

NORFOLK MINERALS SITE ALLOCATIONS DPD:

SINGLE ISSUE SILICA SAND REVIEW (THE PLAN)

INSPECTOR'S DRAFT MATTERS AND ISSUES

Mineral Products Association Ltd

Gillingham House
38 - 44 Gillingham Street
London SW1V 1HU
Tel +44 (0)20 7963 8000
Fax +44 (0)20 7963 8001
info@mineralproducts.org
www.mineralproducts.org

MATTER 1 - Legal requirements and the Duty to Co-operate Issues

1. The Council must demonstrate: how it has prepared the Plan in accordance with the Minerals and Waste (Local) Development Scheme (MWDS); how the Plan complies with the Statement of Community Involvement (SCI); how the consultation that has taken place has been carried out consistent with the SCI; that the Plan has been subject to a Sustainability Appraisal (SA) and a final report of the findings of the SA prepared; that any requirements for Appropriate Assessment under the Habitats Regulations were met before publication of the Plan; and that the Plan complies with all of the requirements of the 2004 Act and the 2012 Regulations (both as amended). Further, the Council must also be able to demonstrate that the requirements of the Duty to Co-operate have been met at the date of submission of the Plan. Has the Council suitably demonstrated in the evidence that all of these legal tests have been met? Would it be reasonable for me to conclude that the Council has met all of the legal tests, including the Duty to Co-operate?

MPA Response

Norfolk County Council (NCC) has indicated that a number of Mineral Planning Authorities were consulted early on in the plan making process. It would appear that the consultation process included some Mineral Planning Authorities containing silica sand resources such as Cheshire East Council, Worcestershire County Council, Surrey County Council, Staffordshire County Council, Nottinghamshire County Council, North Yorkshire Council, North Lincolnshire Council, Kent County Council, West Sussex Council and the South Downs National Park Authority, and Central Bedfordshire & Bedford Borough Council shared minerals planning service. However, the consultation process does not appear to cover all Mineral Planning Authorities containing silica sand resources.

It is not clear if the document is legally compliant as there is no supporting evidence to confirm that NCC has shared the proposed amendments with other Mineral Planning Authorities which have known and proven silica sand resources and reserves. The legal requirements and duty to co-operate, must therefore be questioned on the basis that.

- The proposed modifications do not appear to have a sustainable foundation.
- The proposed modifications have not been objectively assessed.
- The proposed modifications are therefore not consistent with National Policy

MATTER 2 - Whether appropriate provision is made for the steady and adequate supply of silica sand.

Issues

1. Is the Plan positively prepared to meet its identified need and potentially greater future need, as suggested by the last 3 year sales average in the Monitoring Report - Mineral Data Local Aggregates Assessment and Silica Sand Assessment 2015?

MPA Response

In the main, the plan has been prepared positively and we would endorse the use of the last 3 years' sales average. It is data relevant to exhibiting trends in sales particularly following a period of marked recession. The use of the last 3 years' sales average is inherent within the mineral planning process, with the PPG indicating that *“Mineral Planning Authorities should also look at average sales over the last 3 years in particular to identify the general trend of demand as part of the consideration of whether it might be appropriate to increase supply”*. Whilst this quotation is specific to aggregate considerations in the PPG, it equally applies to industrial minerals and is routinely used to calculate stocks of permitted reserves for specific industrial minerals as required by the NPPF. However, the exclusion of AOS A and the amendments to AOS D and Policy SIL 01 are unjustified and unsustainable modifications. Under paragraph 146 of the NPPF, NCC as mineral planning authority are required to plan for a steady and adequate supply of industrial minerals by various methods, including *“encouraging.....stockpiling”*, so that *“.....important minerals remain available for use”*. A shortfall in availability would have serious consequences to the national supply of Silica (Industrial) Sand and the downstream glass industries particularly as existing reserves become depleted and potentially greater future need is realised.

2. Is the Plan justified and consistent with national policy, insofar that it identifies Areas of Search (AoS) rather than Preferred Areas, which the latter is given greater priority in the Government's Planning Practice Guidance? (Paragraph: 008, Reference ID: 27-008-20140306)

MPA Response

The County Council's statement in the 3rd paragraph on page 9 of the Pre-submission Addendum: Modifications (September 2016) is somewhat bizarre. This paragraph states *“that the National Planning Policy Framework does not require local plans to allocate sites for industrial minerals; instead, paragraph 146 of the NPPF indicates that a steady and adequate supply should be planned for by “providing a stock of permitted reserves””*.

We question how the County Council would plan for *“a steady and adequate supply of industrial minerals”* without the use of Site Specific allocations, Preferred Areas, and/or Areas of Search.

The non-allocation of sites would also at odds with the County Council's own statement at Paragraph 2.1 of the Pre-submission Addendum: Modifications Document (Sept 2016). It would also depart from National Planning Practice Guidance (paragraphs 27-008/009) which states that *“Mineral Planning Authorities should plan for a steady and adequate supply of minerals (our underlining) in one or more of the following ways:*

Designating Specific Sites - where viable resources are known to exist, landowners are supportive of minerals development and the proposal is likely to be acceptable in planning terms. Such sites may also include essential operations associated with mineral extraction;

Designating Preferred Areas, which are areas of known resources where planning permission might reasonably be anticipated. Such areas may also include essential operations associated with mineral extraction; and/or

Designating Areas of Search - areas where knowledge of mineral resources may be less certain but within which planning permission may be granted, particularly if there is a potential shortfall in supply.

The hierarchy in the PPG is definitive.

It is acknowledged that NCC has loosely followed the hierarchical approach and indeed has identified one site specific allocation SIL01. However, there may well be justification in raising the status of the Areas of Search identified in the plan to Preferred Areas, as the level of assessment carried out by NCC in its sustainability appraisal is significant and to a level of detail which could qualify these as Preferred Areas.

3. Is the Plan effective and justified, with regard to the number and overall coverage of the five identified AoS, when compared to the identified need? Further to this, would the Plan lead to large areas of land being unnecessarily safeguarded?

MPA Response

No, we believe that the removal of AOS A and the amendments to AOS D and Policy SIL 01 are not justified. These matters were appropriately and correctly considered through the sustainability appraisal and the reasoning behind their removal and modification, is at odds with the evidence base indicating that they were appropriate for inclusion in the first instance.

In Document A95 (Pre-Submission Representations Feedback Report August 201), the NCC Planning Officer's Note (page 12) states that - "*it is considered that there is the potential for silica sand extraction within AOS A to affect the setting of the AONB and the landscape character of the area*" (our underlining). However, in response to further considerations in respect of AOS A, NCC Planning Officer's Note (page 13) states - "*The Areas of Search Policy requires a planning application within an area of search to include a Landscape and Visual Impact Assessment, together with suitable mitigation measures*". Having been through a detailed sustainability appraisal for its initial inclusion, we do not believe the decision to now remove AOS A is robust or justified.

The identified need for Silica (Industrial) Sand is unquestionable to accord with National Policy in NPPF. This need has been identified following previous examination in public and through routine survey and information provided to NCC by industry to date.

With respect to the second sentence of the Inspector's M&I, point 3, it is important to maintain clarity between the need to identify site allocations, to meet the requirement for a steady and adequate supply of minerals; and with the need to identify Mineral Safeguarding Areas to avoid the needless sterilisation of silica sand.

Silica (Industrial) Sand is a recognised scarce resource and there is a responsibility for Mineral Planning Authorities to safeguard deposits which are, or may become, of economic importance, against other types of development or other constraints which would be a serious hindrance to their extraction. It is expected that the whole of a geological outcrop should be safeguarded with the sieve criteria used in the AOS Policy not being relevant to the requirements for minerals safeguarding. In this context, the Mineral Safeguarding Areas would be larger than the Areas of Search. Silica Sand is a mineral of national importance which is necessary to meet society's needs. It is the responsibility for NCC to safeguard the resources of silica sand. Any application which would fall outside the scope of the mineral safeguarding policy CS16 and Appendix C of the Core Strategy, would need to follow the appropriate measures to ensure the minerals are not unnecessarily sterilised.

4. Is there a potential future need for new plant and infrastructure to be required, in order to secure the steady and adequate supply of silica sand? If so, should the wording of the AoS Policy reflect this?

MPA Response

The provision of new processing plant and infrastructure for the development of a new Silica (Industrial) Sand extraction site will be dependent upon a number of factors. As indicated in the current Silica Sand Review, the Leziate site is the sole site in Norfolk producing Industrial Sands to the respective markets. The processing plant and infrastructure at Leziate is long established and represents significant investment. The development of a new processing facility at a new location would be dependent upon a number of factors, notably, the quality and quantity of the deposit and its ability to deliver a sustainable supply of raw materials to the respective industrial users via the transport network. The Areas of Search Policy is a "criteria based" policy which would be applicable to any proposal for silica sand development, let alone an application within

the respective Areas of Search. It is not considered necessary to amend the wording of the policy to reflect any need for future processing plant or infrastructure.

MATTER 3 - Whether the allocated site and areas of search are acceptable in environmental terms and in all other regards.

Issues

1. Is the Area of Search selection process, including its methodology and criteria justified, effective and consistent with national policy?

MPA Response

The initial site selection process for the Areas of Search was outlined in the Preferred Options consultation (2015). Initially, nine criteria were applied, which may on balance be considered overly restrictive and beyond the policy requirements of NPPF. These criteria were:-

1. Silica sand resource with Norfolk Coast AONB and Common Land excluded
2. Silica sand resource with designated heritage assets excluded
3. Silica sand resource with environmental designations excluded
4. Silica sand resource with sensitive receptors to amenity impacts excluded
5. Silica sand resource with Grade 1 and 2 agricultural land excluded
6. Silica sand resource with allocated, current or restored mineral workings excluded
7. Silica sand resource with all planning constraints shown in maps 1 to 6 excluded
8. Silica sand resource showing potential areas of search remaining when all constraints shown in map 7 have been excluded
9. Silica sand resource with only potential areas of search of over 20 hectares

It is evident that for example AONB and Common Land are not preclusive criteria applied to nationally important minerals. Similarly, because of limited availability of resources of suitable quality, the former Mineral Planning Guidance Note for the Provision of Silica Sand in England (MPG15) was clear in recognising that *“it may be necessary to consider working such resources even where they occur beneath areas of the best and most versatile agricultural land”*. The Areas of Search Criteria state that the Silica sand resource within Grade 1 and 2 agricultural land has been excluded from the Areas of Search. However, the Areas of Search Policy would appear to quite rightly acknowledge that *“If the application area contains Grade 3 agricultural land then a detailed agricultural land survey will be required to identify subgrades. Land identified as being within the Best and Most Versatile classification (grades 1, 2, 3a) will require a working scheme which incorporates a soil management and handling strategy which is compliant with Policy DM16.”* This requirement would appear to be at odds the criteria applied to the AOSs and may have unnecessarily limited the extent of the resources identified in the respective AOSs.

Further exclusions were then applied such to define the Areas of Search including:-

- All ancient woodland and 250 metres around them has been excluded
- All Sites of Special Scientific Interest (SSSIs) and 250 metres around them have been excluded (except Roydon Common and Dersingham Bog)
- The hydrological catchment around Roydon Common and Dersingham Bog has been excluded
- designated heritage assets (Listed Buildings, Scheduled Monuments, registered historic parks and gardens, Conservation Areas) and 250 metres around each heritage asset has been excluded
- Sensitive receptors to amenity impacts (residential dwellings, educational facilities, workplaces, healthcare and leisure facilities) and 250 metres around each sensitive receptor has been excluded
- Allocated, current and restored mineral extraction sites have been excluded
- The areas of the Leziat Beds silica sand resource that were remaining at this point were all potential areas of search
- Potential areas of search below 20 hectares in size have not been taken further.

The further exclusion criteria which applied a distance of 250m recognised that “A *planning application may be able to provide information to support an acceptable distance closer than this*” and as such it should be recognised that land outside an AOS may be appropriate for minerals development if this can be demonstrated through the Development Management process that the development is acceptable.

The selection criteria put forward within the preferred options consultation were stringent and did not necessarily accord with current or former planning policy.

2. Can future proposals come forward within AoS D without causing unacceptable harm, most notably, but not limited to: highway and pedestrian safety; landscape; ecological features; heritage assets; and local residents and businesses in the area?

MPA Response

AOS D has been subject of stringent selection criteria as indicated above and through a full sustainability appraisal of the proposed site allocation. The matters identified in the Inspector’s question are development management matters, being considered through an appropriate planning application and where appropriate accompanying Environmental Impact Assessment

3. Is reference within Policy SIL01 for the requirement for a project level Habitats Regulation Assessment to be undertaken at the planning application stage, necessary for it to comply with the Habitats Directive, the Conservation of Habitats and Species Regulations 2010 and national policy?

MPA Response

It is not clear in the submitted documents, where the requirement for a project level Habitats Regulation Assessment to be undertaken at the planning application stage, is within Policy SIL01. The pre-submission consultation indicates at Paragraph 2.18 (Habitats Regulations Assessment) that “A *Habitats Regulations Appraisal has been carried out on the Silica Sand Review in accordance with the Conservation of Habitats and Species Regulations 2010*”. We could find no other reference to such and do not believe that this would be necessary.

4. Do Policy SIL01 and the AoS Policy comply with national policy, in terms of Heritage Assets and should a historic landscape characterisation and archaeological study be required as part of any future planning applications within such areas?

MPA Response

We believe the Policy SIL01 and the AOS Policy are unnecessarily repetitive of the requirements of both the NPPF and the adopted Core Strategy Policies CS14, DM8 and in particular DM9. The scope of any historic landscape characterisation and archaeological study would be determined through the formal EIA Scoping process and should reflect the Mineral Extraction and Archaeology: A Practice Guide (<https://historicengland.org.uk/images-books/publications/mineral-extraction-and-archaeology/>)

5. Is Policy SIL01 and the AoS Policy effective in being able to control any potential noise impacts?

MPA Response

We believe that seeking to control any Development Management matter such as the potential noise impact, through Development Plan policy, is unnecessary. There is a long history of National Planning Policy providing Policy and Guidance on the control of noise at mineral workings, from MPG11: The Control of Noise at Surface Mineral Workings, through MPS2, controlling and mitigating the environmental effects of minerals extraction in England. Annex 2: Noise, to the current Planning Practice Guidance Paragraphs 019 through to 022 (<https://www.gov.uk/>)

[guidance/minerals](#)). These matters are routinely reflected and properly addressed via the use of planning conditions, should planning permission be granted.

6. Is the AoS Policy proportionate and effective in being able to control any potential impacts of proposals coming forward within such areas, including any cumulative effects?

MPA Response

We believe it is for the Development Management process to control any potential impacts of proposals coming forward within such areas, including any cumulative effects, and not for planning policy within a development plan. The Planning Practice Guidance identifies how and when the details of any significant environmental impacts best addressed (Paragraph: 011 Reference ID: 27-011-20140306). This states “*Significant environmental impacts are best addressed through consideration of an Environmental Statement which will have to accompany nearly all planning applications for new mineral working*”, (our underlining). Further, Government Guidance on Environmental Impact Assessment is clear in stating when cumulative effects be assessed? Paragraph: 024 Reference ID: 4-024-20140306 - (<https://www.gov.uk/guidance/environmental-impact-assessment>). The guidance states “*Each application (or request for a screening opinion) should be considered on its own merits. There are occasions where other existing or approved development may be relevant in determining whether significant effects are likely as a consequence of a proposed development. The local planning authorities should always have regard to the possible cumulative effects arising from any existing or approved development. There could also be circumstances where 2 or more applications for development should be considered together. For example, where the applications in question are not directly in competition with one another, so that both or all of them might be approved, and where the overall combined environmental impact of the proposals might be greater or have different effects than the sum of their separate parts*”.

MATTER 4 - Monitoring Issues

1. In order for it to be effective, should the proposed new policies in the Plan be subject to a monitoring framework?

MPA Response

Norfolk County Council produce a Local Aggregates and Silica Sand Assessment, annually. The Planning Practice Guidance (<https://www.gov.uk/guidance/minerals#Local-Aggregate-Assessments>). NCC’s LAA includes the monitoring of Silica Sand production identifying both the 10-year and 3-year average. We do not believe there are any additional monitoring requirements necessary.