

EXAMINATION OF THE KENT MINERALS AND WASTE LOCAL PLAN 2013-2030

EXTRACT FROM INSPECTOR'S REPORT 26th April 2016

(EXTRACT REGARDING SAFEGUARDING)

SAFEGUARDING

Main Issue:

Is the approach to safeguarding mineral resources and mineral and waste related development soundly based, appropriate for Kent, proportionate, consistent with national and local policy, and effective?

142. The subject of safeguarding of land appears in the submitted Plan under a number of policy headings:

- Policy CSM 5: Land-won Mineral Safeguarding
- Policy CSM 11: Safeguarded Wharves and Rail Depots
- Policy CSM 12: Safeguarding Other Mineral Plant Infrastructure
- Policy CSW 17: Safeguarding of Existing Waste Facilities
- Policy DM 7: Safeguarding Mineral Resources and Importation Infrastructure
- DM 8 Extraction of Minerals in Advance of Surface Development
- DM 14: Safeguarding of Transportation Infrastructure.

Minerals safeguarding

143. Policy CSM 5 states that economic mineral resources are safeguarded from being unnecessarily sterilised by other development by the identification of Mineral Safeguarding Areas (MSA) and Minerals Consultation Areas (MCA). It defines an MCA only adjacent to the strategic site for minerals at Medway Cement Works, Holborough (introduced by Policy CSM 3), but none relating to the other MSAs. This is not in accordance with the NPPF, which says that planning authorities should define MCAs based on MSAs. I consider it unsound. The omission can be rectified by a modification to the policy [MM5/8A] which states that MCAs will be identified covering the same area as the MSAs; and in supporting text that explains the approach to safeguarding generally [MM5/8].

144. National policy does not prescribe the method of identifying MSAs, but KCC have had regard to guidance provided in the Mineral Safeguarding in England good practice advice (MSEGPA) published by the British Geological Survey and the Coal Authority (2011). The MSAs have been identified having regard to the British Geological Survey Resource Maps, which as a starting point represent the best available geological data. The MSGPA recommends that where available, other

data should also be incorporated into the definition of MSAs, including information available from the industry.

145. The owners of Aylesford Quarry have provided the Council with information that shows that the silica sand resource is not workable, and that very limited reserves of building (soft) sand (between 150,000 – 200,000 tonnes) remain within the consented area. There is no reason to doubt that conclusion; and the Plan may be corrected by a modification [MMAC/1B] removing the quarry from the list of sites included in calculations of permitted silica sand reserves (Appendix C to the Plan). But it is nonetheless proposed to be included as a soft sand site [MMAC/1A]. Even though the amount of recoverable mineral may be fairly small, I consider it reasonable for the site to remain in the MSA.

146. The NPPF says that MSAs should be defined in relation to known locations of specific minerals resources of local and national importance so that they are not needlessly sterilised by non-mineral development. I appreciate that some minerals for which there is a limited identified demand – for example brickearth – are abundant or widespread in Kent. There is an argument for not including locations of these minerals in an MSA. But, as the MSEGPA states, the use of information from BGS resource maps largely eliminates the need for MPAs to make their own judgments on which mineral deposits are or may become of potential economic interest. MSAs should usually cover the whole resource.

147. Brickearth is not a mineral identified in the NPPF as requiring a stock of permitted reserves to be provided. However, it is analogous to brick clay, for which 25 years reserves are required to be maintained. It is reasonable that the same landbank should be maintained for brickearth. I appreciate that at present brickearth sourced from Kent is used for just 2 brickworks. But over the Plan period and beyond it is possible that demand could increase. In that context, I do not consider it unreasonable for the Plan to safeguard brickearth. The Plan is not unsound in that regard.

148. The MSEGPA says that safeguarding is not precluded by the presence of national and international designations. They have been identified for a different purpose and so should not be used as a proxy for minerals safeguarding. Against that background, it is right that areas protected for their natural history interest, for example, should not be excluded from an MSA.

149. Notwithstanding the limited opportunities to extract mineral in a wholly or mainly built-up area, the advice is that MSAs should usually be defined in such areas to highlight (for example) the potential for extracting minerals beneath regeneration projects and brownfield sites. It also reduces the need to alter the boundaries to take account of urban expansion. The inclusion of developed areas into MSAs / MCAs is therefore not unsound. However, I appreciate that their inclusion could present District Councils and potential developers with a significant administrative and financial burden. Therefore in the interests of practicality KCC has chosen to modify the originally proposed MSAs largely to exclude urban / built up areas. I consider this to be a matter of balance, but I am content for them to be redefined in this way for each individual District. Although contrary to the advice of MSEGPA, it is not contrary to national policy as set out in the NPPF.

150. Section 9 introduces mineral safeguarding maps which are bound separately. The revised maps for each District are to be included in the Plan document. These have been the subject of consultation as part of the Main Modifications publicity and while, as Policies Maps, they are not

before me for examination, provided that the Council makes the necessary amendments, the Plan will be effective and therefore sound. However, introductory paragraph 9.2.1 requires modification to reflect the changes [MM9/3].

151. Although Policy CSM 5, through the maps, identifies the areas to be safeguarded, it does not include the mechanism as to how it is to be implemented. That is included in Policy DM 7, which as submitted also applies to the safeguarding of importation infrastructure such as wharfs (covered by Policy CSM11). This sets out a number of alternative circumstances in which non-minerals development may be allowable (here referred to as “exemptions”), notwithstanding being located in an MSA. I agree with a number of representors who consider that, as submitted it is ineffective and imprecise as to its meaning and operation, and therefore unsound. Modification [MM7/3] covering the policy and the supporting text is necessary to overcome these failings.

152. In Policy DM 7 as submitted, exemption (1) relating to the mineral being able to be extracted satisfactorily prior to development is proposed to be explicitly linked to the specific policy that addresses that matter (DM 8 as submitted / DM 9 under proposed modifications).

153. Exemption (2) as submitted requires applicants to demonstrate that the mineral is either not of economic value or does not exist. That is replaced by a simple requirement that those scenarios should be demonstrated. To this is added a sensible new exemption relating to circumstances where the extraction would not be viable or practicable, potentially reducing the burden on applicants in situations (for example, where the site is clearly too small or unsuitable or has already been developed).

154. A new exemption (5) is added to cover the situation where material considerations indicate that the need for the development overrides the presumption for safeguarding. That allows a degree of flexibility to take account of other priorities. I agree with the Council that it is appropriate nonetheless that opportunities for prior extraction of minerals should be explored. This is not inconsistent. Indeed, to do otherwise could undermine the purpose of the relevant policy (Policy DM 8 as submitted / DM 9 as proposed to be modified).

155. Although as submitted the policy exempted “any sites identified in the local plan”, this is unclear as to its meaning. Proposed new exemption (7) adds clarity by saying that “a site allocated for development in the adopted development plan” will also not be subject to minerals safeguarding.

156. Given the limited weight that should be accorded to draft plan allocations, I agree with the Council not to include these within the list of exemptions. Similarly, while I accept that the policy must be proportionate, I do not consider it appropriate to include the replacement of buildings, including houses, and agricultural buildings in the list of exemptions. Even quite small developments can themselves have a disproportionate impact on the ability to extract minerals. The application of the policy to such developments would allow the policy of promoting mineral extraction prior to development to be more effective. The Policy does not affect permitted development rights.

157. Matters dealing with “importation infrastructure” in Policy DM 7 as submitted (eg wharves) is proposed to be placed within a new policy (“new” Policy DM 8). I consider that later in this report.

158. Overall, I take the view that these modifications largely overcome the concerns of a number of District Councils that the policy as submitted could frustrate adopted development plan policies. They would also allow flexible judgments to be made, balancing the merits of development proposals with the desirability of safeguarding minerals for future generations.

159. The proposed modification also adds the sites in the (future) MSP to those listed in Appendix C (sites included in landbank calculations for mineral working within the Plan period) as being safeguarded. As these sites are known to include mineral, they would in any event logically fall within the defined MSAs and MCAs and so their identification adds little to the policy. But it is not made unsound by this.

160. The modified supporting text to Policy DM 7 [MM7/3] includes new advice that proposals located within an MSA will usually need to be accompanied by a “minerals assessment”, prepared by the promoter, to include for example information about the mineral, and the timescale, practicability and viability of prior extraction. Guidance on such assessments is included in the MSEGPA. I appreciate that their preparation may represent a financial cost to potential developers, but they can bring to light information that may be important to the decision-making process.

161. The supporting text is also proposed to be altered to take account of the modifications to the policy. Together with the revised supporting text to Policy CSM5 [MM5/8], it sets out in broad and adequate terms the way in which it will be used, but the policy helpfully states that further guidance on its application and on the use of minerals assessments will be included in a Supplementary Planning Document (SPD). I consider that appropriate. It is not necessary for it to be referenced in the policy. The SPD is also intended to cover matters relating to the other safeguarding policies. The revised text includes the statement that the Mineral Planning Authority will work with District Planning Authorities and the promoters of development to assess the viability and practicability of prior extraction of the mineral resource.

162. The revised supporting text to Policy CSM 5 also indicates that the MSAs will be reviewed and updated as necessary at least every 5 years. The SPD will set out the matters to be taken into account in such reviews, but amongst them will be previously worked land; transport infrastructure; land within urban areas; proposed urban extensions and site allocations for non-minerals use in adopted local plans; the importance of mineral resources; and the accessibility of the mineral resource (ie whether it can be practically and viably worked). Consideration of these and other matters should ensure that the definition of the MSAs will take account of changing circumstances and priorities.

163. Overall, the modifications make Policies CSM 5 and DM 7 comprehensible, flexible and effective. The introduction of minerals assessments will place an onus on developers to provide reasons why the safeguarding should not prevail in any particular circumstance. But the omission of urban areas from the MSAs and the rationalisation of the criteria of Policy DM 7 should limit the number of assessments that have to be made; and the SPD should provide the necessary detail about how the process should work in practice.

164. Unfortunately, modification MM5/8 includes a number of minor errors. In particular, paragraph 5.5.2 says that Policy DM 7 also relates to the safeguarding of wharfs and rail depots, whereas this is proposed to be considered under (new) Policy DM 8. The description of the purpose

of Policy DM8 actually applies to the (new) Policy DM 9. I have taken the opportunity to correct these errors; and, with those minor alterations, I conclude that the modifications overcome the unsoundness I have identified.

Safeguarded Wharves & Rail depots

165. Policy CSM 11, as submitted (CSM 6 as proposed to be modified), includes a list of wharves and rail depots which are safeguarded for their use for the importation of minerals into Kent. This is in line with the NPPF which requires the safeguarding of existing, planned and potential rail heads, wharfage and associated storage. As indicated above, the way in which the safeguarding is to be implemented is included in Policy DM 7.

166. An additional site "Old Sun Wharf" is to be added to the list under MM5/9A. Though there is no wharf on this site at present, permission has in the past been granted for the construction of a maritime jetty for the importation of sand and stone by river. That permission expired in February 2015 without the jetty having been constructed. Nonetheless, the site must be regarded as having potential under the provisions of the NPPF. It would not be sound to exclude it. Another site "Red Lion Wharf" is retained in the list, despite reservations from some representors. That wharf has permission for full port operational use and is only conditioned for aggregate use. It too falls within the NPPF expectations of safeguarding; and similarly it would not be sound to exclude it.

167. Both sites lie within a key regeneration site identified in Gravesham Borough Council's Core Strategy (Policy CS03). I recognise that their safeguarding could have implications for the successful implementation of the regeneration strategy. But "new" Policy DM 8 [MM7/3A] (consistent with the proposed modification to "new" Policy DM 7 in relation to minerals safeguarding) includes an exception to the general presumption of safeguarding from incompatible development in the case of a site that has been allocated in the adopted development plan. Thus the safeguarding of these sites will not be prejudicial to the regeneration strategy.

168. There is some force to the argument that, as both sites are already allocated in the Gravesham Core Strategy, and as they are thereby exempt from the safeguarding by virtue of "new" Policy DM 8, there is an inconsistency in the Plan and they should not be listed in "new" Policy CSM 6 as being safeguarded. However, I take the view that it may be prudent to retain the safeguarding of the sites, if only to take account of any changes that might be made to future development plan allocations. It may be unlikely, but it is possible that the sites may at some time in the future be "de-allocated". If that were to happen, then they would not be covered by the safeguarding policy. In the meantime, the District Council's regeneration policies are not in any way compromised. I do not believe that the Plan is unsound by reference to this matter.

169. It is clear from the context that "allocated in the adopted development plan" refers to the plans produced by District planning authorities, and not the mineral and waste planning authority. The policy applies only to safeguarding from incompatible development. Any allocation by MPA / WPA would in any event be consistent with the safeguarding.

170. Policy CSM 11 is to be revised to include Old Sun Wharf and renumbered as CSM 6 [MM5/9A]. The opportunity is also taken to correct the names of some other sites and to provide a

revised supporting text [MM5/9]. Consequential revisions are also necessary to the schedule of Policies Maps showing the safeguarded wharfs and rail transportation depots in Section 9 [MM9/1, MM9/1A, MM9/2].

171. Changes to the Key Diagram and to the Policies Maps as a result of these modifications and to correct factual errors (for example, redefining the boundary to East Quay, Whitstable) are necessary. These have been the subject of consultation as part of the Main Modifications publicity. While the Policies Maps and other plans are not before me for examination, provided that the Council makes the necessary amendments to them in order to reflect the MMs, the Plan will be effective and therefore sound.

172. The relevant parts of Policy DM 7 are set out and revised in the new Policy DM 8 [MM7/3A] as Safeguarding Minerals Management, Transportation Production and Waste Management Facilities. This includes the “exemption” where material considerations indicate that the need for the development overrides the presumption for safeguarding. This does not, in my view, weaken the basis for safeguarding important infrastructure such as wharfs, but simply recognises that in some circumstances other considerations may outweigh the need to safeguard.

173. The modification also incorporates a number of revisions which overcome various aspects of unsoundness, principally by means of clearer wording, thereby ensuring effectiveness. In particular, the exception that requires a demonstration of irreversible obsolescence is replaced by a test of viability.

174. I have considered whether the inclusion of “changes of use” as an exemption (criterion 1) is appropriate, bearing in mind that a change of use could potentially affect the ability of a wharf to continue to operate effectively. But I am satisfied that the expression is qualified by “minor”. I consider that full phrase should logically read: “minor extensions and changes of use of buildings ...” rather than “and buildings ...”. I have amended the text of the modification accordingly.

175. Policy CSM 11 as submitted also seeks to protect safeguarded sites from new development in the vicinity that may be sensitive to importation activities; and which may constrain access. So, for example, new residential development close by may be sensitive to dust and noise and so may prejudice the effective working of a facility. The policy requires applications for new development “adjacent to or opposite” the safeguarded site to demonstrate that they would not jeopardise it. I consider that this wording is vague and ineffective and therefore unsound.

176. This is addressed by an important modification (to “new” Policy CSM 6, contained in MM5/9A) which provides a new process whereby Local Planning Authorities would be required to consult with the MPA and take account of its views before making a planning decision on non-mineral related development proposed at, or within 250m of safeguarded minerals transportation facilities (other than “exempt” development listed in “new” Policy DM 8). In that way, an explicit balance may be drawn in planning decisions, taking account of the safeguarding issue. The safeguarding SPD proposed to be produced (see above) is also intended to apply to this policy and will provide a fuller description as to how the process of consultation and decision-making is to work in practice.

177. The Council acknowledges that there is no evidential basis for the distance of 250m proposed to be introduced by the modifications. Nonetheless, setting a specific distance has the advantage of bringing certainty to the process. So various are the variables involved that it may not be possible to justify any specific distance for all sites, but 250m strikes me subjectively as being a reasonable and not excessive distance. I am satisfied that the modification proposed is not unsound.

178. The modifications to Policies CSM 11 and DM 7 include some that are significant and some which do little more than add clarity. As submitted, these policies were ineffective and therefore unsound. As modified, as “new” policies CSM 6 and DM 8, I am satisfied that the elements of unsoundness would be overcome and that they provide an appropriate basis for safeguarding mineral wharfs and rail depots.

Safeguarding other mineral plant infrastructure

179. The NPPF requires MPAs to safeguard existing, planned and potential sites for concrete batching, the manufacture of coated materials, other concrete products and the handling, processing and distribution of substitute, recycled and secondary aggregate material. This is addressed in the submitted Plan under Policy CSM 12. However, although mentioned in the supporting text, the policy does not explicitly seek to safeguard “planned and potential” facilities. Indeed, it refers to sites being safeguarded “for their ongoing use”, which assumes pre-existence. The policy is therefore not fully compliant.

180. So far as potential sites are concerned, I consider that it would be unreasonable and impractical to safeguard all sites that possessed some potential for use for these kinds of facilities. For example, a substantial proportion of industrial sites would possess potential; and there would be very little practical benefit in safeguarding such a large number. Rather, I consider that it would be worthwhile only if certain sites had been brought to the attention of the Council as having specific potential. I am not aware of any such sites. I therefore do not find the Plan unsound in omitting reference to potential sites.

181. Although this Plan does not allocate any sites for these purposes, it is possible that the forthcoming MSP document may do so. It would be appropriate, therefore, for the policy to be modified to incorporate a reference to the safeguarding of future allocated sites, in the same way as “new” Policy CSM 6 (originally CSM 11) does. I have amended the wording of a modification to that policy [MM5/12A] accordingly, in the interests of consistency.

182. The policy sensibly recognises that many safeguarded facilities will be on sites (eg a quarry) which themselves will have a limited life, and so limits the safeguarding to the life of the host site. That is not unsound. But in the case of the loss of permanent facilities to other uses, the policy and its supporting text seeks the provision of suitable replacement capacity elsewhere. In that way, capacity can be maintained, while allowing some flexibility. That too is not an unsound approach, even though it is not specifically promoted in the NPPF.

183. As part of the broader reorganisation of the safeguarding policies, Policy CSM 12 is re-numbered as CSM 7 [MM5/12A], together with revised supporting text [MM5/12]; and the section dealing with the provision of replacement capacity is transferred to “new” Policy DM 8 [MM7/3A]

and its supporting text, so that the approach will be consistent with that applying to wharfs and rail heads.

184. Under MM5/12A, “new” Policy CSM 7 adds a section comparable to that introduced into “new” Policy CSM 6 concerning the process of consultation and decision-making by Local Planning Authorities dealing within applications on, or near safeguarded sites. That too refers to a distance of 250m. I have considered that matter above. I note that the MM includes a minor error, in that it refers to a consultation with the Waste Planning Authority when the Mineral Planning Authority is meant. I have corrected the modification.

185. Overall, subject to the correction referred to above and the policy being extended to safeguard allocated sites, I am satisfied that, as modified, it is sound.

Safeguarding of existing waste facilities

186. This topic is addressed under Policy CSW 17 which, under the broader re-organisation of safeguarding policies in the Plan, is re-numbered CSW 16 [MM6/13A].

187. In contrast to the approach of the NPPF with respect to minerals, the NPPW does not include any reference to the safeguarding of existing or proposed waste sites, in the sense of protecting them from development that may inhibit their development or effective use. Nonetheless, waste management is an important element of infrastructure that would benefit from reasonable and proportionate protection. The inclusion of a waste facilities safeguarding policy into the Plan is not intrinsically unsound.

188. Many waste management sites are by their nature temporary (eg waste disposal and sites associated with other temporary operations). It would not be reasonable to extend safeguarding to such sites. “New” Policy DM 8 makes it clear that the safeguarding would not apply if the facility is not viable or incapable of being made so.

189. As submitted, Policy CSW 17 includes similar provisions to CSM 12 Safeguarding other mineral plant infrastructure and DM 7 Safeguarding mineral resources and importation infrastructure, relating to the need for replacement capacity to be provided in the event that development affecting the safeguarded site were to reduce it. As part of the broader reorganisation of the safeguarding policies, all these provisions are incorporated into “new” policy DM 8.

190. Although I appreciate that the Plan seeks, so far as possible, for Kent to be self-sufficient with respect to minerals and waste facilities and for the MPA / WPA to be able so far as possible to exercise control over them, I take the view that the requirement for replacement capacity to be in the county is unjustified. In some circumstances, it may be more practical and indeed sustainable for provision to be made in a neighbouring authority’s area where it serves the same market. From the further consultation responses received, this approach does not appear to have raised any issues in any of the neighbouring authorities. In order to address this issue, reference to Kent in the third criterion of Policy DM 8 is removed by a modification [FM11]. In the interests of clarity I have added reference to the facility serving the same market.

191. Consistent with proposed “new” policy DM 8, a section to Policy CSW 17 (“new” policy CSW 16) is added to make it comparable to that introduced into “new” Policy CSM 6 and “new” Policy

CSM 7 concerning the process of consultation and decision-making by Local Planning Authorities dealing with applications on, or near safeguarded sites. That too refers to a distance of 250m. I have already considered the principle of the specified distance above. I am satisfied that it may also be employed with respect to waste facilities.

192. The supporting text to Policy CSW 17 (“new” Policy CSW 16) is modified to bring it into line with modifications to the policy and to the broader reorganisation of the safeguarding policies within the Plan [MM6/13].

193. Subject to the modifications, I am satisfied that the policies of the Plan relating to the safeguarding of waste facilities are sound.

Extraction of minerals in advance of surface development

194. The NPPF requires MPAs to set out policies to encourage the prior extraction of minerals where practicable and environmentally feasible, if it is necessary for non-mineral development to take place. This is addressed in the Plan under Policy DM 8.

195. As submitted, the policy says that permission will be granted for “mineral extraction that is in advance of permitted surface development”. But this would not apply to development which incorporated extraction together with surface development. It is too restrictive and thereby ineffective and unsound.

196. The shortcomings may be overcome by a modification to the policy and its supporting text [MM7/3B], the latter explicitly linking the operation of the policy to development proposed in a Minerals Safeguarding Area, and to the Safeguarding Mineral Resources Policy (“new” Policy DM 7) in order to provide context. As part of the general reorganisation of the policies in the Plan, it is renumbered as Policy DM 9.

197. When read together with the modified supporting text, it is clear that the development being referred to is non-mineral development and that the aim of the policy is to prevent needless sterilisation of resources in line with the NPPF. There is no need to further amend the policy in the interests of soundness.

Safeguarding of transportation infrastructure

198. This topic is addressed under Policy DM 14. Although described as a safeguarding policy, in effect it does little more than identify the effect on aviation, rail, river, sea, other waterways and road transport as a consideration in minerals and waste development proposals. Where there would be a severe impact, permission would be refused; and elsewhere mitigation would be sought. Under a proposed Additional Modification, “severe” is proposed to be changed to “unacceptable”, and the Policy is re-designated as DM 15, but these are not matters that relate to soundness so I make no further observations.