

Leeds Natural Resources and Waste DPD –
Public Examination

Address for correspondence

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Date: 14 December 2011

David Feeney
Head of Forward Planning & Implementation
Leeds City Council
(by email)

Dear David

**Natural Resources and Waste Development Plan Document
Examination into the Soundness of the Leeds Resources and
Waste DPD**

At the conclusion of last Wednesday's Hearing, the Inspector agreed to reflect on a number of unresolved issues before deciding whether or not to invite you to take further action. Having done that he has now asked me to write to you, setting out the conclusions of his deliberations.

1 Proximal development

PPS1 encourages the efficient use of mineral resources and in non-unitary areas recommends the inclusion of Minerals Consultation Areas in minerals plans. This has a dual function of alerting the development industry, as well as the district planning authority, to the presence of recoverable minerals on adjacent land and the fact that the protection of the ability to optimise the extraction of this resource will be a significant material consideration when considering a planning application for development on such land. Additionally, Policy Minerals 2 says that "minerals resources will be protected from development which could sterilise them for future use". However, the inclusion of Minerals Consultation Areas in Unitary plans is not mandatory. The absence of such areas could nevertheless result in developers unwittingly bringing forward development proposals that could conflict with future mineral extraction.

In this context the Inspector considers the inclusion of 'stand-off' areas, backed by an appropriate policy, to be the preferred solution. However, although he considers the inclusion of such areas in unitary plans to be preferable, providing the Council introduces a system that alerts its development control officers to the presence of minerals on appropriate adjacent sites and proceeds with its proposed amendment to paragraph 3.23 (Post Submission Schedule of Changes No. 10), he does not consider the exclusion of proximal development from the plan to be unsound. Unless you propose to amend the plan to include 'stand-off' areas, I would be grateful if you would confirm in writing that before the plan is adopted an appropriate notation

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identifying 'stand-off' areas around all safeguarded minerals sites (including transport sites) will be included on the Council's CAPS system.

2 Safeguarding sand and gravel resources within the urban area.

At the Hearing it was agreed that in addition to coal, only sand and gravel deposits were likely to offer possibilities for extraction within the urban area, thereby justifying their safeguarding for future exploitation. Appendix 1 to the Council's response for the 'Rounding off Session' explains the criteria you used to define Mineral Safeguarding Areas (MSA's), pointing out that the three purposes of MSA's are to

- Prevent "proven resources" being needlessly sterilised.
- Encourage prior extraction when practicable, where non mineral surface development is proposed.
- Alert non-mineral developers to the presence of valuable mineral resources, directing them to relevant policies.

Unfortunately the evidence base is not detailed and relies on the information contained on the British Geological Survey Maps (BGSMS). In particular there is no detailed assessment of where mineral extraction is likely to be practicable or economic. As well as outlining the extent of sand and gravel deposits in the rural area, the BGSMS indicate the presence of sand and gravel within the urban area. For consistency these areas ought to be identified on the Mineral Safeguarding Area Map and accompanied by an appropriate criteria based policy similar to that which refers to the recovery of coal present on major development sites.

Whilst the Inspector accepts that it will not be practicable to remove sand and gravel from many sites within the urban area where it is found, in the absence of firm evidence that demonstrates that it is not practicable to remove sand and gravel from any location within the urbanised part of the Aire Valley where it is found, then the omission is not justified and the plan is unsound in this respect because it does not comply with national guidance. His site inspections, which were far from comprehensive, nevertheless suggest that there could be sites in the Lower Aire Valley of sufficient size to facilitate the economic removal of sand and gravel, if the quality of the resource is proven.

Additionally, although the Inspector accepts all of your points about after use and flooding, these are not justifications for excluding the urban deposits of sand and gravel from the safeguarding area but could be a part of a criteria based policy that identifies the circumstances where sand and gravel would or would not be expected to be extracted from under urban development sites. Evidence from his site visits suggest that not all sites, if commercially exploited for sand and gravel, would result in the creation of a void below the water table that required back-filling.

The Inspector therefore invites you to either amend the sand and gravel Minerals Safeguarding Area Map to include all of the unworked deposits in the Aire Valley and to include an appropriate policy(s) to encourage the practicable recovery of this mineral resource or provide robust evidence that demonstrates that there are no potential sites within this area where such an outcome would be practicable. The criteria in Policy Minerals 8 could be used but you could add additional or use different criteria if you considered them to be more appropriate.

3 The protection of wharves and rail sidings.

The principle of Policy Minerals 14 is supported by national policy and the evidence suggests that there is interest in the development of canal and rail freight terminals that could handle minerals and other bulky products. However, there is little evidence, other than in the case of the remaining canal wharf that is in use (adjacent to site 18) and this is away from the main Leeds urban area, to suggest that bulky freight could be economically transported by canal to or from the urban core of Leeds. In this context, the suggested amendment at paragraph 3.30 to review the policy is appropriate and the Inspector agrees that in the circumstances, a period of at least 5 years is necessary to establish whether or not the plan's aspirations in this respect are economically viable.

Whilst there may be a much larger network of wharves in London than in Leeds, many of the wharves in London are currently used and the Thames as a navigable waterway is far superior to the Aire and Calder canal. The plan proposes to safeguard or allocate 5 wharves and 4 rail sidings, only two of which are currently in use. There are also other potential Transport sites that are not safeguarded by the plan. The evidence before this examination is not sufficiently compelling to justify the long term safeguarding of all of these sites irrespective of other considerations.

Nevertheless, the plan says nothing about how applications for other forms of development on these sites, some of which may be equally valuable to the future development and well being of the city, as a canal wharf or rail siding, will be judged. The evidence base does not support a total presumption against other forms of permanent development on these sites. The Policy is therefore not justified and the plan in this respect is unsound. The Inspector therefore invites you to either amend Policy Minerals 14 or to introduce a new policy, to provide a set of criteria which decision makers can apply to proposals that conflict with the desire to preserve the Transport Modes sites for uses that involve canal or rail freight. The amendments to the London Plan viability criteria suggested by British Waterways could be used but you may consider it more appropriate to define others that are more appropriate to the particular circumstances pertaining in Leeds.

The Inspector does not have a copy of your suggested amendment to Site 18 but has asked me to clarify whether or not all of the revised site is currently in a use associated with canal wharfage or whether the area originally safeguarded is not used and therefore available for a new user?

4 Protection of the Wharfe Valley east of Pool.

Paragraph 24 of Planning Policy Statement 7: *Sustainable Development in Rural Areas* says that whilst the government accepts that there are areas outside of nationally designated areas that are particularly highly valued locally, it considers carefully drafted, criteria based policies in LDDs, utilising tools such as landscape character assessment, should provide sufficient protection for these areas without the need to unduly restrict acceptable sustainable development. Even policy N37 of the Leeds Unitary Development Plan points out that development within Special Landscape Areas will be acceptable providing it would not seriously harm the character and appearance of the landscape.

In the Inspector's opinion Minerals Policy 5 as written is too prescriptive and not in accordance with national policy or indeed UDP Policy N37. He therefore invites the

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Council to either remove the policy and supporting text from the plan, leaving any proposals for mineral development to be judged against UDP Policy N37 and its successor or suggest an appropriate minerals specific policy that is not prescriptive.

5 Hazardous waste.

Page 17 and Table 2.1 of the Waste Topic Paper point out that there will be an increase in Hazardous Waste during the plan period, that the city is a net importer of this waste stream and that as well as protecting existing effluent and clinical waste treatment facilities at Knostrop, provision may need to be made for the disposal of solid hazardous waste within Leeds by the plan. The plan points to the capacity for solid hazardous waste at Swillington and Howley Park landfill sites but it also says that disposal to landfill is the last option, to be used only when other alternatives are not feasible and that over the long term the amount of waste sent to landfill will be reduced to the minimum. Its not entirely clear what the long term strategy is for the treatment of solid hazardous waste in Leeds but the Waste Strategy for England 2007 says that as well as seeking to reduce the amount of hazardous waste there is a need for additional treatment facilities and infrastructure for hazardous waste to assist in meeting changes brought about by the Landfill Directive. If Leeds is to continue to rely on disposal in former quarries, irrespective of government policy, then the plan should justify this course of action. Otherwise the long term solutions should be discussed in the plan.

Are the hazardous waste facilities at Knostrop actually protected by the plan?

6 Consultation

The schedule of changes introduces a number of fundamental alterations to the plan. For example specific targets for minerals production and waste disposal facilities in Leeds have been introduced and the period covered by the plan for both minerals and waste has been extended to 2026. At paragraph 5.23 PINS Procedure Guidance for Local Development Frameworks says: -

"If the change would alter the thrust of a policy, extend the range of development that a policy would apply to, delete a policy or introduce a new policy, two very important considerations need to be borne in mind. First, the change must not undermine, or possibly undermine, the sustainability credentials of the plan. Second, is the change a matter that has been subject to adequate community engagement? If there is a problem with either of these matters the change may, in some instances, be acceptable provided the LPA has taken appropriate steps to demonstrate that the sustainability credentials of the plan are intact or that further adequate community engagement has occurred".

In the Inspector's opinion, minerals producers, waste operators and others not present at the Hearings could disagree with your forecasts and apportionments and challenge the plan on the grounds that an absence of specific consultation on the changes prejudiced their interests.

Although the Cumbria judgement refers to the re-introduction of a site, the judgement is applicable to any situation where a part of the plan is altered on "Soundness Grounds". The Inspector has to consider whether or not the plan meets the legal requirements set out in the regulations and in particular whether those concerning the Statement of Community Involvement have been met. In his opinion and to avoid any

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potential comeback, all the proposed changes will need to be advertised for a period of 6 weeks before he can certify that the plan meets the requirements in this respect. Any representations received on the proposed soundness changes would be taken into account by the Inspector before concluding the Examination and finalising his report. Additionally, you will need to demonstrate that the sustainability credentials of the plan are not affected by any of the proposed changes.

Yours sincerely



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18th January 2012

Dear Mr Middleton

Natural Resources & Waste Development Plan Document, Examination into the Soundness of the Leeds NRWDPD

Further to your letter of 14th December, regarding a number of matters in respect of the above DPD (Proximal Development, Safeguarding Sand & Gravel resources within the urban area, the protection of wharves & rail sidings, protection of the Wharfe Valley east of Pool, Hazardous waste and consultation), the City Council has prepared the attached response.

In preparing this response, the City Council has given careful consideration of the issues you have raised and how these relate to the overall approach and intent of the NRWDPD (and its relationship to delivering the ambitions of the Community Strategy – Vision for Leeds), government policy and the planning challenges in a city the size and complexity of Leeds. Central to these challenges, is the need to manage many competing demands, including stimulating economic investment, delivering priorities for regeneration and to deliver requirements for housing growth, whilst seeking to maintain (and where necessary enhance) environmental quality.

In a number of respects the City Council has reflected your views in suggesting a way forward, in other areas however (minerals safeguarding and mineral extraction in the Wharfe valley east of Pool), there are fundamental concerns that the suggested approach would undermine wider objectives and is likely to be undeliverable in practice.

The Council respectfully requests that you give further consideration to the representations contained within this letter, in respect of the issues of soundness raised. If having done so, you remain minded to consider the DPD unsound, then, in accordance with S20(7C) of the Planning and Compulsory Purchase Act 2004, please could you indicate in respect of each of your concerns the modifications that would be appropriate to overcome the lack of soundness. In so doing, can you provide the Council with an opportunity to make further representations on the precise wording to be included.

Thank you for your assistance.

Yours sincerely

A handwritten signature in black ink that reads "David Feeney". The signature is written in a cursive style with a large initial 'D' and 'F'.

David Feeney
Head of Forward Planning & Implementation

Natural Resources & Waste DPD

Response to Inspector's Letter of 14 December 2011

1. Proximal Development

LCC will add a buffer around all the NRWDPD minerals and transport sites on the internal CAPS system, as a basis to alert City Development staff & inform the Development Management process.

2. Safeguarding sand & gravel resources within the urban area

As explained at the examination and in our submissions the Council has significant reservations about the appropriateness and practicalities of such safeguarding. Based on BGS maps this would affect an extensive swathe of brownfield land through the heart of the main built up area of the district (as shown on the attached map). This includes a significant part of the City Centre and employment land in the Aire Valley. Both are recognised to be critical to the employment prospects not just of Leeds but to the economic success of the City Region more generally. This is acknowledged in RSS, which of course still sets the context for the NRWDPD. These areas and the main urban area more generally are the focus for growth in the emerging Core Strategy consistent with government guidance.

If safeguarding were to be applied then Policy Minerals 2 would apply and a new policy for the sand and gravel MSA would need to be written similar to the Policy Minerals 8 (for coal). The implication would then be that an applicant whose site fell within the safeguarding area would need to demonstrate that the site did not contain viable deposits or would otherwise be expected to extract the sand and gravel prior to development. The Council is of the view that very few if any proposals will emerge on which extraction is viable. Yet the blanket safeguarding will create uncertainty and will place the burden and cost of proof on the developer.

Furthermore, even where on-site extraction is not viable the developer will be expected to take account, in some way, of the potential extraction of sand and gravel on adjoining land, however uncertain and remote the prospects, in order not to sterilise that possibility. This seems to us to create a level of uncertainty that is likely to be a serious deterrent to would be developers and funders. This could have significant implications for job growth and the economy with the likely real gains from safeguarding being wholly outweighed by these potential disbenefits. The extent of this effect is increased by the need to take safeguarding into account in relation to proximal development.

For information, a plan based on BGS maps is provided showing the extent of deposits through the urban area. We have calculated that this covers an area of 1,462.15 hectares. Adding a notional 50m around this area to account for proximal development adds a further 300 hectares.

The thrust of current planning guidance, ministerial statements & the emerging National Planning Policy Framework is for planning to help stimulate economic growth. Planning Guidance needs to be considered in the round, a point emphasized in the draft NPPF. Minerals Planning Guidance is only one of many strands of such national policy. Indeed MPS1 recognises this point. It says that minerals policies "complement, but do not replace or overrule other national planning policies".

The draft NPPF as well as seeking to support economic development places great emphasis on seeking to balance competing considerations. Safeguarding should not be seen in isolation but is only one issue among many. MPS1 also recognises this. It acknowledges that there can be conflict between extraction and impacts and states that an integrated approach is needed. It goes on to suggest avoidance where, presumably unacceptable, environmental impacts arise (para1). In addition para 9 advocates safeguarding "as far as possible" (para 9). The clear implication being that there will be circumstances in which safeguarding is not

appropriate. It is recognised that the 2006 Practice Guide para 32 advises that safeguarding areas should be identified in DPDs. That same document (para 13) also recognises that not all locations will be economically viable and environmentally acceptable. It is also noted that the BSG Good Practice Advice published in 2011 (by the minerals industry) draws particular attention to the draft NPPF and advises that “it is important to recognise that this good practice should be read in the context of a changing framework for planning”.

Paragraph 13 of the NPPF states ‘ the Government is committed to ensure that the planning system does everything it can to support sustainable economic growth’. The Council is therefore concerned that the approach advocated by the Inspector does not reflect these broad priorities and at a local level, would place additional burdens and uncertainty on the development process. The Council notes that in the recently published Select Committee Report on the draft NPPF reference is made to the “abattoir effect” (Section 2 para11). This reflects concern that the planning system should deliver certainty for developers so that they can be confident that their investment will not be devalued in future by some form of “bad neighbour” development. The Council is concerned that safeguarding would create just the position that the Select Committee report is concerned with.

Neither is the Council convinced that its concerns could be overcome by an exceptions policy. The BGS Good Practice Advice refers to concern for opportunities beneath brownfield sites and large regeneration projects particularly on the fringes of urban areas. The exceptions policy given as an example makes no reference to any distinction between the urban fringe and elsewhere and moreover advises that size thresholds should not be applied. Its exemptions list goes down to householder level applications.

In seeking to achieve longer term economic growth and to help stimulate investment in the immediate term, the Council, with a range of partners has a number of key strategic initiatives in place. This includes the establishment of an Enterprise Zone (identified as a City Region priority via the Local Enterprise Partnership) within the Aire Valley as well as emerging proposals for the Riverside area of the city centre. The Council is therefore concerned that at a time when the Council is seeking to support government priorities for growth, additional impositions, potential delays and uncertainties for businesses and the community, would be imposed on the development process (i.e. in identifying the urban locations of safeguarded resources & the boundaries that would also need to be identified for ‘standoff areas’).

Many of the sites coming forward throughout the urban area are relatively small in scale and highly unlikely to give rise to viable extraction of sand and gravel. Yet safeguarding would require developers to go through an additional process to verify this. Furthermore, having passed this hurdle, development would be required to take into account the potential for a neighbouring site to be subject to extraction, without any real basis for establishing whether this is ever likely to happen. What impact this would have is difficult to judge but there must be a real prospect that this very uncertainty would deter investors and funders. Placing this additional burden on development and the uncertainty that policy coverage would create seems completely at odds with the thrust of government policy. In the Council’s view safeguarding is not warranted in these circumstances.

Should the opportunity arise, the sand and gravel resource can still be extracted prior to development. Experience in the city would suggest that where resources are located and are viable to remove, this would occur through the normal development management process because the developer would see value in doing so. Proposals would be dealt with in the context of Policy Minerals 10. Revised wording in the supporting text is being suggested as a Proposed Change to emphasise this point. The Council suggests adding the following wording to the end of paragraph 3.8 “**Valuable resources may exist outside of an MSA (refer to the Minerals Resource Map in figure 2.2) and developers are encouraged to explore the potential for extraction prior to (and well in advance of) site development**”.

This is a similar approach to the one taken in the Wakefield Core Strategy, adopted April 2009, which has identified mineral safeguarding areas for sand and gravel in the rural area

only, not in the urban area even though the resource exists there. It also encourages prior extraction but does not require it. Such an approach would be much more acceptable to Leeds and strikes a balance between different planning objectives for minerals and for economic growth.

An important element of the test for soundness, is that the Plan is 'Effective', namely that it is deliverable, flexible and able to be monitored. Paragraph 4.46 of PPS12 states that a strategy (or a DPD) is unlikely to be effective if it cannot deal with changing circumstances. Given the concerns raised by the Council above, the Council would urge the Inspector to consider the Council's proposal to include the suggested additional wording above. The Council considers that such an approach would provide the flexibility required within the local and national policy context.

The Council would welcome the Inspector's consideration of our proposed wording and if it is still not deemed to be sufficient then we would ask if the Inspector could suggest how we might be able to write the policy in a way that deals with those issues that the Council is concerned about (i.e. the detrimental effect on other housing and employment objectives for the city).

3. The protection of wharves & rail sidings

The Council considers that it would be helpful if the Inspector could clarify these comments. The first paragraph clearly accepts the overall approach, regarding the importance of retaining wharves and rail infrastructure and for the policy to be reviewed after a period of 5 years. This approach however appears to conflict with the comments made in para. 3 of section 3, regarding the need for the plan to specify how applications for alternative forms of development (i.e. for development which is not canal wharf or rail siding dependent) which may come forward in the meantime should be determined. When these circumstances currently arise across the city, applications are considered on their merits against a range of considerations including the policy provisions of the Development Plan, national guidance and other evidence that may be provided by prospective applicants. This is true of many types of development which are judged in this way without criteria to cover every possible eventuality. Debate at the Examination supports the notion that the introduction of criteria would be seen by landowners as encouragement to pursue other interests. The Council is therefore concerned that introducing criteria to consider applications for alternative uses undermines the very essence of the policy and could potentially make the plan unsound in not providing a robust policy framework to support the retention of wharves and rail sidings consistent with national guidance (including the draft NPPF). For these reasons the Council remains of the view that the introduction of a criteria policy is inappropriate. However, if such an approach is deemed necessary the Council would suggest the following:

“Applications for uses that do not make use of the safeguarded wharf or rail siding will be considered in terms of their benefits weighed against the loss of the non-road freight opportunity and using the following criteria:

- i) the use would not sterilise the longer term potential of the site for wharf or rail siding use,**
- ii) the applicant is able to demonstrate that there are no suitable alternative sites for the proposed use,**
- iii) a sufficient supply of sites will remain in the district, readily available and of at least the same functional capability, so as not to prejudice the objective of encouraging a shift from non-road freight.”**

The Inspectors further consideration of these matters would therefore be welcomed.

4. Protection of the Wharfe Valley, east of Pool

Through the Hearing process and the additional papers provided by the Council, we have demonstrated that sufficient provision has been made across the district and for the plan period, for sand & gravel. The protection proposed for the area east of Pool need not last forever but it is appropriate for the duration of the Plan. The Council has committed also to

the ongoing monitoring of the plan (and ongoing research & development re. the potential for marine aggregates) and for intervention and review at the appropriate time. The letter of 14th December, does not question the Council on the soundness of this approach. The Council is therefore concerned that amendments to Policy Minerals 5 would lead to uncertainty. Significantly, this approach is likely to direct the mineral industry away from preferred and less sensitive locations within the Aire Valley, to the detriment of the spatial integrity of the plan and its ability to direct development to more appropriate locations at a local level. The NRWDPD provides an evidence based approach and a strategy for mineral extraction in the most appropriate locations.

Meeting minerals planning obligations whilst reflecting local priorities is entirely in keeping with the government's devolved planning agenda. In addition, the Council is concerned also that given the sensitivity on this issue, re-consultation on revised wording, will give rise to further representations being made, and cause further uncertainty and delay, through the need for re-examinations.

The Council does not consider that its approach is inconsistent with national policy and the current UDP. Policy needs to be considered in the round and consistent with national and local policy. Some forms of development will be acceptable in the Wharfe Valley. The policy is simply making clear that there are forms of development, i.e. sand and gravel extraction, that are inappropriate, given that provision is already made elsewhere.

5. Hazardous Waste

The Council notes that this matter has not previously been raised through the Inspector's questions, the hearings or via any representations. The Council has evidenced that the plan makes provision for a wide variety of waste sites, in a number of locations and is supported by a criteria based policy (Waste 9), to deal with waste applications on their merits. This policy approach does not therefore preclude applications for hazardous waste coming forward. In order to clarify this further, additional wording could be added to the supporting text as necessary.

The Council can confirm that the hazardous waste facilities at Knostrop have been safeguarded, these are Sites 87, 88 and 89 in the Mapbook. The Council suggests adding the following wording to the end of paragraph 4.17 **"Whilst some solid hazardous waste is exported out of the district, overall Leeds is a net importer of hazardous waste. Liquid hazardous waste arising in the district and beyond is treated at the White Rose Environmental Clinical Waste Incinerator and WRG Effluent Treatment Plant. These are important facilities for the treatment of hazardous waste and are safeguarded in this DPD. New solid hazardous waste cells could potentially be provided at Swillington and Howley Park which are also safeguarded. There is scope for further hazardous waste treatment, such as soil-washing or bio-remediation and this could be accommodated on any of the strategic waste sites or industrial estates that are identified as suitable for waste treatment facilities"**.

6. Consultation

The Council accepts that the plan changes advocated in the Inspector's letter 14th December, if implemented, will require a further 6 week consultation. The Council is concerned that such plan changes, especially with regards to minerals safeguarding of sand and gravel within the urban area, criteria for the relaxation of safeguarding of wharves & rail sidings and the weakening of the protection of the Wharf Valley to the east of Pool would attract substantial objections. This would be at odds with the spirit of the front-loading process recommended in PPS12.

The Council recognises that the potential for changes to generate opposition is not of itself a good basis for rejecting such change. However, the Council believes there are sound planning reasons why these changes are not all appropriate and these reasons are set out in this response.

In this response the Council has given a reasoned justification for its position and suggested further amendments to help move the process forward. The Inspector's further consideration of these matters as set out in this response would therefore be welcomed.

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Date: 08 February 2012

David Feeney
Head of Forward Planning & Implementation
Leeds City Council
(by email)

Dear Mr Feeney

**Examination into the Soundness of the Leeds Resources and Waste
DPD**

The Inspector has asked me to thank you for your considered response to his letter of 14 December, explaining in depth the City Council's concerns about the outstanding issues. Having given considerable thought to the matters that you raised he has asked me to reply as follows: -

Re-consultation

It is not clear from your response whether your observations in section 6 imply an acceptance that a further round of consultation is necessary, regardless of the conclusions of the discussions on the outstanding matters or simply refer to the fact that you consider a re-consultation would only be necessary if changes similar to those suggested in my letter of 14th December are agreed. For the avoidance of doubt he has therefore asked me to point out that in any event he considers that to comply with the consultation requirements contained in Section 19.3 of the 2004 Act and Regulation 27 of the 2004 Regulations, as interpreted in paragraph 5.23 of Examining Development Plan Documents: Procedure Guidance 2009, the proposed changes to the plan will have to be the subject of further consultation. If it is not then he will be unable to find the plan legally sound. This is because a number of your suggested changes that go to soundness could be of concern to third parties and without an opportunity to respond to a consultation, their interests could be seen to be prejudiced.

To take just one example, you have introduced mineral production targets broken down from the Aggregates Working Party's forecasts to 2016 but extrapolated to 2026. Had you not done so, then their absence would have made the plan unsound in the context of a lack of effective delivery targets, which is contrary to national guidance. Whilst the suggested targets may be perfectly reasonable and sensible and no one who had sight of them at

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the Hearing session, when they were discussed, wished to object further to this aspect of the plan, that is not the point. Anyone could come forward and say that they disagreed with your apportionment and the forecasting assumptions that led to the introduced targets, for whatever reason, and claim (quite rightly) that they had not had an opportunity to make comments on them. In consequence they could successfully challenge the legality of the plan. In the Court's eyes, it is not whether what they are putting forward by way of objection is justified or reasonable, it's the fact that they were denied the opportunity to make the representation. Following the two recent court cases on Local Development Document (LDD) consultation, Inspectors are now advised to think very carefully before not asking for re-consultation if there are any soundness changes at all. At the present time you have suggested 21.

If the re-consultation brings forth further objections then the Inspector would have to consider them. However, unless they affect the soundness of the amended plan, they are not going to result in further changes. The Inspector has also asked me to tell you that if a further Hearing session was necessary, he would not be expecting you to defend changes that you were not fully committed to.

Sand and gravel

Whilst the Inspector has accepted your sand and gravel targets and is proposing to endorse them as the most appropriate in the circumstances, he has reservations as to their deliverability and the long term appropriateness of extrapolating past outputs. It is in this context that you should consider his reservations about policy for safeguarding aggregate resources within the urban area and extraction in the Wharfe valley.

The sand and gravel targets are based on the assumption that unproven reserves will be proven and extracted during the plan period. It is by no means certain that reserves to the extent anticipated will be proven and extracted. The current landbank is about a year rather than seven, as recommended in Minerals Policy Statement (MPS) 1. There is only one allocation (Midgely Farm) which could notionally produce 1.6 million tonnes or nearly 11 years of supply. However, Midgely Farm was allocated in the Unitary Development Plan (UDP) but has not been taken up during the past decade and in the absence of evidence from the industry to suggest that it is about to be, it cannot be confidently relied upon as the panacea to the recent serious under-performance in sand and gravel output from Leeds and West Yorkshire. At the same time the one current producer in Leeds, at Methley Quarry, offered no evidence on the viability of potential reserves in this area and declined an invitation to attend the Hearing to discuss its objection to the plan. There is therefore no certainty that contributions to the target will come from the Methley Area. This situation does not inspire confidence in your forecasts or represent the adequate and sustainable supply of minerals required by national policy. The evidence suggests that the position in the other West Yorkshire Authorities is no better.

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The 2007 Yorkshire and Humber Sand and Gravel Study suggested that at that time the region had a shortfall of permitted reserves of 32 million tonnes for the period 2006-21 and by implication that additional resources needed to be identified for the period beyond 2015. The majority of this shortfall is required to meet the needs of Leeds and West Yorkshire. Consequently, on sustainability grounds, the Yorkshire and Humber Sand and Gravel Study recommended a dramatic increase in West Yorkshire production. Whilst the subsequent British Geological Survey (BGS) study concluded that the potential for an increased sub-regional apportionment for West Yorkshire is limited, it did not say that opportunities to increase West Yorkshire's contribution should not be exploited.

The national desire to reduce production of aggregate in the National Parks, some of which is used in Leeds for concrete making, is a further consideration that points to the desirability of maximising the production of concrete quality sand and gravel from within West Yorkshire. Historically, the shortage of good quality, easily exploitable reserves in areas without planning constraints within West Yorkshire has been made up by the exploitation of resources in North and South Yorkshire. The evidence before the examination suggests that at the same time as it is becoming difficult to identify economically viable sand and gravel resources within West Yorkshire, the historically exploited resources in North and South Yorkshire, to meet West Yorkshire's needs, are becoming exhausted. The BGS study confirms that the possibilities for new sand and gravel developments in southern North Yorkshire to supply the Leeds-Bradford area are quite limited and that materials coarse enough for concreting are becoming scarce in this area.

Taken together, these considerations suggest a need for caution when considering policies that would lead to constraints on the exploitation of sand and gravel resources within West Yorkshire.

Safeguarding sand and gravel resources within the urban area.

MPS1 requires mineral resources to be safeguarded as far as possible, in order that proven deposits are not needlessly sterilised by non-mineral development. It encourages the prior extraction of minerals where practicable. Its Practice Guide (PG) also says that the safeguarding exercise should safeguard proven deposits of minerals which are or may become of economic importance. Additionally this document requires minerals LDD's to set out clear and appropriate Development Control policies, which should include the safeguarding of minerals resources with potential for future extraction.

Whilst recognising that not all safeguarded land will be worked for minerals, BGS specifically says that the safeguarding of minerals should not be constrained by other planning designations such as urban areas, without sound justification. There is no such justification in the plan or its supporting documents. The BGS also specifically refers to the need to

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highlight the existence of river terrace sand and gravel resources where it exists beneath potential regeneration projects and brownfield sites. A number of areas within the Aire valley fall into this category.

Defining Mineral Safeguarding Areas (MSA) alongside environmental and cultural designations also ensures that the impact of any proposed development/redevelopment on mineral resources will be able to be taken into account alongside other considerations when development decisions are being made. MPS1 says that in unitary planning areas MSAs should alert prospective applicants for non-minerals development to the existence of valuable resources, although there is no presumption that resources in MSAs will ever be worked.

Given the locational constraints on mineral working and the difficulty in finding suitable new sites in order to maintain the supply of materials to support economic growth, it is imperative that scarce minerals are protected for the long term. Sand and gravel resources, because they tend to be associated with river valleys, where there are existing settlements and continual development pressures, are particularly vulnerable. Sand and gravel resources are not plentiful in West Yorkshire and in order to maximise indigenous supply and minimise unsustainable movements of sand and gravel, over the long term it is essential that all economic resources are exploited.

The plan already has an extensive coal safeguarding area that does not appear to have given rise to the concerns you have expressed in relation to sand and gravel. As sand and gravel is a much scarcer resource than coal in a West Yorkshire context, there is more justification for safeguarding sand and gravel than coal. The Inspector has considered the planning guidance in the round and would point out that safeguarding in urban areas is not meant to compete with other policies and guidance and that if an integrated approach is adopted, the fears that you express should not arise. He is therefore of the view that in the above circumstances there is a justification for a policy mechanism to alert developers to the presence of sand and gravel under urban sites and a framework to determine whether or not they should be extracted prior to development taking place.

The Inspector accepts that defining an urban safeguarding area, based on the BGS maps, would affect an extensive swath of brownfield land through the heart of the main built up area. He also notes your emphasis on the importance of this area for employment generation. In such circumstances he agrees that it would be preferable if the safeguarded area did not apply to locations where prior extraction is unlikely for economic or other reasons, although as minerals become scarcer what is uneconomic today may be economic tomorrow! Nevertheless, the MPS says that economically unviable and environmentally unacceptable sites should ideally not be in safeguarded areas. Unfortunately there is no evidence base before the Examination that would enable these differentials to be easily established so unless you are able to point to more detailed examinations of the resource or wish to

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undertake a more in-depth analysis, the BGS maps may be the best data source available?

He agrees that the application of Policy Minerals 2 to sites within the urban area may send out the wrong message to some developers. It probably already would with regard to coal. He also notes that the BGS exceptions policy does not make a distinction between urban areas and elsewhere. However, that is not to say that it is never appropriate to do so. A new or sub policy that applied to safeguarded minerals on previously developed land and removed the need to demonstrate that there will be no sterilisation, could be introduced. Additionally, the BGS exceptions policy does not say that size thresholds should not be used, only that they should be avoided in most cases. However, the BGS is talking about all minerals and notes that coal has been extracted successfully from relatively small sites in advance of development. If there is evidence of a threshold below which sand and gravel would not be extracted on economic grounds, even with the use of portable equipment, then it should be used. Otherwise your reference to major applications in Policy Minerals 8, would suffice.

The Inspector does not accept that in a previously developed situation it is essential for developers to have regard to the potential for future extraction on adjacent land. This is presumably not your intention with regard to coal? Each case should be considered on its merits and the existence of development on adjacent land would be a factor considered under Policy Minerals 10 when the appropriateness of extraction on a particular site was being considered. Arguments about sterilising redevelopment and thwarting regeneration do not stand up to scrutiny. If considered early enough in the development process, prior extraction need not delay essential development and in some instances the commercial value of the extracted mineral can help to support marginal regeneration projects. Unfortunately, the evidence suggests that where the need to consider prior extraction is not facilitated through policy, then in the normal course of events and by the time developers realise that there are valuable mineral resources to be extracted, the development process is too far advanced for it to happen without delaying the development. The Inspector wishes to avoid this.

The wording of policies is really a matter for yourselves but if it assists, the Inspector would suggest that the second part of Policy Minerals 2 is split into two parts. The first part could refer to applications for development on land that is not previously developed within a MSA and the whole of the current paragraph should apply. The additional paragraph could refer to applications for development on previously developed land within a MSA only needing to demonstrate that extraction of the mineral will take place prior to or during development if appropriate as detailed in Minerals 8 below. Minerals 8 could be amended to refer to sand and gravel as well as coal with an additional demonstration that: there is coal and/or sand and gravel but its recovery would give rise to unacceptable environmental harm. (something along these lines probably ought to have been included in any event). Environment should be treated in its wider sense and include matters such as flooding and highway safety etc.

The Inspector notes your points about Wakefield and Greater Manchester. The Wakefield LDD was a Core Strategy where unlike Leeds the issue of MSAs within the urban areas was not raised. The absence of an MSA under the developed parts of Greater Manchester has been raised by third parties and is to be the subject of discussion at a Hearing session.

Wharfe valley

Having visited the area, the Inspector fully supports your desire to prevent sand and gravel extraction within the Wharfe valley to the east of Pool, whilst ever there are viable resources within the areas that you have identified and available resources from less environmentally sensitive areas within the region. He intends to stress this in his report. His concerns arise from the uncertainties surrounding the delivery of the strategy that you have put forward and discussed above and the overall shortage of resources within the region as a whole in the medium and long terms. In this context the BGS study suggests that the Wharfe valley has some of the largest and highest quality unworked sand and gravel deposits in the region. In his opinion there will need to be a comprehensive review of resources serving West Yorkshire long before 2026, if major supply problems are not to arise. Extraction within the Wharfe valley both within Leeds and North Yorkshire should be objectively compared with other available resources. However, if in the meantime there is little progress re extraction elsewhere in Leeds and appeals arise in the Wharfe valley without a criteria based policy you would be fighting the proposal on the hoof and against national policy that says that you should maintain a landbank of at least 7 years for sand and gravel.

In the above circumstances the resisting of proposals for the extraction of sand and gravel within the area to the east of Pool in the Wharfe Valley without qualification is not justified. Local Planning Authorities are meant to look at development proposals put before them impartially and objectively. To say in a DPD that from the outset you will strive against proposals with the intention of preventing them in all circumstances does not imply that you would look at proposals objectively and on their merits, given the circumstances pertaining at the time. In his "Soundness considerations" presented to the Round Up Hearing session, the Inspector suggested a less prescriptive version of Policy Minerals 5, in the event that you preferred not to have a criteria based policy. "Proposals" at the beginning of Policy Minerals 5 could be prefaced by "It is unlikely that" and "Resisted" at the end could be changed to "not supported" and the reason why they are not being supported i.e. "The plan makes more than adequate notional supply for the provision of sand and gravel from within Leeds for the plan period. Unless it can be clearly demonstrated that the extraction of the reserves from the allocated site and area of search are not viable then there is no justification for considering extraction from within the Wharfe valley to the east of Pool." inserted into the supporting text.

The protection of wharves & rail sidings

My letter of 14 December was not meant to imply that the Inspector does not fully support the intentions of Policy Minerals 14. He does. However, it is not fair and reasonable to simply introduce a policy that has the intention of preventing land from being used for uses other than a freight interchange, in circumstances where there is as yet not a proven demand for such facilities to the extent being proposed. Land owners should have a reasonable expectation of knowing what they would have to do, no matter how arduous, to obtain planning permission for other uses. Applications will be inevitable at some point and decision makers should be able to judge all of the proposals on the same basis in the interests of fairness. Therefore in the Inspector's opinion there should be some criteria against which all proposals to use these sites other than for freight interchanges should be judged. The ones that you have suggested would be acceptable. You may in addition like to consider "the applicant is able to conclusively demonstrate that the site is no longer appropriate for use as a freight interchange, including marketing evidence". This would cover most of the points raised by British Waterways in their letter of 5 December 2011.

On the matter of encouraging landowners to pursue other interests, the Inspector's observations suggest that the opposition to this Policy from land owners, for the most part stems from encouragements within the City Planning Department to the effect that these sites are appropriate for residential development. Providing the Council as a whole makes it clear that these sites are not appropriate for residential development, then much of the opposition to the policy is likely to dissipate. In a number of instances this could easily be achieved by reference to the current flooding guidance.

The Inspector has asked me to clarify whether in the context of your suggested amendment to Site 18, all of the revised site is currently in a use associated with canal wharfage or whether the area originally safeguarded is not used and therefore available for a new user?

Hazardous waste

Your suggested additional wording at the end of paragraph 4.17 goes a long way towards explaining your strategy for hazardous waste. Your response suggests that landfill is indeed the last resort for the disposal of this waste stream and that every effort should be made to reduce the amount of hazardous waste. It would be appropriate to say this in the revised text and to accommodate the proposed changes in a separate section on Hazardous Waste, rather than as an amendment to paragraph 4.17. To cover this, the Inspector would suggest amending the second part of the amendment as follows: -

"These are important facilities for the treatment of hazardous waste and are safeguarded in this DPD. The Waste Strategy for England 2007 says that as well as seeking to reduce the amount of hazardous waste there is a need for

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additional treatment facilities and infrastructure for hazardous waste to assist in meeting changes brought about by the Landfill Directive. There is scope for further hazardous waste treatment in Leeds, such as soil-washing or bio-remediation and this could be accommodated on any of the strategic waste sites or industrial estates that are identified as suitable for waste treatment facilities. The Council will encourage the provision of hazardous waste treatment facilities in preference to disposal at landfill sites. As a last resort solid new hazardous waste cells could potentially be provided at Swillington and Howley Park landfill sites, which are also safeguarded".

I trust that the above answers your questions and enables you to suggest further changes to the plan as appropriate. Should you require further clarification, please get in touch and I will ask the Inspector to comment further.

Yours sincerely



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