

Central & Eastern Berkshire Authorities

Hearing Position Statement

Main Matter 7 – Development Management

Word count: 2657

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

Issue: Whether the Development Management policies are justified, effective and consistent with national policy?

Policy DM3 (Protection of Habitats and Species)

7.1 Is the biodiversity net gain target sufficiently ambitious to make a tangible difference to the biodiversity within the plan area?

The provision of net gains for biodiversity is established in the National Planning Policy Framework (Para. 174(d)). However, it is the Environment Bill (currently going through parliament) that requires that development achieves at least a 10% net gain in value for biodiversity and that developers must submit a 'biodiversity gain plan' with a planning application. As such, it is considered that Policy DM3 is sufficiently ambitious as it meets the requirements of the forthcoming legislation.

This is an evolving area of policy as the Bill progresses and guidance is produced to advise developers and local planning authorities. The Mineral Products Association and Planning Officers Society is currently working on guidance for its application to minerals development.

Biodiversity Metric 3.0 has also been launched by Natural England and therefore, is no longer 'proposed' as suggested in Para. 5.18. Therefore, proposed Modifications (AM2 and AM4) seeks to update this reference.

Consideration of how the Metric would be applied is also evolving and therefore, further advice on compensatory habitats would be beneficial in order to make a tangible difference. As such, proposed Modification (AM3) seek to address this.

Policy DM4 (Protection of Designated Landscape)

7.2 Is this policy consistent with the National Planning Policy Framework 2021?

No, the Joint Minerals and Waste Plan - Submission Version - February 2021 refers in Para. 5.33 and Footnote 40 to Para. 172 of the NPPF 2019. This should instead refer to Para. 176 of the NPPF 2021. As such, proposed Modification (AM5) seeks to update this reference.

7.3 Should the policy text be expanded to cross refer to the circumstances set out in paragraph 176 of the National Planning Policy Framework 2021?

Yes, Para. 176 of the NPPF 2021 now refers to development within the setting of AONBs. As such, proposed Modification (MM3) seeks to address this through the addition of appropriate wording to the policy.

In addition, in accordance with Para. 125 of the NPPF 2021, Landscape Character Assessments 'help ensure that land is used efficiently while also creating beautiful and sustainable places'. As such, proposed Modification (AM6) seeks to address this through the addition of appropriate wording to the supporting text.

Policy DM5 (Protection of the Countryside)

7.4 Is the policy consistent with the National Planning Policy Framework 2021?

Policy DM5 (2) seeks to protect and improve public access (NPPF, Para. 120 (a)). The policy also seeks to ensure previously developed land is prioritised (NPPF, Para. 119). However, DM5 and Para. 5.40 would benefit from being updated to reflect the wording in the NPPF which highlights the 'intrinsic character and beauty' of the countryside (NPPF, Para. 174). Therefore, proposed Modifications (AM7) seeks to address this.

Furthermore, the supporting text would benefit from highlight the use of Landscape Character Assessments (LCAs) (NPPF, Para. 125). Proposed Modification (AM8) provides additional guidance on the implementation of the policy with respect to LCAs.

7.5 Is criterion 1 of the policy effective with regard to what mineral and waste proposals would be supported?

It is recognised that there are some proposals, mostly likely for waste uses, that may require a countryside location due to the nature of their activities or the potential impact on amenity as outlined by Para. 5.42. Therefore, to ensure criterion 1 is fully effective, proposed Modification (MM4) seeks to ensure this point is captured.

Any further developments are considered under Para. 5.47 which highlights that in these cases the proposals would be considered a departure from the Plan and would need to outline the exceptional circumstances including limiting impacts on the countryside and the expected environmental gains.

7.6 As mineral extraction is most likely to occur in the countryside what purpose does the reference to 'time-limited' seek to achieve?

It is agreed that mineral extraction itself is temporary and therefore, time-limited. However, the Policy is seeking to limit any related developments. To clarify this, proposed Modification (MM4) seeks to amend the emphasis on 'time-limited'.

7.7 As the definition of previously developed land excludes land used for mineral extraction where restoration is required, is it intended that the policy would prevent waste development in a mineral site?

Policy W4 (iv) identifies active quarries as a feature which would benefit an appropriate location. However, should a site be restored, or restoration is required as part of the planning permission, proposed Modification (MM4) seeks to clarify that these would be supported under certain circumstances.

7.8 How will the policy effectively manage the completion of mineral extraction operations?

Policy DM5 states that development in the countryside will be expected to be subject to a requirement that it is restored if no longer used for minerals and waste use. The enforcement of this will be through Development Management measures. However, this does not prevent developers submitting applications to change restoration proposals and in some cases, these changes may be required to accommodate other development, such as waste which may seek an isolated location due to the impacts of its activities. However, the proposal will need to ensure that it meets the other criterion regarding high-quality design, operation and restoration as well as taking account of the intrinsic character and beauty of the landscape and the consideration of public access.

Policy DM6 (Green Belt)

7.9 How does the policy recognise the temporary nature of mineral extraction?

The National Planning Policy Framework does not refer to the temporary nature of the development being a factor, but it is recognised that the Planning Practice Guidance ([Paragraph: 001 Reference ID: 64-001-20190722](#)) refers to the duration of development being a factor as noted by Claremont Planning Consultancy (REP 22). Therefore, it is considered that this would be beneficial guidance in the implementation of the policy and proposed Modification (AM10) seeks to address this in the supporting text.

7.10 Is the requirement for the waste industry to look for alternative sites outside of the Green Belt appropriate and reasonable? Should this relate to existing sites or new sites?

The issue of alternatives was raised by Jayflex Aggregates (REP 38). Whilst certain development at the time may be deemed appropriate in the Green Belt, circumstances change over time and therefore, it is considered that new proposals within the Green Belt including those on existing sites should demonstrate that no alternatives are available outside of the Green Belt. This aligns with the approach set out in Policy W4 which looks to site waste development within suitable existing industrial estates in the first instance. Where this is not possible, specific sites have been identified in the Green Belt as there are no known alternatives outside of the Green Belt at this time and lastly, a criteria-based approach is provided.

7.11 How does the policy recognise that some waste proposals, for example, within an existing building and thereby being not inappropriate development, relate to the applicability of criterion 2?

It is recognised that there are some cases where there are exceptions. Para. 5.55 outlines these in relation to minerals extraction but it is noted that circumstances which relate to waste are not outlined. Therefore, proposed Modifications (MM5 and AM10) seek to clarify this point in Policy DM6 and Para. 5.55.

7.12 How does criterion 2 relate to national policy? Should a distinction be made between the requirements of criterion 2 and very special circumstances to outweigh harm to the Green Belt?

Para. 5.53 outlines that any potential harm to the Green Belt and any other harm, would need to be outweighed by other considerations. Criterion 2 addresses what those considerations would need to include in relation to the suitability of the site, the availability of alternatives and mitigation. Proposed Modification (AM9) seeks to clarify this point.

Policy DM7 (Conserving the Historic Environment)

7.13 Should the policy be expanded to include a list of the categories of assets and their relative importance to be consistent with national policy?

Policy DM7 currently references 'designated' and 'undesignated'. It is considered that the historic environment is not a legislatively rich subject. Scheduled Monuments have legal protection independent of the planning system. All others have 'a weight' given to them in planning considerations, for example: listed buildings, registered parks, conservation areas, locally listed buildings (or other heritage assets), (there are also registered battle fields and world heritage sites, but these are not impacted by the Plan).

Para. 5.64 highlights that the significance of the heritage asset will need to be taken into account. However, it is recognised that this point can be further elaborated. Therefore, proposed Modification (AM11) seeks to clarify the consideration of importance. However, it is not considered necessary for a list to be included in the Policy itself.

7.14 Is the policy effective with regard to the measures which could mitigate harm to the historic environment?

Para 5.16 indicates that mitigation 'can' be achieved by recording and making the results available. Part 4 of Policy DM7 provides for such mitigation to be secured. 5.66 indicates the need for mitigation ahead of or during development and 5.67 includes mitigation post extraction (such as restoration). Proposed Modification (AM12) seeks to provide further support to both Para. 5.67 and DM7 (4).

7.15 Should the policy include a requirement to record all assets to be lost and the recording to be deposited in the public archive to be consistent with national policy?

This requirement is set out in the supporting text, Paras. 5.66 and 5.67 and the proposed Modification (AM12). Therefore, it is not considered necessary to outline this specifically in Policy DM7.

7.16 Is the policy consistent with national policy on heritage assets in relation to how to weigh harm?

Planning has to balance competing issues and where they are in conflict and cannot be reconciled, must refuse or permit the proposed development according to the relative weight of the 'need' and the 'merits' of the material considerations. The plan presently seeks to articulate this balance of merits through:

- Para 5.16 "Where the public benefits of development outweigh the significance of the heritage assets"
- Para 5.63 "heritage assets should be conserved in a manner appropriate to their significance"
- Para 5.64 "Any decision on planning applicationsshould be informed by an assessment, proportionate to the circumstances, of the significance of heritage assets ... " and impacts and effects.
- Para 5.68 "The suitability of all proposals will be assessed, having particular regard to proposed conservation and mitigation measures, and the potential benefits of mineral development on archaeology".
- DM7 part 2 "Harm will only be allowed where the public benefit of development clearly and convincingly outweighs the significance of the heritage assets, and where the development cannot be delivered in a way that does not cause harm." [emphasis added]
- DM7 part 4 "When the public benefits of development outweigh the significance of the heritage assets".

Policy DM8 (Restoration of Minerals and Waste Developments)

7.17 Does the policy give sufficient clarity on what restoration information is required?

The policy would benefit from the provision of greater clarity in the supporting text on what restoration information is required. As such, proposed Modification (AM14) seeks to address this through the addition of appropriate wording to the supporting text.

7.18 Should the policy, rather than supporting text in paragraph 5.83, cross refer to the Restoration Study?

The inclusion of new Para. 5.83 is considered a sufficiently robust link between the Restoration policy and its supporting text and the Restoration Study (HS73).

It is considered that the supporting text is given equal weighting to the policies and therefore, the implementation of the policy outlined in Para. 5.83 does not need to be explicitly referred to within Policy DM8.

7.19 Would this provide sufficient clarity on what options or strategies for restoration have been considered by developers and operators?

The Restoration Study (HS73) provides greater detail and clarification on options or strategies for restoration. Supporting text provides a link to the Restoration Study in Para. 5.83. However, Para. 5.83 would benefit from additional clarification (please see proposed Modification (AM16)).

7.20 How would restoration and aftercare plans take into account community needs and aspirations?

Para. 5.82 sets out the importance of taking account of community needs and aspirations in restoration and aftercare plans. This supporting text would benefit from reference to neighbourhood plans and forums such as liaison panels. As such, proposed Modification (AM15) seeks to address this through the addition of appropriate wording to the supporting text.

7.21 How will the policy ensure restoration is undertaken?

In the first paragraph of the policy, appropriate restoration and aftercare is required for planning permission to be granted. Development management processes will ensure that the agreed restoration is implemented. The imposition of conditions, with associated monitoring and enforcement is emphasised in Para. 5.4 and proposed Modification (AM18).

7.22 Should the policy refer to the need to manage flood risk in relation to the type of restoration? Would cross referencing to Policy DM10 be effective?

It is recognised that flood risk is only addressed through Para. 5.76 in relation to consideration of the existing hydrological regime. Therefore, proposed Modifications (AM13) seek to clarify the importance of managing flood risk and include cross-reference to Policy DM10.

Policy DM9 (Protecting Health, Safety and Amenity)

7.23 Should the policy supporting text include some cross reference to the monitoring and enforcement regimes to be effective?

Para. 5.4 states that the relevant planning authority will 'Monitor all minerals and waste development proportionate to its potential risk and take appropriate compliance measures, including enforcement action when unauthorised development takes place'.

However, it is recognised that this point would benefit from being reiterated in Para. 5.94 (page 47) when the functions of the other regulatory bodies are being referenced. Therefore, proposed Modification (AM18) seeks to clarify this point.

7.24 Should the policy include reference to the quality of atmosphere, land and water to be effective?

Policy DM9 (2)(a) states that "Minerals development should not release emissions to the atmosphere, land or water (above appropriate standards)". It is not considered within the remit of the Plan to set out what these standards are, what the quality of atmosphere, land or water should be or that a particular quality should be maintained. As set out in para 5.94 these elements are within the remit of other regulatory bodies or functions.

Some key issues that are relevant to the local circumstances of the Plan are highlighted within paras 5.88-5.93, AQMA's in particular, as routing decisions will need to consider them both in the Plan area and in adjacent authorities.

Policy DM10 (Flood Risk)

7.25 Is the Policy DM10 consistent with national policy?

Following comments received by the Environment Agency in their Regulation 19 response (REP 27), proposed Modifications (AM19, AM20 and AM21) are sought to ensure consistency with national policy.

Furthermore, proposed Modification (AM20) seeks to update the supporting text in relation to Flood Zones 3a and 3b.

7.26 Should the policy differentiate between minerals and waste development, given the wording in the Planning Practice Guidance (reference ID: 7-018-20140306)?

It is not considered necessary to differentiate minerals and waste development in Policy DM10 as the Guidance relates more to minerals sites being classed as water compatible so can be located within the flood

plain. The need to locate structures outside of the floodplain is covered by the existing policy wording. Waste sites are classified in the Planning Practice Guidance as 'less vulnerable' so are prohibited in the functional flood plain.

7.27 Is the Strategic Flood Risk Assessment (SFRA) adequate, up to date and compliant with paragraph 160 of the National Planning Policy Framework 2021?

The SFRA is being undertaken in line with current guidance. The Environment Agency (EA) have been consulted and it is considered that their concerns have been addressed. As such we believe it is compliant with the paragraph 160 of the National Planning Policy Framework.

A revised SFRA has been prepared (HS69a). The approach taken has been discussed with the EA and was submitted to them for comment. The approach was also based on a recent SFRA prepared for Hart District Council (also within the Thames catchment area) particularly in relation to the consideration of climate change on the suitability of sites.

Policy DM11 (Water Resources)

7.28 Should the policy or supporting text include a cross reference to nearby private and licenced abstractions?

It is recognised that this issue is relevant to the Plan area and some proposals that have been considered. Therefore, proposed Modification (AM22) seeks to include this additional reference as suggested by the Environment Agency (REP 27).

7.29 Should a Hydrological Assessment be required for all applications that present a hazard to water resources, quality and abstraction?

It is recognised that this a relevant point raised by the EA and therefore, proposed Modification (AM24) seeks to clarify this requirement.

Policy DM15 (Past Operator Performance)

7.30 Can this policy be justified in land use planning terms having regard to legislation, National Planning Policy Framework, Planning Practice Guidance and National Planning Policy for Waste?

Planning history and past behaviour are briefly mentioned in the National Planning Practice Guidance (PPG) - the “planning history of a site may be a relevant consideration in the determination of an application” (Paragraph: 010 <https://www.gov.uk/guidance/determining-a-planning-application>). Therefore, DM15 is in accordance with national policy. Otherwise, this is a policy area that is not particularly covered by national legislation and guidance, however local plans are not meant to repeat national policy but should instead reflect local circumstances. Locally, issues have been raised, during the preparation of the Plan, regarding a number of sites where past performance would be highly relevant to any future proposals, as noted in the Regulation 22 Consultation Statement (SD03) in para 4.10.

In land use terms, the history of a site demonstrates what the, largely theoretical, proposals from a planning application look like in practice and whether a site can indeed support a particular land use. Similarly, previous delivery of comparable land uses by an operator can provide valuable information as to how they implement planning application proposals and can indicate how to avoid or mitigate similar issues in the future.

7.31 How would this policy be effective?

For the policy to be effective it will require the development management and monitoring regime to work closely together so that sufficient information is available to inform the Monitoring Assessment. This additional information will assist in making a fully informed decision as to measures that may be needed to ensure any significant adverse effects are avoided or mitigated.

7.32 How would operators and local communities have certainty as to how the policy would be applied?

As this is a new policy, there may well be an adjustment period and lessons to be learnt from its application, including potentially the need for further implementation guidance. However, without it as a starting point, it is unlikely that a solution offering greater certainty can be easily found.

7.33 Who is supplying what information for this policy? What evidence will the planning authority gather for their Monitoring Assessment? Will the applicant have any role or input into the Monitoring Assessment?

It would be expected that the planning authority prepares the Monitoring Assessment with relevant input, the list for which is not exhaustive, but includes the monitoring officer who would be expected to liaise with the

operator throughout the site life. What the applicant will need to provide is addressed in 5.147.

The evidence will need to support the determination of the planning application and will need to be closely linked to the land use, issues that arose and how they were dealt with. The Monitoring Assessment may be used as a basis to request additional information, so the applicant will be able to provide further information and address any issues raised.

7.34 How would this policy be monitored?

The monitoring indicators have been chosen as they should indicate whether:

- a) Monitoring Assessments are prepared where appropriate, and
- b) Monitoring Assessments are taken into account and appropriately influence decision making.

It is acknowledged that there is no policy review threshold for the former, so a modification is proposed (AM23).

Any implementation lessons learnt should be included in the monitoring reports and then taken into account during a review of the Plan.

** There are no specific questions on Policies DM1, DM2, DM12, DM13 or DM14 **