

**TONBRIDGE & MALLING BOROUGH COUNCIL**  
**PLANNING and TRANSPORTATION ADVISORY BOARD**

**05 March 2019**

**Report of the Director of Planning, Housing and Environmental Health**

**Part 1- Public**

**Matters for Recommendation to Cabinet - Non-key Decision (Decision may be taken by the Cabinet Member)**

**1 KENT MINERALS AND WASTE LOCAL PLAN 2013 – 2020 AND THE DRAFT MINERALS SITE PLAN – RESPONSE TO CONSULTATION**

**Summary: Kent County Council (KCC) is carrying out an early partial review of the Kent Minerals and Waste Local Plan 2013 – 2020 and the Draft Minerals Site Plan between Friday 11<sup>th</sup> January and Friday 8<sup>th</sup> March 2019. Both consultations are being carried out under Regulation 19 and provides an opportunity to comment on either document before they are submitted to the Secretary of State for Examination. This report briefs Members on the consultation and recommends an officer-level response for endorsement.**

**1.1 Background to Consultation**

- 1.1.1 The Kent Minerals and Waste Local Plan (KMWLP) was adopted by KCC in July 2016 and sets out policies and sites for mineral extraction, importation and recycling as well as waste management. The Kent Minerals and Waste Local Plan (KMWLP) sets out the overarching strategy for the sustainable management of Kent's waste, the delivery of minerals where a need exists and is the primary element of the Development Plan against which planning applications and appeals for minerals and waste development will be determined.
- 1.1.2 The Minerals Site Plans and Waste Site Plans allocate specific locations and sites for minerals and waste development. The Kent Minerals Sites Plan (The Sites Plan) provides the spatial detail for meeting requirements for sharp sand and gravel and for soft sand in accordance with policy CSM2 of the Kent Minerals and Waste Local Plan 2013-30 as stated above. The Sites Plan identifies potential locations for extraction of sharp sand and gravel and of soft sand. Once adopted, the Kent Mineral Sites Plan will replace the currently saved policy CA6 of the Kent Minerals and Waste Local Plan: Construction Aggregates 1993, as well as policy B1 of the Kent Minerals Subject Plan: Brickearth 1986.
- 1.1.3 The version of the KMWLP and Minerals Sites Plan that is currently available for consultation is one that KCC intends to submit for examination later this year. When adopted, the policies and site allocation will replace the existing suite of

saved Kent Minerals and Waste policies and site allocations. It is important that the Council responds to the consultation because the KMWLP and Sites Plan will form part of Tonbridge and Malling Borough Council's Development Plan. This means that the policies and site allocations proposed by KCC may have implications for the Council's planning functions and future decision making and delivery of the Local Plan as a whole.

## 1.2 Consultation Appraisal

- 1.2.1 Local Development Scheme - The Local Development Scheme (LDS) is the project plan for the KMWLP; it sets out the timetable for the production of the documents including the examination and adoption dates. As part of advising on this consultation, it is worthwhile for Members to be aware of the proposed time frames. The latest published version of the LDS (Nov 2017) indicates that the Regulation 19 consultation should have been undertaken between October and November 2018 and both the KMWLP and Minerals Sites Plan Pre submission be submitted to the Inspectorate in January 2019. It further advises that KCC envisage the Examination hearings to take place between April – May 2019 and final adoption by December 2019. On the basis of the present situation, the LDS is therefore currently out-of-date where the Regulation 19 consultation currently ends in March 2019, but is not considered to be significantly behind its proposed schedule.
- 1.2.2 Minerals Site Plan - To begin with when considering minerals extraction, it must be acknowledged that minerals can only be extracted where they naturally occur and that minerals are an important material for the construction industry. The winning of minerals are essential to support sustainable economic growth and our quality of life.
- 1.2.3 The Minerals Sites Plan will identify mineral sites and locations for mineral extraction, processing and importation that reflect the principles and strategy of the Minerals and Waste Local Plan 2013-2030. The Minerals Sites Plan proposes sites for the extraction of soft sand, and sharp sand and gravel. It is considered that these allocations, in conjunction with current permitted reserves and the criteria based approach to the provision of aggregates established in Policy CSM2 of the adopted KMWLP, will provide sufficient minerals during the Minerals Sites Plan period for the identified soft sand requirements and make an effective contribution to the supply of land-won sharp sand and gravel. The supply of locally extracted sand and gravel will be sourced from;
- Existing permitted sites,
  - New sites, including extensions, and
  - Other new sites not identified in the Minerals Sites Plan, deemed as acceptable sustainable mineral development in accordance with Local Planning policy and national planning policy.

1.2.4 KCC state that based on the current data, a sharp sand and gravel requirement of 5.75mt is required over the plan period. Having assessed the sharp sand and gravel sites that were promoted through the 'call for sites' in accordance with planning policy, two sites are allocated to contribute to the steady and adequate supply of sharp sands and gravel, subject to demonstrating at planning application stage compliance with the development management criteria and national and local planning policy:

- Stonecastle Farm quarry extensions, Hadlow (M13). An extension to the existing quarry.
- Land at Moat Farm Five Oak Green (M10). A proposed new quarry.

Both sites are relevant to the Tonbridge and Malling Borough and are discussed below. Historically, sharp sand and gravel deposits have been extracted along Kent's river valleys where both of these sites are within the River Medway valley.

1.2.5 Concerning soft sand, KCC state that based on current data, there is a soft sand requirement of 2.51 mt over the plan period. Having assessed the soft sand sites that were promoted through the 'call for sites' in accordance with planning policy, one site is allocated to contribute to the steady and adequate supply of soft sand, subject to demonstrating at planning application stage compliance with the development management and national and local planning policy:

- Chapel Farm (west) Lenham (M3). A proposed new quarry.

This site is a significant distance from the Tonbridge and Malling Borough and is not considered to impact upon the Borough.

Extensions to Stonecastle Farm Quarry, Hadlow/Whetsted (M13) - Sharp sand and gravel.

1.2.6 This site is within the borough boundary and perhaps, is the most relevant. It is an extension of approximately 28 hectares to the west of an existing quarry. The site is estimated to have a mineral reserve of 1,000,000 tonnes. It is recognised to be within the Green Belt, an area of archaeological interest and ground water vulnerability zone.

1.2.7 When considering the acceptability of the site, the promoted allocation area is considered to make a logical extension to the existing quarry. It is within a rural area, away from main residential areas and the Council's main strategic sites where the delivery of the new Local Plan is not considered to be jeopardised. Access is also considered acceptable being proposed to the south east entirely within Tunbridge Wells Borough at Stone Castle Farm where vehicles would access onto the main A228 highway. If however, in the event that a future planning application proposed an alternative access onto Hartlake Road, this would raise concerns given the predominantly rural nature of the local highway network in this vicinity. This will be stressed in the response back to KCC.

Moat Farm, Five Oak Green Tunbridge Wells (M10) - Sharp Sand and Gravel.

- 1.2.8 The second site allocation for sharp sand and gravel extraction is Moat Farm, Five Oak green which is a new site within the administrative boundary of Tunbridge Wells Borough Council, but very close to the TMBC boundary. The site is estimated to have a natural mineral reserve of 1,500,000 tonnes. Access is also proposed to be onto the A228 at Stone Castle Farm which is an existing access used by quarry vehicles.
- 1.2.9 Being within the Tunbridge Wells boundaries this is clearly less of a direct concern for TMBC. However when considering its acceptability, the site is located directly below the Stone Castle quarry and would form a natural extension to this existing quarry, containing the minerals extraction within one area reducing the impact from smaller, individual sites scattered around west Kent Districts. The site is well away from main residential conurbations as well as main strategic sites proposed within the Local Plan and is not considered would affect the TMBC Local Plan delivery. A suitable access is also proposed onto the A228 which is already used by such quarry vehicles.
- 1.2.10 Cumulative Impact - The proposed Stone Castle extension, the existing Stone Castle quarry and the new Moat Farm quarry would all be adjacent to each other and will form a large area of minerals extraction and it is important to consider potential cumulative impacts. In this regard, the sites are proposed to be worked sequentially to the permitted phases at Stonecastle Farm Quarry and Moat Farm Quarry and not together, which will reduce their impact. However, as a large area of mineral extraction there is likely to be a notable change in the appearance of the landscape as well as an increase in vehicular movements through the villages of Whetsted and Beltring and general noise and dust. This is therefore likely to put additional pressure on the local highway network, mainly the A228 and affect upon residential amenities.
- 1.2.11 Members are advised that other extraction sites previously proposed under Regulation 18 consultation within the Borough have not been put forward for allocation. Of particular interest is the West Malling Sandpit at Ryarsh (Site M8) (soft sand and silica) which attracted a lot of public attention. Following the consultation process, the County Council considered that activities associated with the mineral extraction would not preserve the openness of the Green Belt and so the development was deemed to be inappropriate, and there were no very special circumstances to justify this development within the Green Belt. In terms of making a comparison with the Stonecastle Farm site there is a discernible difference mainly that the sites provide for different minerals. The Ryarsh site provides for soft sand and silica and was a new proposed site which is within the Green belt where the quantity of mineral needed over the plan period can be met by another site not within the greenbelt. The Stonecastle site provides for sharp sand and gravel (a different mineral) and is an extension to an existing site (already within the Green belt) therefore making it more acceptable in planning terms.

1.2.12 The previously proposed site of the Postern Meadows Site Tonbridge (M12) was also not carried forward as a future minerals site allocation due to concerns regarding biodiversity, highways and transportation, landscape, amenity and public rights of way.

### **1.3 Proposed Response**

1.3.1 Officers propose a response based on the fact that, in principle, there are no objections to Stone Castle Farm extension and Moat Farm being identified as sites for minerals extraction. It is recommended that the response to KCC outlines concerns over the cumulative impact and is subject to the developments demonstrating that they are acceptable in terms of the landscape impact, nature conservation, highways implications, the amenities of residents and water resources as well as a suitable restoration plan to protect the countryside thereafter. In this respect, to be acceptable, the developments should strictly comply with the M10 and M13 development management criteria's. The concerns relating to any proposed access onto Hartlake Road should also be noted.

### **1.4 Partial Review of the Kent Minerals and Waste Local Plan**

1.4.1 The County Council is partially reviewing the adopted Kent Minerals and Waste Local Plan 2013-30 (the Plan). The Plan sets out the strategy for the sustainable management of Kent's waste, recycling and extraction of minerals and is the primary element of the development plan against which planning applications and appeals for minerals and waste development in Kent will be determined.

1.4.2 Waste Policies - Modifications are proposed to policies CSW4, CSW5, CSW6, CSW7, CSW8, CSW12 and CSW 14 in the following areas:

- Waste Management
- The strategy for provision of future waste management capacity
- The identification of site allocations for waste management facilities
- The approach to safeguarding mineral resources and waste management and minerals supply.

1.4.3 Background - The adopted Plan identifies a shortfall in capacity of the following types over the Plan period (to 2030) being waste recovery capacity, hazardous waste and disposal of dredgings.

1.4.4 As a consequence, policies CSW7, CSW8, CSW 12 and CSW 14 state that a Waste Sites Plan will be prepared that will identify sites suitable for accommodating facilities needed to address the identified capacity shortfalls. However a review of the future needs for waste management facilities in Kent has been undertaken and this has concluded that there is now no need for the development of this additional capacity. This is for several reasons set out below;

- Energy recovery capacity. Additional capacity has been confirmed at Kemsley Sustainable Energy Plant (SEP) Sittingbourne.
- Hazardous Waste. Due to a lack of additional need.
- Disposal of dredgings. There is no clear need identified.

1.4.5 The review and changes of these policies and supporting text are based on up-to-date data and monitoring where it is considered that there is no longer the need for so much recovery capacity over the plan period where the overall net self-sufficiency regarding waste would still be maintained. The changes relate to a general modernisation of the plan where, for example, a dredging disposal site is no longer needed in regard to policy CSW 14. It is considered that the changes don't present significant land use issues for the borough of Tonbridge and Malling and the delivery of its planning functions where the changes afford greater transparency and flexibility.

## 1.5 Proposed Response

1.5.1 The changes do not present a significant impact upon the land use in TMBC. It is recommended that the changes are accepted and no objection be raised.

1.5.2 Safeguarding Minerals Resources - The last part of the review of the KMWLP concentrates on the Minerals Safeguarding Areas (MSAs) and policies DM7 and DM8 which is perhaps the most relevant to TMBC in terms of the policy changes. The purpose of the MSAs is to ensure that mineral resources are adequately and effectively considered in land-use planning decisions, so that they are not needlessly sterilised, compromising the ability of future generations to meet their own needs. The designated MSAs are illustrated on maps at the back of the KMWLP which are based upon the British Geological Society Data.

1.5.3 Policy DM7 sets out the circumstances when non-minerals development may be acceptable at a location within a Minerals Safeguarding Area. This policy recognises that the aim of safeguarding is to avoid unnecessary sterilisation of resources and encourage prior extraction of the mineral where practicable and viable before non-mineral development occurs.

1.5.4 Policy DM8 relates to the safeguarding of minerals management, transportation, production and waste management facilities (including wharves and rail depots), in order to enable them to continue to be used to produce and transport the minerals needed by society. The policy sets out the circumstances when safeguarding minerals and waste development may be replaced by non waste and mineral uses. This includes ensuring that any replacement facility is at least equivalent to that which it is replacing and it specifies how this should be assessed.

1.5.5 In planning terms it is important to prevent the sterilisation of potentially valuable minerals and supporting infrastructure, where the retention therefore of these policies is critical to sustainable development.

- 1.5.6 Policies DM7 and DM8 are currently worded with set criteria's 1- 7 which the developments are assessed against. They are also worded with 'either', 'or' which essentially means only one criteria needs to be met to demonstrate compliance with the policy. This wording is retained in the changes. However new wording is now introduced which requires development proposals to consider the remainder of the policy and conclude that minerals and resources will not be needlessly sterilised before planning permission can be granted.

The changes to wording are underlined below.

**DM7.**

*"Planning permission will only be granted for non-mineral development that is incompatible with minerals safeguarding where it is demonstrated that either:*

- 1. the mineral is not of economic value or does not exist; or*
- 2. that extraction of the mineral would not be viable or practicable; or*
- 3. the mineral can be extracted satisfactorily, having regard to Policy DM9, prior to the non-minerals development taking place without adversely affecting the viability or deliverability of the non-minerals development; or*
- 4. the incompatible development is of a temporary nature that can be completed and the site returned to a condition that does not prevent mineral extraction within the timescale that the mineral is likely to be needed; or*
- 5. material considerations indicate that the need for the development overrides the presumption for mineral safeguarding such that sterilisation of the mineral can be permitted following the exploration of opportunities for prior extraction; or*
- 6. it constitutes development that is exempt from mineral safeguarding policy, namely householder applications, infill development of a minor nature in existing built up areas, advertisement applications, reserved matters applications, minor extensions and changes of use of buildings, minor works, non-material amendments to current planning permissions; or*
- 7. it constitutes development on a site allocated in the adopted development plan where consideration of the above factors (1-6) concluded that mineral resources will not be needlessly sterilised. Further guidance on the application of this policy is included in a Supplementary Planning Document".*

**DM8.**

*"Planning permission will only be granted for development that is incompatible with safeguarded minerals management, transportation or waste management facilities, where it is demonstrated that either:*

- 1. it constitutes development of the following nature: advertisement applications; reserved matters applications; minor extensions and changes of use and buildings; minor works; and non-material amendments to current planning permissions; or*
- 2. it constitutes development on the site that has been allocated in the adopted development plan where consideration of the other criteria (1, 3-7) can be demonstrated to have taken place in formulation of the plan and allocation of the site which concluded that the safeguarding of minerals management, transportation production and waste management facilities has been fully considered and it was concluded that certain types non-mineral and waste development in those locations would be acceptable; or*
- 3. replacement capacity, of the similar type, is available at a suitable alternative site, which is at least equivalent or better than to that offered by the facility that it is replacing; or*
- 4. it is for a temporary period and will not compromise its potential in the future for minerals transportation; or*
- 5. the facility is not viable or capable of being made viable; or*

6. material considerations indicate that the need for development overrides the presumption for safeguarding; or
7. It has been demonstrated that the capacity of the facility to be lost is not required.

*Replacement capacity must be at least equivalent in terms of tonnage, accessibility, location in relation to the market, suitability, availability of land for processing and stockpiling of waste (and materials/residues resulting from waste management processes) and minerals, and:*

- *in the case of wharves, the size of the berth for dredgers, barges or ships*
- *in the case of waste facilities, replacement capacity must be at least at an equivalent level of the waste hierarchy and capacity may be less if the development is at a higher level of the hierarchy.*

*There must also be no existing, planned or proposed developments that could constrain the operation of the replacement site at the required capacity.*

*Planning applications for development within 250m of safeguarded facilities need to demonstrate that impacts, e.g. noise, dust, light and air emissions, that may legitimately arise from the activities taking place at the safeguarded sites would not be experienced to an unacceptable level by occupants of the proposed development and that vehicle access to and from the facility would not be constrained by the development proposed. Further guidance on the application of this policy will be included in a Supplementary Planning Document”.*

- 1.5.7 When considering the implications of these alterations, the changes do make the policies tighter and less open. However the key wording here in the changes is consider/consideration (and not compliance), meaning that the development has to be mindful of the rest of the policy criteria but does not have to strictly comply, which prevents it from being unduly restrictive. On the basis that the policies continue to be worded as ‘either’, ‘or’ means only one criteria needs to be met to demonstrate compliance with the policy, resulting in a negligible constraint upon the Council’s planning functions.
- 1.5.8 Policy DM8 also has been changed to allow for materials/residues resulting from waste management processes which is considered understandable and acceptable which allows the policy to be more applicable to waste matters and has no significant impact upon the TMBC planning functions.

## **1.6 Proposed Response**

- 1.6.1 Safeguarding should not put at risk the deliverability of sustainable growth identified in Local Plans in response to local need. However a balanced needs to be struck between the safeguarding of these minerals and facilities for sustainable development whilst not stifling sustainable growth. It is considered that, on balance, these changes are not significant and would not prevent the delivery of the TMBC Local Plan and therefore are accepted and no objection be raised.
- 1.6.2 It is recommended that in the response to KCC, they are reminded that the ‘either’, ‘or’ wording means only one criteria needs to be met to demonstrate

compliance with the policy. The expectation for developments to comply with the whole policy and each criteria would therefore be unreasonable.

## **1.7 Legal Implications**

1.7.1 The Kent Minerals and Waste Local Plan and Minerals Site Plan once adopted, will form part of the statutory Development Plan for Tonbridge and Malling Borough. This means that the KMWLP and Minerals Sites Plan will have implications for the planning functions of the Council, namely the processing of planning applications.

## **1.8 Financial and Value for Money Considerations**

1.8.1 There are no financial or value for money considerations as part of this consultation.

## **1.9 Risk Assessment**

1.9.1 As set out above, the KMWLP, once adopted, will form part of the statutory Development Plan for Tonbridge and Malling Borough. If the consultation is not considered and a representation is needed, but not made at this stage, there is the risk that the concerns and priorities of this Council and the impacts upon the public will not be relayed to KCC.

## **1.10 Equality Impact Assessment**

1.10.1 The decisions recommended through this paper have a remote or low relevance to the substance of the Equality Act. There is no perceived impact on end users.

## **1.11 Recommendations**

1.11.1 Subject to any comments that the Board wish to make that the proposed responses set out at paragraphs 1.3, 1.5 and 1.6 in this report, form the basis of a formal response to the KCC Regulation 19 consultation that finishes on the 8th March.

The Director of Planning, Housing and Environmental Health confirms that the proposals contained in the recommendation(s), if approved, will fall within the Council's Budget and policy Framework.

Background papers:

Annex A-C – Proposed Minerals Site Plans

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