

Minerals and Waste Local Plan: Strategic Sites and Policies Local Plan Examination

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By e-mail via Programme Officer to: Your Ref:

Mrs Susan Marsh
Principal Minerals & Waste Planning Officer Our Ref:
Priory House
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SG17 5TQ Date: 7 February 2013

Dear Mrs Marsh

MINERALS AND WASTE LOCAL PLAN EXAMINATION

- 1 I have now had the opportunity to review the discussions of the hearing sessions held over the period 15–24 January 2013. In the light of those discussions, I have identified a number of places where the Plan as submitted would be regarded as unsound. In which case, you might like to consider whether the Joint Authorities wish to modify the Plan before I go on to submit my report and conclude the Examination.
- 2 As I said in my letter of 14 December 2012 – and repeated many times during the Examination – my role is only to consider if the Plan meets the tests of soundness set out in National Planning Policy Framework. If the comments below stray beyond the limits of those four tests and into points where the Plan could be simply “improved” in some way, then I apologise for going beyond my remit.
- 3 In response to my previous letter the JAs have already formulated a number of proposed changes. I understand that these have yet to be formally advertised, but I have taken them on board as insofar as they affect the matters discussed at the January Hearing sessions
- 4 The main point of concern I have is the identification of Elstow South as a landfill site. I am aware there is a current planning application lodged with Bedford Borough Council for the development of this site very much along the lines set out in the Plan. That application has to be determined on its own merits in the light of the current development plan policies, and not those emerging through this Local Plan - which is still undergoing Examination. In that context I acknowledge that there is a danger that what I say below could be seen to impinge upon the impartial determination of the planning

application. That is not my intention and my comments have to be weighed against all other material considerations which are relevant to the current planning application. My comments below relate solely to the matters being put forward as proposals and allocations in this Local Plan.

- 5 It was acknowledged by the JAs at the Hearing session for Matter 5 that the JAs' knowledge of the circumstances at Rookery South has moved on since the Plan was drafted and there is greater confidence that the Rookery South landfill site can be brought into operation relatively quickly, there being now no major constraints or unresolved concerns. Indeed, taking account of the engineering / drainage / phasing issues and (to a lesser degree – see below), the unresolved land ownership issue at Elstow South / Elstow North, it is likely that Rookery South can be brought into use much sooner than Elstow South. This, taken together with the acknowledgement that Rookery South would have sufficient capacity to accept all of the Plan's anticipated landfill needs – and particularly in a period where there is an expectation that greater and more intensive pre-treatment will lead to a lower than predicted amount of residues requiring disposal to landfill - indicates that there is no overriding need for Elstow South to be identified in addition to Rookery South.
- 6 I also have to give due regard to the views expressed by the potential developer of Elstow South at the parliamentary Special Procedure Order hearings that the confirmation of a Development Consent Order (DCO) for the Rookery South Resource Recovery Facility would undermine the viability of a waste-related development at Elstow South. I appreciate that the developer has yet to formally consider whether that may still be the case now that the parliamentary Joint Committee has expressed the intention in principle to confirm the DCO, but it does indicate that a degree of uncertainty now hangs over the deliverability of the Elstow South allocation.
- 7 There are other concerns relating to the impact of the Elstow South landfill proposal on the confidence of investors, house purchasers and service providers at The Wixams. These could be characterised as being a fear of harm to health, amenity and the environment rather than the likelihood actual harm (taking account of safeguards embodied in the Policies of this plan, saved Local Plan policies, guidance in PPS10 and controls imposed though an Environmental Permit). However, such a significant effect upon investor confidence has to be accepted as real harm where those concerns demonstrably undermine the momentum behind achievement of what is seen to be a necessary major urban extension for Bedford. These concerns focus particularly on the northern extension of Wixams onto land identified in the Bedford Borough Council's Allocations and Designations Local Plan as Area AD4.
- 8 Drawing these points together, I consider that the allocation of Elstow South as a landfill site is not justified in that it is not required to meet the anticipated needs set out in the Plan. Furthermore, an over-provision of landfill capacity is not supported by the imperative to drive waste up the hierarchy and hence it could be seen to be contrary to national policy. The allocation is not effective as there is uncertainty over when and how it could be delivered. Finally, from the evidence presented to the Hearing session for

Matter 5, the allocation would jeopardise the successful implementation of a necessary major housing development, which could put at risk the effectiveness of the Bedford Borough Allocations and Designations Local Plan.

- 9 One response to deleting Elstow South as a landfill site may be to identify a replacement landfill site but, as discussed above, it is unlikely that a replacement landfill site could be justified as a specific allocation if there is confidence that Rookery South could be brought into use quickly. Whether a waste recovery/processing site is needed at Elstow South as an allocation (and it is not listed as such under Policy WCP 2) is a matter for the Joint Authorities to come to a view upon, having regard to the discussion under Examination Matter 4 and the amount of land required and allocated for waste processing, concerns over neighbourliness with The Wixams, impact on the nature conservation, recreation and leisure value of the Elstow South lake and its surroundings, and the deliverability of an operation here having regard to the views expressed by the developer at the parliamentary Special Procedure Order Joint Committee hearings.
- 10 If the Council choose not to delete Elstow South then I would expect to be provided with evidence to demonstrate that the submissions heard and views discussed at the Hearing sessions were no longer relevant.
- 11 Insofar as the degree of detail relevant to a Local Plan Examination allows, I do not consider that using Elstow North for waste recovery would be unsound, subject to suitable safeguards; but this too has a degree of uncertainty over whether this necessitates a scheme which also secures the restoration or reconfiguration of the southern flanks of the site. If there is the need for an integrated scheme this would, having regard to my comments on the acceptability of a landfill operation at Elstow South, appear to rule out the likelihood of Elstow North making progress as a waste recovery site.
- 12 There is also a degree of uncertainty over whether the Elstow North allocation – either together with Elstow South, or on its own – is dependant upon a clarification of land ownership boundaries (and liabilities) between Elstow South and Elstow North.
- 13 From what was said at the Hearing session, it seems that these two proposals (Elstow North and Elstow South) are not necessarily inter-linked and a stand-alone waste recovery/processing operation could be developed at Elstow North at some point during the Plan period, with the arising waste residues probably having to be sent off-site for disposal. I leave it with the Joint Authorities to consider whether the Elstow North site should be retained in the Plan as a strategic waste recovery allocation, but I would appreciate confirmation that this would be a realistic proposition.
- 14 Other points were discussed at the Examination Hearing sessions where changes to the Plan were seen as being likely. It was agreed that it is necessary to re-draft the Minerals Safeguarding Areas plans so as to clarify that Cornbrash Limestone is a safeguarded mineral. It was also accepted that Policy WCP 6 should be reconsidered in the light of PPS10 encouraging only the disposal of waste as close as possible to its arisings; it is likely that

for some wastes it would be a better sustainable balance to carry it longer distances where specialist processes or rarity of the product indicates that fewer – and therefore not necessarily local – facilities would be a rational and responsible strategy, having regard to the overall aims of sustainability. It was acknowledged that the Policy should be revised so as to clarify that specialist wastes may justify a longer haul distance, and that the point of origin would be taken as a transfer station or other waste processing / recovery operation. Finally, it was agreed that the Glossary would be revised to clarify that the production of refuse derived fuel (RDF) or solid recovered fuel (SRF) would be an acceptable waste recovery operation under Policy WCP 8.

- 15 Although not specifically discussed at the Examination, since the Plan was submitted the Secretary of State has revoked the East of England Plan. It will therefore be necessary to delete all references to the East of England Plan as forming part of the policy context for this Local Plan.

Next moves

- 16 The JAs need to consider how to take forward the above points, together with those made in my letter of 14 December. On the assumption that the JAs wish to take the Plan to adoption it is necessary to consider what changes could be made to the Plan to make it sound. If the JAs do wish to introduce changes it will be necessary for them to request that the Examination is suspended whilst the proposed changes are publicised.
- 17 If a replacement allocation site for Elstow South is to be included this should have been subject to Sustainability Appraisal (SA) before it is put forward as a proposed change. If the proposed site has not been previously subject to SA, or that SA is now some months old and needs to be refreshed, then this is likely to influence the timing of events hereafter.
- 18 The Plan can only be modified to incorporate changes which would make it 'sound' where I identify such changes as Main Modifications in my report to the JAs and recommend that the Plan be changed accordingly.
- 19 Main Modifications need not address every detail; they can be characterised as the 'headline' points, but there are likely to be numerous small adjustments or revisions which would be the consequence of introducing a Main Modification. Some of these could be presented in a simplified or omnibus form such as under a proposed Major Change to bring the nomenclature into line with the current Local Plan Regulations, a listed consequential change could be "change all references to DPD to Local Plan" – rather than list every such reference throughout the document. Other, perhaps more substantial, consequential changes may have to be specifically noted under the relevant proposed Major Change heading, particularly where this would introduce a new policy or revised wording for another policy, or essential clarification in the reasoned justification for a policy.
- 20 I have attached as an Annex to this letter a list of the points which I have identified as likely to be the subjects for Main Modifications. It might be helpful if the public consultation on such changes could group all associated

consequential changes together; that is, the substantive point could be identified as a proposed Major Change, and all consequential revisions listed (and numbered) under the same 'umbrella' heading.

- 21 The proposed Major Changes to the Plan which are likely to be carried forward by me as recommended Main Modifications in my report will need to be formally advertised to give those potentially affected the opportunity to make representations. Those making representations must be given the opportunity to give their views in writing, or they can ask to present their views orally at a Hearing session.
- 22 As I understand it, the JAs are also considering presentational changes to the Plan which would not impinge upon its soundness; this could include restructuring the document and some renumbering of policies. These changes would not need to be endorsed by me, but are likely to require some level of advertising. Whether the JAs decide to categorise such changes as Major or Minor is something I would not wish to influence. Other changes such as consequential renumbering of paragraphs, correction of spelling and typographical errors etc would not need to be endorsed by me, and I leave it to the JAs as to whether they need to be advertised.
- 23 I would be grateful for an early indication as to how the JAs propose to proceed. If the JAs decide to proceed and make proposed modifications to the Plan I would be grateful for an indication of when it is likely that the results of public consultation would be placed before me for my consideration.

Yours sincerely,

Geoffrey Hill
Inspector

MATTERS WHICH IMPINGE UPON THE SOUNDNESS OF THE PLAN

(as identified in Letters of 14 December 2012 and 29 January 2013)

General points

1. Inclusion of a policy to actively support sustainable development.
2. Deletion of references to the East of England Plan.
3. Nomenclature used throughout the Plan (including its title) to be revised to accord with Local Plan Regulations 2012.
4. Policies in the Plan should be worded positively.

Points raised in discussion of specific Matters at Examination Hearings

5. Deletion of Elstow South as a landfill allocation. (*Matter 5*)
6. Review of Policy WCP 6 to give clearer justification for the policy and an explanation of how any restrictions will be assessed with regard to the nature and value of the recovery operation, the degree of flexibility which will be applied, how any restrictions are to be enforced, and giving an indication of what are to be regarded as the origins of wastes going through a recovery facility.¹ (*Matter 6*)
7. Removal of reference to the proximity principle in WCP 8 and (if necessary) a revision of the supporting reasoned justification. (*Matter 6*)
8. Revision to the wording of Policy MCP 6 to be more positive and to accommodate additional or replacement processing plant as well as mineral extraction. The reference to an exception being necessary to comply with the policy should also be removed. (*Matter 7*)
9. Revision to the wording of Policy MCP 5 to make it more positive in its support for additional silica sand extraction sites in order to maintain continuity of production for at least 10 years. (*Matter 8*)
10. Redrafting of Minerals Safeguarding Area plans to show deposits of building stone more clearly. (*Matter 9*)
11. Clarification / consistency to be provided of the terms used in the Plan relating to the degree of treatment of waste required before disposal of the residue. Policy WCP 11 and Waste Objective 3 appear to be inconsistent, with Objective 3 expecting a higher or more intensive level of treatment than the Policy. (*Matter 10*)

¹ The Twinwoods decision is an interesting contrast to other recent Secretary of State decisions in Runcorn and Cornwall. For a proposed Energy-from-Waste installation in Cornwall (Case Ref: APP/D0840/A/09/2113075) he agreed with the Inspector that the idea of imposing a catchment area on was inappropriate and unnecessary (see paragraphs 1798-1800 of the Inspector's Report for that case). The decision and Inspector's report can be seen via the Planning Portal.

12. Acknowledgement of the production of RDF / SRF as an appropriate and acceptable recovery process prior to disposal. (*Matter 11*)