baseline and Methodology Report Revised (July 2017) (HS18);
- Habitats Regulations Assessment (Screening Report) Proposed Submission (August 2020) (SD08); and
- Habitats Regulations Assessment (Appropriate Assessment) Proposed Submission (August 2020) (SD07).

The Court of Justice of the European Union (CJEU) *People over Wind, Peter Sweetman v Coillte Teoranta*, Case 323/17 is referenced and considered in Para. 1.8 (pages 4 and 5) of the Screening Report (SD08) and Para. 1.13 (page 5) of the Appropriate Assessment (SD07).

The ECJ ruling in the Holohan case (C-461/17) is referenced and considered in Para. 1.14 (page 5) of the Appropriate Assessment (SD07).

A Screening exercise was undertaken (see Screening Report referenced above, SD08), which resulted in three policies and four minerals and waste sites being 'screened in' for further consideration (Section 8, pages 86 and 87) as part of an Appropriate Assessment. The Appropriate Assessment (referenced above, SD07) concluded that the Joint Minerals and Waste Proposed Submission Plan is compliant with the Habitats

Regulations and will not result in likely significant effects on any European sites, either alone or in-combination with other plans or projects.