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TOPIC PAPER 1

Legal Requirements; Evidence Base; and Relationship to other Minerals and Waste Development Plan Documents



CUMBRIA MINERALS AND WASTE DEVELOPMENT FRAMEWORK

REPEATED SITE ALLOCATIONS POLICIES AND PROPOSALS MAP

***This Topic Paper is in response to Main Matter 1 of the
Inspector's Issues and Questions (ED 81)***

HEARING SESSION 1

**TUESDAY 24 April
(10.30 to 13:00)**

**Committee Room 1
County Offices, Kendal**

QUESTION 1.1

(i) Has the DPD been prepared in accordance with the Minerals and Waste Development Scheme (MWDS); does its listing and description in the MWDS match the submission document; have the timescales set out in the MWDS been met?

1. The Site Allocations Policies and Proposals Map were originally prepared under the March 2009 MWDS. The documents matched their listing and descriptions in Section 3 of the MWDS. There was slippage of three to four months in the MWDS's timescales for the documents' Regulations 27 and 30 stages.
2. The reason for the slippage was that two additional rounds of Regulation 25 consultations were needed in June and September 2009, in order to give people the opportunity to comment on new sites that had been put forward by consultees. This meant that the commencement of the Regulation 27 stage had to be put back from October to December 2009.
3. The documents were submitted to the Secretary of State on 30 April 2010; in the MWDS this had been programmed for during January 2010. The 2009 MWDS programmed the adoption of the documents for December 2010, whereas they were actually adopted by the County Council on 20 January 2011.
4. There was then a successful legal challenge by Barrow Borough Council that led to the documents being quashed by the High Court. As a consequence of that, the County Council repeated the Regulation 27 stage in October to December 2011 and resubmitted the documents on 3 February 2012. These dates were in accordance with a revised MWDS programme that was published on the CCC website (LD182).

(ii) Has regard been paid to the County Council Plan, the community strategies of the County's borough councils and those of neighbouring local planning authorities and other relevant strategies?

5. The current County Council Plan is for 2011 to 2014 (LD185). Its underpinning aim is to be as effective and efficient as possible, focussing on our customers. The three key priorities of the Plan are to:–
 - *challenge poverty in all its forms;*
 - *ensure the most vulnerable people in our communities receive the support they need; and*
 - *improve the chances in life of the more disadvantaged in Cumbria.*

The Plan's aspirations for Cumbria can be summarised as:–

- *a thriving economy;*
 - *a high quality and sustainable environment;*
 - *a great place to be a child and grow up in; and*
 - *being able to enjoy an independent and healthy life.*
6. The Minerals and Waste Development Framework is most relevant to the aspirations for the economy and the environment. Development and regeneration initiatives could be constrained if provision is not made for a

continuing sustainable supply of construction materials and for the appropriate waste management facilities that businesses and industries need.

7. The Framework's policies identify the county's environmental assets and aim, not only to protect, but also to enhance them. Sustainability has been an overriding consideration throughout the preparation of the development plan documents. Examples of this are Core Strategy Policy 1: Sustainable Location and Design and the Sustainability Appraisal reports that have been published. One of the main objectives has been to minimise the impact of minerals and waste developments on climate change.

Community Strategies

8. Regard has been paid to the six Community Strategies in Cumbria – County wide; Carlisle; Eden; Furness; South Lakeland; and West Cumbria. The Community Strategies and Action Plans are documents LD8, LD13, LD124, LD127, LD168 and LD184.
9. The relationship of the MWDF to these strategies is set out in Chapter 5 of the Core Strategy (CSD14) and in its Appendix C (CSD16). The most relevant has been the Cumbria Strategic Partnership's Sub-regional Spatial Strategy (LD139).
10. The content of the Community Strategies is reflected in the profile of the key issues and pressures affecting Cumbria, which are set out in the Sustainability Appraisal of the Site Allocations Policies (RSAP2). This also explains that the sustainability objectives that have been developed from these issues and pressures have been tried and tested in the sustainability appraisals of Community Strategies.
11. Regard has also been paid to the Regional Spatial Strategy (RD7), Regional Economic Strategy, Regional Waste Strategy (RD13), Climate Change – North West Action Plan (RD18), the annual reports of the North West Aggregates Working Party (latest, LD177), Regional Technical Advisory Body (RTAB), Local Transport Plan (LD176), Local Area Agreements (LD40 and LD142), the Energy Coast Masterplan (LD65), District Local Plans and emerging Local Development Frameworks and the Nuclear Decommissioning Authority's Low Level Radioactive Waste Strategy (LD191).
12. It has not been considered necessary to include sections on the Community Strategies of neighbouring local authorities. This is because they have not raised relevant new issues that have not been mentioned in the strategies of the Cumbria Local Strategic Partnerships. Where matters relevant to minerals and waste are mentioned in those Strategies, they are references to the waste hierarchy, protection of the environment and access to services.
13. Some of the adjacent areas demonstrate similarities with Cumbria in terms of being sparsely populated, having ageing populations, difficulties in retaining young people and experiencing marked contrasts between relative affluence and serious deprivation.
14. The most tangible inter-relationships are between the southern part of South Lakeland and the northern part of Lancashire and Lancaster. In this area, Carnforth, with its train station, supermarkets and Household Waste Recycling Centre, provides services that are used by people in the south of Cumbria.

15. Community Strategies in Durham and Northumberland are markedly different because of their understandable focus on the Tyne and Wear and Tees Valley City Regions.
16. The neighbouring Community Strategies that were considered are: Ambition Lancashire 2005-2025; Lancaster Sustainable Community Strategy 2008-2011; Altogether Better Durham 2010-2030; Northumberland: Resilient for the Future (to 2025); North Yorkshire Community Plan 2011-2014; and Richmondshire Sustainable Community Strategy (to 2021).
17. Close contacts with the adjoining minerals and waste planning authorities have been maintained, not only through formal consultations, but also through the waste network that has replaced the RTAB, and MWDF officer working groups for the North West and North East regions.

(iii) Does the DPD comply with the Statement of Community Involvement (SCI) and has the Council carried out all consultation consistent with the SCI?

18. The Statement of Community Involvement (CSD13) was adopted in January 2006.
19. Its Appendix 2 lists the Specific Consultation Bodies, Government Departments, General Consultation Bodies and other consultees which the County Council was proposing to consult. Lists of those consulted at the different stages for preparing the Site Allocations Policies and Proposals Map are included in the Pre-submission Consultations Statement and its Appendices (RSAP5 and 6).
20. At each stage of the process, copies of documents have been made available for public inspection at the County Council offices in Kendal and Carlisle and at District Council offices and public libraries.
21. Appendix 4 of the SCI sets out the proposed consultation methods. In addition to consultation letters, the Limehouse on-line consultation system and the council's website, it explains that a main focus of public engagement would be through the established network of Neighbourhood Forums and Local Committees with their regular meetings. During these "front loading" consultations, the Council's Neighbourhood Development Officers arranged the publicity and locations, which involved press notices, leaflet drops and "flyers" distributed with local newspapers. These were at the earlier stages; no requests were received for meetings about the resubmitted policies.
22. Contacts were made with hard to reach groups, but these were not successful in persuading them to engage directly with the process. This may be understandable in that we have not been able to identify any significant equality issues raised by MWDF proposals. Representatives of hard to reach groups frequently saw our presentations when they were attending Neighbourhood Forum meetings to seek support or grants. No requests have been received for documents to be made available in different formats or other languages.
23. Stakeholder group meetings were held with the minerals and waste management industries and environmental organisations. Direct involvement with Site Liaison Committees has been relatively limited; their meetings are usually attended by development control case officers who have been briefed about the MWDF. Exceptions have been attendance at the Ghyll Scaur quarry liaison committee and regular attendance at the quarterly meetings of the Low Level Waste Repository Site Stakeholder Group Sub-committee. People who submitted

comments on particular aspects of MWDF proposals at earlier stages have been kept informed of progress.

24. The County Council considers that the consultations summarised above, have, throughout the preparation of MWDF development plan documents, been in accordance with the Statement of Community Involvement. There have been numerous public meetings, mostly focussed on the Council's existing network of Neighbourhood Forums and Local Committees with their regular meetings schedules.
25. Our experience has been that this focus was appropriate because meetings that were held specifically about strategic minerals and waste matters tended to be very poorly attended, despite widespread publicity. Similarly, we found that attended exhibitions at public libraries did not attract much interest.
26. In the main, public interest has been in waste management; but there are areas where minerals matters have taken precedence - sand and gravel at Roosecote, the Kirkby Thore/Long Marton area, with regard to gypsum, and the Holme St Cuthbert/Westnewton area, north of Aspatria, with regard to lorry traffic from sand and gravel quarries.
27. For the resubmitted Site Allocations Policies and Proposals Map, the consultation processes are described in the Pre-submission Consultations Statement (RSAP5) and its Appendices (RSAP6).

(iv) Has the DPD been subject to a Sustainability Appraisal and has the Council provided a final report of the findings of the Appraisal?

28. The Sustainability Appraisal (SA) report is document RSAP2, which was submitted with the development plan document.
29. The SA report is a slightly revised version of the one that was submitted in 2010 with the previously submitted version of the Site Allocations Policies. The revisions incorporate the inclusion of the M12 Area of Search, updated information, clarification and references to the historic environment in connection with English Heritage's representation.
30. During the Examination in 2010, part of the text of the policies document was used as an additional policy, now Site Allocations Policy 1. This is a general policy and the SA report has not been amended to refer specifically to it. This has not been considered to be necessary because the policy does not include any sustainability matters or sites that were not in the earlier version of the policies. It is just an explanation of how the reserve sites in Policies 2 and 3 would be considered.

(v) Were any requirements for Appropriate Assessment under the Habitats Regulations met before publication of the DPD?

31. No Appropriate Assessments were undertaken before the publication of the DPD. However, the Habitats Regulations Assessment concludes that Appropriate Assessment may be required, when detailed development proposals are being considered, for eleven of the proposed sites.
32. Those Assessments would identify the mitigation measures that could be needed to ensure that the proposed developments do not affect the integrity of a European Site. None of the mitigation measures, that are considered likely to be

needed, would involve measures that are not commonplace requirements of planning permissions or Environmental Permitting.

33. The Habitats Regulations Assessment (RSAP3) was submitted with the Site Allocations Policies. It had been prepared in close consultation with Natural England. Natural England's response to the consultation for the resubmitted policies is representor reference 20 in document RSAP7. The previous consultation response to which it refers was the letter, dated 5 February 2010, which was included in earlier document SAP7, representor 73. That letter confirmed that Natural England agreed with the conclusion that the Site Allocations Policies and Proposals Map are not likely to adversely affect the integrity of European Wildlife Sites.

(vi) Is the DPD in general conformity with the Regional Strategy?

34. No response has been received from the residual regional planning body to the consultation for the resubmitted policies. At the 2010 submission stage 4NW confirmed, in its letter dated 8 February 2010 (included in SAP7, representor 86), that the policies were in general conformity with the RSS that had been published in September 2008. With the limited changes that have been made, there is no reason to believe that the repeated policies are not also in general conformity.
35. The 4NW February 2010 letter, also commented that the Regional Aggregates Working Party (RAWP) was currently engaged in assessing the updated national and regional guidelines for aggregates provision to 2020. It anticipated that the RAWP recommendations would feed into RS policy development during 2010.
36. With the demise of the regional planning body, that policy development did not happen. The only matter relevant to conformity, of which the County Council is aware, is that in the meantime, the RAWP has adopted revised sub-regional apportionments. Despite a reduced estimate of regional need, the apportionment to Cumbria for sand and gravel was increased from 700,000 tonnes/year to 880,000 tonnes/year.
37. There was no consensus about this, Cumbria dissented. Cumbria's opposition was based on:-
 - the lack of a Sustainability Appraisal of the higher figures;
 - that, because of the location of Cumbria's sand and gravel quarries in the north of the county, an increase would not help resolve any shortfalls which would be in Greater Manchester and Merseyside; and that
 - in addition to the NW apportionment, the Cumbria quarries also supplied parts of the North East, Yorkshire and Humberside and southern Scotland.

Taking into account the size of the sand and gravel landbank and the provisions in Site Allocations Policy 7, it is not considered that this matter of apportionment alters the conclusion about general conformity.

(vii) Does the DPD comply with all of the 2004 Regulations, as amended in 2008?**and****(viii) Specifically, does it comply with the requirement regarding the publication of prescribed documents, their availability at the Authority's principal offices and on the Authority's website, the placing of local advertisements and notification of the DPD bodies?**

38. Following the High Court decision, in June 2011, to quash the Policies, the Regulation 27 'publish and consult' stage was repeated with a consultation period from October to December 2011. This stage is described in the 2012 Pre-submission Consultations Statement (RSAP5), which was submitted with the DPD. Copies of the representations that were received are in RSAP7.
39. Copies of the consultation letters and the consultee address lists are in document RSAP6. Copies of the Press Notice that was placed in the six local newspapers and of the Statement of the Representations Procedure are in RSAP8. Paper and/or CD copies of the documents were made available for inspection at County and District Council offices and at public libraries. The prescribed documents were available to see on the County Council website.
40. The initial work on the Site Allocations Policies had commenced in 2005, under the requirements of the original 2004 Regulations. At that time, these policies were being progressed at the same time as the Core Strategy and Development Control Policies.
41. The 2006 Regulation 25 Issues and Options Discussion Paper (LD73) identified sites; maps of them were in the Appendix and a supplement. This document had an extended consultation period from June to September 2006, during which presentations were made at 28 public meetings around the county.
42. The Preferred Options Site Allocations were published in February 2007, together with the Preferred Options Core Strategy, Generic Development Control Policies and Maps. This was in accordance with Regulation 26 of the 2004 Regulations. The County Council was then persuaded by Government Office and the Planning Inspectorate to delay further work on sites until the Core Strategy had completed its Examination.
43. Work on sites recommenced in February 2009. This later work has been in accordance with the 2008 amendments to the Regulations.
44. There were three sets of Regulation 25 consultations for the Site Allocations Policies: in January/February, June/July and September/October 2009. The Regulation 27 version was published for consultation in December 2009 to February 2010. These consultations are described in the 2010 Pre-submission Consultations Statement (RSAP9).
45. With regard to the resubmitted policies, during a break in the High Court hearing, both parties discussed the possible remedies if the policies were quashed. It was agreed that the Regulation 27 stage would need to be repeated. It was not felt to be necessary to revert to the Regulation 25 stage, unless new sites were to be proposed upon which there had been no opportunity to comment. This approach has not been questioned in the responses to the resubmitted policies.
46. The subject of the High Court challenge was the inclusion, as a result of discussions at one of the Hearing sessions, of an Area of Search in Policy 7.

This was M12 Roosecote sand and gravel quarry extension, an Area of Search for a possible replacement of the nearby M27 Roose sand quarry.

47. This Area of Search had not been proposed by the County Council at the 2010 Regulation 27 stage. However, it was not a new site with regard to Regulation 25, as it had been identified in the June and September 2009 consultations. The only change that has been made subsequently, is that the area of land that is shown on the maps has been reduced, so that it relates better to field boundaries and other features.
48. A number of changes were made between the 2011 Regulation 27 version of the Site Allocations Policies document and the submitted Regulation 30 version. The County Council considers that these were editing changes that did not significantly alter the content of the document (see LD199).
49. In the opinion of the County Council, it has complied with all of the requirements of the 2004 Regulations and the 2008 amendments.

(ix) How is the Regulation 13(5) requirement to list saved Structure and Local Plan policies that will be superseded met?

50. A Regulation 13(5) Statement has not been submitted for the Site Allocations Policies. This is because the relevant Structure Plan and Local Plan policies have already been superseded by the adopted MWDF Core Strategy and Generic Development Control Policies. The Regulation 13(5) list that was prepared in connection with those adopted DPDs is Appendix H in document LD153.
51. The Minerals and Waste Development Framework (MWDF) is a direct replacement for the Minerals and Waste Local Plan 1996 to 2006. Only one of its “saved” policies was not superseded by the adopted Core Strategy and Generic Development Control Policies.
52. That was MWLP Policy 58, which states “Proposals to recover energy from waste through the utilisation of landfill gas will be permitted at the Flusco and Kendal Fell Quarry landfill sites, subject to the submission of a satisfactory scheme.”
53. This policy lost its relevance through the passage of time; it did not need to be superseded by the Site Allocations Policies. Landfill gas electricity generators have been operational at the Flusco site for several years; it is still an operating landfill. The landfill at Kendal Fell Quarry closed several years ago and the landfill gas electricity generator has now been removed, because landfill gas volumes have reduced to the extent where the generator is no longer viable.
54. The Cumbria and the Lake District Joint Structure Plan 2001 – 2016 (document LD16) was adopted in April 2006. Thirty five of its policies were replaced in 2008 by North West Regional Spatial Strategy (RSS) policies. Twenty two Structure Plan policies were “extended” by the RSS until their, then, anticipated replacement by a future revision of the RSS. There will not now be such a revision. Instead, in accordance with the Localism Act, it seems that relevant RSS policies will need to be replaced by local development plan policies. A one year transition period has been given for this.
55. The RSS encouraged local authorities to consider whether the saved Structure Plan policies could be expressed within their LDFs. The most obvious of these,

that had already been taken into account or expressed within the adopted Minerals and Waste Development Framework development plan documents, were ST4 Major development proposals; E35 Areas and features of nature conservation interest; E37 Landscape character; E38 Historic environment; R47 Mineral extraction outside the Lake District National Park and AONBs; R48 Mineral extraction in the Lake District National Park and AONBs; R49 Waste recovery facilities; R50 Thermal treatment and energy recovery from waste plants; and R51 Residual waste and landfill.

56. The Structure Plan is a joint County Council and Lake District National Park development plan document. Policies, such as R48, that relate to land within and outside the National Park, could not be unilaterally superseded by the Cumbria Minerals and Waste Development Framework.
- (x) **Has the Duty to Cooperate introduced as s33A of the 2004 Act by s110 of the Localism Act 2011 been met?**
57. This duty did not come into effect until November 2011, which was half way through the final consultation period for the resubmitted policies. However, planning for minerals and waste management cannot be considered on an individual local authority basis and co-operation with other authorities and organisations has always been an essential part of the plan preparation process. Submitted document RSAP11 sets out how the County Council has met the requirements of this duty.

QUESTION 1.2

Is paragraph 2.3 inconsistent with the Core Strategy?

58. The question relates to an explanation, in the Site Allocations Policies paragraph 2.3, of the policy approach with regard to numbers of waste management facilities. This is that it is not intended to use the figures in Core Strategy Policy 9 restrictively, to the extent of saying that number of facilities and no more.
59. The County Council considers that there are still too many uncertainties, in the rapidly changing context of planning for waste management, for such a restrictive approach to be sustainable or reasonable. The uncertainties were acknowledged in the Core Strategy itself, in paragraphs 7.28 and 7.29 with regard to commercial and industrial wastes.
60. It is not as if paragraph 2.3 would lead to a lack of policy or 'free for all' in terms of provision. The number of facilities would be limited by proposals having to demonstrate that they were needed, either to deal with wastes arising within the county or, in accordance with Core Strategy Policy 8, would provide local, social and economic benefits sufficient to outweigh other sustainability criteria.
61. Paragraph 2.3 refers to Development Control Policy DC4, which itself refers to three relevant Core Strategy Policies. It is considered that there is consistency between the Site Allocations Policies, the Generic Development Control Policies and the Core Strategy.
62. A principle of the MWDF Core Strategy (CSD14) is that provision will be made for managing all of Cumbria's wastes within the county. This is expressed in Core Strategy Policy 8. Core Strategy Policy 9 quantifies this, by setting out the amounts of Cumbria's waste for which capacity will be provided (1 to 1.2 M

tonnes/year) and gives the numbers of sites for types of facilities that the Site Allocations Policies should seek to identify. Its paragraph 7.30 explains that, to provide flexibility, those Policies should try to identify more than the minimum numbers that are set out in the Core Strategy policy. In accordance with this, the Site Allocations Policies identify nearly twice as many sites.

63. In Site Allocations Policies 2 and 3, for Household Waste Recycling Centres and for waste treatment facilities, first preference and reserve sites are identified. Policy 1 sets out four circumstances when the reserve sites could be permitted.
64. The Core Strategy was written in 2007/8 and the County Council considers that experience since then confirms that the non-restrictive approach is appropriate. No one could have anticipated the strong Government support for anaerobic digestion schemes, which has led to a number of proposals coming forward. Another factor is that the very substantial increase in energy prices has been, at least partly, responsible for increased interest throughout the country, in new and/or more advanced energy from waste technologies.
65. These include landfill mining, gasification plants, plasma technologies and the production of synthesis gas, and biofuels, including aviation fuel. Facilities such as Mechanical and Biological Treatment plants are increasingly being regarded, and justified, as industrial production units rather than waste treatment. They take in what can be regarded as a lower carbon resource and from it turn out a number of products - feedstocks for plastics and metal recycling plants, compost, alternative aggregates and a fuel.

QUESTION 1.3

Does English Heritage consider the DPD is inconsistent with national policy?

66. English Heritage (EH) has confirmed (email 7 March 2012, passed to Programme Officer 8 March) that the submitted policies are considered to be sound. The representation by EH is basically that the text of the Site Allocations Policies document and supporting documents inadequately address historic environment issues.
67. The MWDF policy with regard to the historic environment is set out in Core Strategy Policy 4: Environmental assets. Those assets are listed in Core Strategy Boxes 3 and 4, which follow paragraph 3.44. References are made to features of national importance, but national policy is not repeated. There is also Generic Development Control Policy DC 11 and its paragraphs 5.12 to 5.15.
68. In response to the Regulation 28 representation about the Site Allocations Policies, the County Council amended chapter 5 of the Site Allocations Policies, parts of the Sustainability Appraisal and the Site Assessments Report, to include references to listed buildings and their settings before the documents were submitted. The changes between the Regulation 27 and 30 versions are highlighted in document LD199.
69. In the opinion of the County Council, these are factual editing changes which do not affect the substance or content of the Site Allocations Policies. The representation is not one that alleges "unsoundness".