



The Planning Inspectorate

Report to Leeds City Council

by Andrew S Freeman BSc(Hons) DipTP DipEM FRTPI FCIHT MIEnvSc

an Inspector appointed by the Secretary of State for Communities and Local Government

Date 28th August 2015

PLANNING AND COMPULSORY PURCHASE ACT 2004 (AS AMENDED)

SECTION 20

**REPORT ON THE EXAMINATION INTO THE
LEEDS NATURAL RESOURCES AND WASTE LOCAL PLAN
POLICIES MINERALS 13 AND 14**

Document submitted for examination on 12 February 2015

Examination hearings held on 27 and 28 May 2015

File Ref: PINS/N4720/429/12

ABBREVIATIONS USED IN REPORT

Examination documents (referenced in parentheses in the text) are prefixed by the letters CD, DC, EX or PM.

AA	Appropriate Assessment
AM	Additional Modification
ha	hectares
LDS	Local Development Scheme
MM	Main Modification
NPPF	National Planning Policy Framework
Para	Paragraph
PPS	Planning Policy Statement
SA	Sustainability Appraisal
SCI	Statement of Community Involvement
SCS	Sustainable Community Strategy

Non-Technical Summary

This report concludes that the Leeds Natural Resources and Waste Local Plan Policies Minerals 13 and 14 provides an appropriate basis for the planning of the city over the next 12 years providing a number of modifications are made to the Plan. Leeds City Council has specifically requested me to recommend any modifications necessary to enable the Plan to be adopted. All the modifications to address this were proposed by the City Council and I have recommended their inclusion after considering the representations from other parties on these issues. The Main Modifications can be summarised as follows:

- Safeguarding rail sidings at Whitehall Yard;
- Extending the allocated site at Skelton Grange Road, Stourton (Site 20) to include land to the southeast;
- Restricting the allocation of the site at Bridgewater Road South (Site 21) to employment activities which will utilise movements of mineral freight by rail; and
- Identifying Unitary Development Plan Policy T31 as a policy that will be, in part, superseded by Policy Minerals 13.

Introduction

1. This report contains my assessment of the Leeds Natural Resources and Waste Local Plan Policies Minerals 13 and 14 in terms of Section 20(5) of the Planning & Compulsory Purchase Act 2004 (as amended). It considers first whether the Plan's preparation has complied with the duty to co-operate, in recognition that there is no scope to remedy any failure in this regard. It then considers whether the Plan is compliant with the legal requirements and whether it is sound. The National Planning Policy Framework (Paragraph 182) makes clear that, to be sound, a Local Plan should be positively prepared, justified, effective and consistent with national policy.
2. The starting point for the examination is the assumption that the local authority has submitted what it considers to be a sound plan. The basis for my examination is the Publication Draft Policies Minerals 13 and 14 dating from November 2014 (CD1/1). This is the same as the document upon which consultation took place between 7 November and 19 December 2014.
3. My report deals with the main modifications that are needed to make the Plan sound and legally compliant and they are identified in bold in the report (**MM**). In accordance with Section 20(7C) of the 2004 Act, the Council requested that I should make any modifications needed to rectify matters that make the Plan unsound/not legally compliant and thus incapable of being adopted. These main modifications are set out in the accompanying Appendix and Annexes (A and B).
4. The main modifications that are necessary for soundness and/or legal compliance all relate to matters that were discussed at the examination hearings. Following these discussions, the Council prepared a schedule of proposed main modifications (CD4/2) and up-dated the sustainability appraisal (CD4/3). These have been subject to public consultation for six weeks. I have taken account of the consultation responses in coming to my conclusions in this report.

Assessment of Duty to Co-operate

5. Section 20(5)(c) of the 2004 Act requires that I consider whether the Council complied with any duty imposed on them by Section 33A of the 2004 Act in relation to the Plan's preparation. In this regard, the Council's "Duty to Co-operate Statement" (CD1/10) provides a detailed account of actions taken. A summary of actions is to be found in the document "Summary of how the Duty to Cooperate has been satisfied" (EX/4).
6. Meetings have taken place with cross-boundary authorities and other relevant agencies with an interest in the strategic movement of freight and other matters. The Council held regular meetings with these bodies through the Leeds City Region Strategic Planning (Duty to Co-operate) Group. All the adjoining authorities were represented along with the Environment Agency, Highways Agency (now Highways England), Office of Rail Regulation and Network Rail.
7. The Council has also considered evidence from across the region including from Hull City Council, Wakefield Council and Associated British Ports. Consistency has been achieved with policies and plans of bodies such as the

Canal and River Trust, the Marine Management Organisation, the Crown Estate and the Department of Transport. The Commercial Boat Operators' Association have been partners with the Council throughout the plan preparation process. In addition, meetings have taken place with owners affected by the Plan's policies.

8. I conclude that the Council has worked collaboratively with other authorities and bodies and has co-operated effectively through a continuous period of engagement. The local planning authority has fulfilled the duty to co-operate with regard to the Leeds Natural Resources and Waste Local Plan Policies Minerals 13 and 14.

Assessment of Legal Compliance

9. My examination of the compliance of the Plan with the legal requirements is summarised in the table below. I conclude that the Plan meets all the requirements identified. However, there is a compliance issue with regard to superseded policies.
10. Regulation 8(5) of the Town and Country Planning (Local Planning) (England) Regulations 2012 states that, where a local plan contains a policy that is intended to supersede another policy in the adopted development plan, it must state that fact and identify the superseded policy. In the present case, Unitary Development Plan Policy T31 would be partly superseded by Policy Minerals 13 (in conjunction with Core Strategy Policies SP1 and EC1a). However, through an omission, the superseded policy has not been identified. This matter would be corrected under main modification **MM3**.

LEGAL REQUIREMENTS	
Local Development Scheme (LDS)	The Local Plan is identified within the approved LDS February 2015 Update (CD2/3) which sets out an expected adoption date of Summer 2015. The Local Plan's content and timing are compliant with the LDS.
Statement of Community Involvement (SCI) and relevant regulations	The SCI was adopted in February 2007 (CD2/2) and consultation has been compliant with the requirements therein including consultation on the post-submission proposed "main modification" changes (MM).
Sustainability Appraisal (SA)	SA has been carried out and is adequate.
Appropriate Assessment (AA)	The need or otherwise for AA was reviewed within the latest Sustainability Appraisal document (CD1/7). This document together with the November 2010 Screening Determination (CD1/8) indicates why AA is not necessary. ¹

¹ The document "Sustainability Appraisal – Addendum 4: SA of Policies Minerals 13 and 14, June 2015" (CD4/3) indicates why AA of the Plan as proposed to be modified by the Main Modifications (CD4/2) is not necessary.

National Policy	The Local Plan complies with national policy except where indicated and modifications are recommended.
Sustainable Community Strategy (SCS)	Satisfactory regard has been paid to the SCS.
2004 Act (as amended) and 2012 Regulations.	The Local Plan complies with the Act and the Regulations.

Assessment of Soundness

Preamble

11. In January 2013, Leeds City Council adopted its Natural Resources and Waste Local Plan. However, the adoption of two of the policies was challenged in the High Court. The policies are Minerals 13: Transport Modes; and Minerals 14: Criteria for Assessing Alternative Development on Protected Wharves and Rail Sidings. The relevant challenge was allowed and Policies Minerals 13 and 14 were remitted back for reconsideration.
12. The remitted policies are the subject of this report. The policies have been amended and the evidence based up-dated following the decision of the court and further consideration by the Council. Thus the policies are different from those that were previously examined. They have been the subject of further public participation including formal consultation between 7 November and 19 December 2014. The revised policies and supporting text are to be incorporated into a consolidated adopted version of the Natural Resources and Waste Local Plan.
13. I have considered all relevant matters including regard to national policies and advice, principally that set out in the National Planning Policy Framework (CD3/05). In this regard, and when testing soundness, it is necessary to consider whether the Plan has been positively prepared.
14. For my part, I find that the Leeds Natural Resources and Waste Local Plan Policies Minerals 13 and 14 has been positively prepared and is sound in that regard. Policy Minerals 13 has the positive objective of ensuring that there will be an appropriate supply of sites where the movement of freight by rail or canal can be achieved. Related economic activities are encouraged. The avoidance of unacceptable sterilisation is specifically catered for and permissible under the terms of Policy Minerals 14.
15. Additionally, the Plan will be subject to the presumption in favour of sustainable development (Adopted Natural Resources and Waste Local Plan (CD1/18), General Policy 1). This confirms that the Council will take a positive approach when considering development proposals. Planning applications that accord with the policies in the Plan will be approved unless material considerations indicate otherwise.

Main Issues

16. Taking account of all the representations, written evidence and the discussions that took place at the examination hearings, I have identified two main issues upon which the soundness of the Plan depends.

Issue 1 – Whether appropriate provision has been made for the safeguarding and allocation of sites that will support the movement of minerals by rail and water as well as associated employment opportunities

Whitehall Yard

17. Paragraph 143 of the National Planning Policy Framework (CD3/5) states that, amongst other things, local planning authorities should safeguard existing, planned and potential railheads and certain rail links in preparing local plans. In this regard, there are existing sidings at Whitehall Yard. These were considered for safeguarding at an earlier stage of the plan making process. However, following consultation with Network Rail (DC1/38, Page 93), there were doubts about the on-going suitability of Whitehall Yard for use by modern rail vehicles. Conflict with the use of Leeds station was perceived as an additional problem. The safeguarding was not progressed.
18. Subsequently, an aggregate company with its own rail division expressed interest in the site and demonstrated how trains could be accommodated. In addition, as the site is designated as a Strategic Freight Site, Network Rail is obligated not to prejudice future rail freight use where viability has been demonstrated (PM13/1, Appendix 1).
19. In the circumstances, and to be consistent with national policy, the sidings at Whitehall Yard should be safeguarded. This would be effected through main modifications **MM1 and MM4**.

Skelton Grange Road, Stourton

20. Under the Leeds Natural Resources and Waste Local Plan Policies Minerals 13 and 14, land at Skelton Grange Road, Stourton (Site 20) would be allocated for provision of a new canal wharf and associated employment activities which would utilise movements of freight by canal. However, planning permission for wharfage on adjoining land to the southeast has recently been granted. The approved scheme would form Phase 1 of a plan that includes Site 20 as Phase 2.
21. The adjacent Aire and Calder Navigation is a Priority Freight Route. Extension of the allocation to cover the whole site would be consistent with plans to promote greater freight activity on the Navigation. Allocation of the wider site would accord with the national policy of allocating sites to promote development (National Planning Policy Framework (NPPF), Para 157). It is an action that would have stakeholder support (PM13/2). In addition, under the terms of Policy Minerals 13, safeguarding would be extended to the whole site in line with Paragraph 143 of the NPPF. Accordingly, the extent of the allocation would be varied under main modification **MM5**.

Bridgewater Road South

22. It is proposed to allocate land at Bridgewater Road South (Site 21) for the provision of new rail sidings and associated employment activities which would utilise movements of freight by rail. This description would include container traffic. However, the evidence indicates that, inherently, the site is not suited to any volume of traffic of this nature (CD1/13, Appendix 3). Such use would not be justified, a point conceded by the City Council. On a preliminary matter, therefore, it is proposed to restrict the allocation to employment activities which will utilise movements of *mineral* freight by rail. Main modification **MM2** refers.
23. As to the allocation, as proposed to be modified, I am of the opinion that increased transportation of mineral freight by rail would help minimise the number of heavy goods vehicles travelling on the road network. Typical benefits are identified in the evidence base (CD1/44). In my judgement there would be considerable environmental and other advantages. There would be a modal shift that would accord with national policies supporting sustainable development and sustainable transport (see, for example, NPPF Paras 29, 31 and 41). In addition, there would be accord with Policy EN7 of the Leeds adopted Core Strategy (CD2/1) whereby the Council will seek to identify opportunities to ensure that aggregates can be transported by non-road based freight.
24. A further relevant point is the shortage of rail-related sites. Indeed, the Council's evidence states that Site 21 is the only site available in Leeds that has the potential for unloading of the trains that can bring in marine-won aggregate (PM13/1, Para 8.8). As such, I appreciate the Council's desire to allocate the Bridgewater Road South site and to try and ensure that it *will* be used (and not *can* be used) in connection with the movement of mineral freight. This is in circumstances where the site is linked by rail to the East Coast and I acknowledge the feasibility of importing marine-won aggregate.
25. Be that as it may, Site 21 is a large site extending to 7.51 ha.² Under the provisions of the Plan, and unless alternative development could be justified under Policy Minerals 14, the whole of the site would be reserved for the proposed use throughout the Plan period or until the policy were reviewed. Whilst it is necessary to take account of longer term requirements (NPPF, Para 157), the realities of achieving the envisaged development must also be considered (NPPF, Para 154). Planning policies should avoid the long term protection of sites allocated for employment use where there is no reasonable prospect of the site being used for that purpose (NPPF, Para 22).
26. At the examination hearings, I was told that there are plans to develop an aggregates, asphalt and concrete railhead complex on part of the site. In this regard, a site with an area of 3.1 ha (7.7 acres) has been identified as potentially meeting the company's needs (PM13/3a). A site of this order of size is seen by opponents of the allocation as adequate to meet all likely future needs including those relating to growth in rail-borne traffic.
27. In addition, I note that a buffer would need to be provided between development on the allocated site and proposed residential development to

² As advised at the Examination Hearings

the north (CD1/16, Page 11). In my view, rather than encroaching into the residential allocation, it would be sensible to provide a buffer within the Site 21 allocation where there is likely to be "spare" land. However, an appropriate solution will emerge as the Aire Valley Area Action Plan progresses.

28. Other constraints include a main sewer and the narrow and pointed nature of the southeastern end of the site. These are factors that are likely to affect the aggregates, asphalt and concrete railhead development but would need to be taken into account in any re-configuration allowing for other users.
29. For my part, I note that the Council's case is not dependent upon growth in the transportation of land-won aggregate by rail. Although the carriage of aggregate by rail is seen as experiencing long-term structural growth and is forecast to increase by something between 11 and 28%,³ it is the importation of marine-won sand and gravel by rail that is the main justification for the allocation. Transportation by rail would bring the environmental benefits noted above. In addition, there would be a secure supply of concreting aggregate, an aggregate that is not indigenous to the Leeds region.
30. The potential to deliver marine-won aggregate into the Yorkshire and Humberside Region has been the subject of a report, the "Marine Aggregates Study" (CD1/28). The case for importing some 2 million tonnes of marine-won aggregate a year was examined. Based on population, I was told that one-sixth of this amount (333,333 tonnes) would be needed in Leeds although Leeds could also import a larger amount and export the surplus to other parts of the region. In addition, and under the terms of its Core Strategy, the Council is following a "Planning for Growth" agenda. The needs of the city could well be greater than 333,333 tonnes.
31. The Marine Aggregates Study considers a number of scenarios including the possibility of a major new operator entering the market in the short term (described at the examination hearings as "not at all likely") and one of the major aggregate companies developing a large scale marine aggregate facility (with a capacity of 300,000 tonnes a year or more) in the medium to longer term. On the scale of contribution and timing, the study concludes that "...in 20 years' time there may be one or more such operations active in the region" (CD1/28, Page 11).
32. At the examination hearings, I was told by an industry representative that development by an existing major aggregates company in the medium to long term was "inevitable". A development with a throughput of 300,000 tonnes a year was described as "likely and realistic". The Council, for its part, stressed that a new operator could easily enter the market. A possible pre-mix concrete operation was given as an example.
33. There remains the question of the land-take that would be associated with a facility handling marine aggregate. The Marine Aggregates Study states that, where processing and value added manufacture is undertaken, a large throughput (some 500,000 tonnes a year) would be expected and a 5 ha site would be required (CD1/28, Para 7.2.2). Pro-rata, I estimate that a facility with a capacity of 300,000 tonnes a year would require a site of 3 ha. Based

³ PM13/3, Para 2.22

on evidence given at the examination hearings, a handling-only facility would require approximately 1.6 to 2.0 ha (4 to 5 acres) of land.

34. In the light of the evidence, I would make the following observations:

- Site 21 has an area of 7.51 ha.
- Site 21 is connected by rail to the East Coast. It would be feasible to use this connection for the movement of marine-won aggregate.
- In the short term, there are definite proposals for an aggregates, asphalt and concrete railhead complex on part of the site. This would have a land-take of some 3.10 ha.
- In the medium to long term, there is every likelihood of a facility utilising the movement of marine-won aggregate. A typical handling-only facility would require some 1.6 to 2.0 ha. A typical manufacturing complex would require approximately 3 ha.
- The land-take associated with the above developments would be in the approximate range 4.70 to 6.10 ha. In addition, allowance would need to be made for constraints such as a buffer separating development from housing to the north.
- There is the less definite prospect of a further operator entering the market. This would result in the demand for yet more land.
- Demand related to long-term structural growth in the carriage by rail of land-won aggregate is a further factor.

35. I find that the importation into Leeds of rail-borne marine-won aggregate would be highly desirable and in line with policy objectives. There is a reasonable prospect that the allocated site would be used for the stated purposes. It is entirely sensible for the Council to anticipate the emerging requirement and to plan for the future of the city in this way. The allocation of a site of 7.51 ha is justified by the evidence. It would not be appropriate to reduce the site area to 3.10 ha (or 2.80 ha – 7 acres) as sought by representors.

Issue 2 – Whether there are appropriate provisions regarding alternative development on protected wharves and rail sidings

36. Policy Minerals 14 sets out criteria for assessing alternative development on protected wharves and rail sidings. Criterion 3 of the policy allows for a demonstration that a sufficient supply of sites will remain in the district, readily available and of at least the same functional capability. Concern has been raised at the wording of these tests and the lack of clarification within the supporting text.

37. For my part, I do not find that the policy is unsound. I appreciate that there may be differences of opinion about the way the terms are interpreted. Councils and applicants often argue about such matters. However, I cannot legislate for the way policies are interpreted. In my opinion, the policy

wording presents a sound and reasonable basis for testing exceptions to the provisions of Policy Minerals 13 in a consistent way.

38. On a related point, Criterion 4 as proposed to be modified (Additional Modification AM4) would require an applicant to conclusively demonstrate, through the provision of current and forecast marketing evidence, that a site is unlikely to be used for freight purposes. It may be that "conclusively" adds little to the test. The requirement would be to present evidence that satisfies the Council. However, I do not consider that inclusion of "conclusively" makes the Plan unsound. There is no need for a main modification in this regard.
39. I appreciate that a site may be unsuitable for a variety of reasons. However, I do not see this as a reason for dropping the need for marketing evidence. Indeed, the marketing evidence is a mechanism by which the unsuitability of a site for a wide manner of reasons could be demonstrated. Again, no main modification is necessary.

All Other Matters

40. I have considered all other matters raised in the representations. However, they do not require any further main modifications to the Plan.

Overall Conclusion and Recommendation

41. The Plan has a number of deficiencies in relation to soundness and/or legal compliance for the reasons set out above which mean that I recommend non-adoption of it as submitted, in accordance with Section 20(7A) of the 2004 Act. These deficiencies have been explored in the main issues set out above.
42. The Council has requested that I recommend main modifications to make the Plan sound and/or legally compliant and capable of adoption. I conclude that with the recommended main modifications set out in the Appendix the Leeds Natural Resources and Waste Local Plan Policies Minerals 13 and 14 satisfies the requirements of Section 20(5) of the 2004 Act and meets the criteria for soundness in the National Planning Policy Framework.

Andrew S Freeman

INSPECTOR

This report is accompanied by the Appendix containing the main modifications. The additional rail siding site at Whitehall Yard (Site 13) is illustrated in Annex A. The modified boundary of the wharf at Skelton Grange Road, Stourton (Site 20) is illustrated in Annex B.