

**Cambridgeshire and Peterborough
Minerals and Waste Local Plan
Further Draft Local Plan Consultation
March 2019**

Form B: Consultation Response Form

From 15 March to 25 April 2019 the Councils are consulting on the Further Draft version of the Minerals and Waste Local Plan. This is the second of three rounds of consultation on this new Plan, which can be viewed at cambridgeshire.gov.uk/mwlp or peterborough.gov.uk/mwlp.

This form can be used for responding to the consultation, however we would prefer you to make comments online using the Online Consultation Portal found at links above. Alternatively you can email this form to planningpolicy@peterborough.gov.uk or post it to Joint Minerals and Waste Planning Team, % Peterborough City Council, Place and Economy, Sustainable Growth Strategy, Sand Martin House, Bittern Way, Fletton Quays, Peterborough, PE2 8TY.

All comments must be received by **11.59pm on 9 May 2019**. Late comments **will not** be accepted.

Part A: Your Details

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Signature: (not required for electronic submission)	Date: 24 April 2019

Important information about data protection:

Any comments you make as part of the consultations into the Minerals & Waste Local Plan will be made public as it is a statutory requirement to publish comments. We will publish these online. If you have any concerns then please contact us. The Councils will however remove personal email addresses, postal addresses, telephone numbers and signatures. Your information will be retained by the Councils as part of our statutory plan making duty, until no later than six months after the Plan is adopted, at which point your information will be securely deleted / destroyed. We will consult you at subsequent stages of the Plan's preparation to seek further comments from you and to keep you informed. If you do not wish to be contacted at subsequent stages of the Plan, please let us know using the contact details at the top of this page. **By submitting this form you are agreeing to these conditions.**

Part B: Your Comments

If you want to comment on several policies, paragraphs or other matters, please use a separate Part B for each representation. Please provide as much information as possible: for example, if you disagree with a policy please let us know why and tell us what alternative wording or approach you think we should use. If you need more space, please continue on a separate sheet.

Which site, policy, paragraph or other matter are you commenting on?

Policy 4 and Appendix 2, Policy 10 and Policy 23

Support: I support the above referenced site / policy / paragraph because:

Please see attached letter

Object: I object to the above referenced site / policy / paragraph because:

Please see attached letter

General Comments:

I neither support nor object to the above referenced site / policy / paragraph but I make the following observations:

Please see attached letter

Please email your comments to: planningpolicy@peterborough.gov.uk or post a hard copy to Joint Minerals and Waste Planning Team, % Peterborough City Council, Place and Economy, Sustainable Growth Strategy, Sand Martin House, Bittern Way, Fletton Quays, Peterborough, PE2 8TY.
If you have any queries please call 01733 747474.

Thank you for taking the time to respond

RICHARD BUXTON

SOLICITORS

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24 April 2019

Dear Sir / Madam

Cambridge and Peterborough (the Councils) Minerals and Waste Local Plan March 2019 Further Consultation Draft (the MWLP)

Consultation Response on behalf of Hemingfords Action Group

1. I am writing on behalf of the Hemingfords Action Group (the Group). The Group represents and is made up of residents from the villages of Hemingford Abbots and Hemingford Grey who initially successfully opposed a specific proposal to develop waste facilities at the former Hemingfords Golf Course and are now concerned that the MWLP should not open the door to a further unsustainable application.
2. As you will be aware, the effect of section 70 of the Town and Country Planning Act 1990, and section 38(6) of the PCPA2004, is to generate a presumption in favour of the plan in the English planning system. This means that unless material considerations indicate otherwise, if development accords with the local plan it will be approved, and if it conflicts with the development plan it will be refused. It is therefore crucially important that all the Council's key requirements for sustainable development are secured through policy, and that those policies are drafted in such a way that they clearly 'bite' on development.
3. For the reasons I will explain, and subject to the comments below, the group generally supports the policies relating to further waste facilities as set out in the MWLP.
4. However, the group considers that Policies 4 and 23 in particular are ambiguous, and potentially ineffective. As such these policies conflict with the requirements of the NPPF and raise the risk that the MWLP is found unsound on examination. As set out below, the Group requests the Councils to correct the policies in amending the draft MWLP.

Background

5. The MWLP is a draft local plan, prepared in accordance with the requirements of the Planning and Compulsory Purchase Act 2004 (the PCPA), the Town and Country Planning (Local Planning) (England) Regulations 2012 (as amended) and the Government's

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National Planning Policy Framework (2019) (the NPPF) and National Planning Policy for Waste (2014) (the NPPW).

6. Section 39(2) of the PCPA requires plan making authorities to prepare their plans “with the objective of contributing to the achievement of sustainable development”.
7. The NPPF explains that this means, “meeting the needs of the present without compromising the ability of future generations to meet their own needs” (NPPF, paragraph 7). It goes on to explain that in achieving this end, the planning system has three overarching objectives, comprising economic, social and environmental objectives.
8. The environmental objective in particular requires development to “contribute to protecting and enhancing our natural, built and historic environment; including making effective use of land, helping to improve biodiversity, using natural resources prudently, minimising waste and pollution, and mitigating and adapting to climate change, including moving to a low carbon economy” (NPPF, paragraph 8 (c)).
9. Section 9 of the NPPF provides guidance to plan making authorities on sustainable transport, and requires transport issues to be considered from the earliest stages of plan-making so that the potential impacts on transport networks can be addressed, and so that the environmental impacts of traffic and transport infrastructure can be identified, assessed and taken into account, and opportunities identified to avoid adverse impacts, and generate net environmental gains (NPPF, paragraph 102). Paragraph 103 of the NPPF requires the planning system to actively manage growth in support of these objectives.
10. General guidance on preparing local plans is set out in the NPPF at section 3. This requires not only that plans should be prepared with the objective of contributing to the achievement of sustainable development, but “contain policies that are clearly written and unambiguous, so it is evident how a decision maker should react to development proposals” (NPPF, paragraph 16(d)).
11. The NPPW requires that the “need for waste management facilities is considered alongside other spatial planning concerns” (page 4). With specific reference to site identification, the NPPW requires waste planning authorities to:
 - “Consider opportunities for on-site management of waste where it arises;
 - Consider a broad range of locations ... looking for opportunities to co-locate waste management facilities together and with complementary activities ...; [and]
 - give priority to the re-use of previously-developed land” (NPPW, paragraph 4).
12. Ultimately, and as the Councils will be aware, a local plan such as the MWLP must satisfy the soundness test, i.e. it must be positively prepared, justified, effective and consistent with national policy (PCPA2004, s. 20(5) and NPPF paragraph 35).

The draft MWLP

Identified Sites

13. As a preliminary issue, the Group notes that the land to the north of Hemingford Abbots Golf Course is identified in the interactive policies map as an existing waste management facility and lies within a Waste Management Consultation Area.
14. This site (Land at New Farm, Cambridge Road, Hemingford Abbots) was granted permission in June 2000 under planning reference H/1424/98 pursuant to which it is authorized to accept artificial grass matting, silica sand, rubber matting/pads, green waste, subsoil, topsoil, plastic containers/bags and aluminium cans only for transfer, processing or storage. It is understood that this site never secured a waste management licence and is now in the process of being closed down and cleared. The Group therefore consider that the site should not be identified as an existing waste management site.

General Comments

15. The Group supports the MWLP's vision of providing for the sustainable management of all wastes to the achievement of net self-sufficiency, and of striking a balance between meeting present and future needs, and maintain and enhancing the social, environmental and economic vibrancy of the plan area (MWLP paras 2.10 & 2.11).
16. The Group also supports the headline objectives set out in Table 2 (the Headline Objectives) and welcomes the recognition in the MWLP that notwithstanding the plan area is a net importer of waste (with imported waste almost four times the amount of waste exported from the area) (at paragraph 3.31), the direction of national waste policies is for waste planning authorities to "increase their waste management capacity to the extent of meeting the needs of their own area (i.e. moving towards net self-sufficiency)" with a related reduction in cross-border movements (MWLP, paragraph 3.32). In particular, the Group wholly supports the MWLP's stance, that in the light of these circumstances, "no site specific allocations for new waste management facilities have been identified" (MWLP, paragraph 3.39).

Policy 4

17. The Group recognizes that notwithstanding the factual and policy position described above, there may nonetheless be a need in the future to develop waste management facilities within the WMLP area, and therefore subject to the following comments, supports the principles of Policy 4.
18. Reading the supporting text of Policy 4 together with policy 4 itself, the Group has the following specific concerns.

19. There is a general requirement for proposals which do not contribute towards sustainable waste management to demonstrate the “quantitative and market need for the development”.
20. In the case of *Cherkley Campaign Ltd v Mole Valley DC (and others)* [2014] EWCA Civ 567, the court of appeal held that a private (commercial) demand was sufficient to discharge a requirement to demonstrate ‘need’. It is highly unlikely that a waste management facility will be promoted in the absence of a commercial demand. Hence the requirement for a ‘market demand’ to be demonstrated will almost inevitably be satisfied in every case.
21. The Group assumes that the reference to a ‘market need’, is intended to refer to a ‘qualitative’ need which, if satisfied, would promote the Headline Objectives of the MWLP rather than promoting merely the commercial objectives of future developers. Please could you therefore amend the terminology to refer to a ‘quantitative and qualitative’ need and delete the reference to a ‘market’ need. If necessary, this can be further explained in the explanatory text to the policy.
22. *Catchment and other restrictions.* Related to the question of qualitative need, the Group notes the comment in paragraph 3.46 that Policy 4 does not make specific reference for applicants to enter into binding restrictions on catchment areas, including tonnages and / or waste types. This is a concern, given the background of the area as being a net importer of waste, the policy ambition of self-sufficiency which obviously informs the locational requirements, and the adverse impacts of excessive road haulage on residential amenity, air quality, and the role of heavy goods vehicles in congestion.
23. There is a clear risk, particularly given the relatively easy road access from net exporters of waste such as the London authorities, and the price in particular of agricultural land, that there will be commercial pressure to increase the number of waste processing facilities in the MWLP area. As currently drafted, and particularly in the absence of a qualitative need measure, it is likely to be difficult for the Waste Planning Authority to resist such applications. The Group therefore consider that in addition to a qualitative need test, there should be a requirement that any new facilities demonstrate that their waste streams derive wholly or predominantly from within the MWLP area.
24. Policy 4 professes to direct proposals to suitable sites and appears to recommend a sequential approach to site selection. As we understand it, the sequential preference is for:
 - B2 or B8 sites within identified settlements and other strategic employment areas of over 10ha (in both cases as identified in Development Plan Documents) (the First Choice Sites)
 - other ‘suitable’ sites within the identified ‘urban areas’ or on the “edge of them” provided that the First Choice Sites are unviable or unsuitable for site-specific reasons, and always subject to demonstrable compatibility with surrounding uses and establishing a clear relationship with the relevant

settlement (by virtue of landscape, design and highway access). We also note that substantial weight will be given to the use of brownfield land.

- Co-location with other waste management facilities or complementary activities is supported.

25. In principle, the Group supports the above policies. However, as I will explain they are concerned that the policies are not clear and could be misapplied.

Failure to Accord with NPPW

26. The sequential site approach in Policy 4 is unclear. The NPPW requires 'priority' to be given to the re-use of previously developed land. This requirement is significantly watered down in Policy 4, becoming instead just a requirement to give substantial weight to the use of brownfield land.

27. Giving 'substantial weight' to a brownfield location is a different exercise from giving 'priority' to a brownfield location. The admonition to give substantial weight to a brownfield location (as per draft Policy 4) simply means that a proposal which involves a brownfield location will attract additional 'brownie points' in the decision making process. It does not require brownfield locations to be prioritized over other locations as per the NPPW.

28. Moreover, the NPPW requirement to prioritise brownfield sites is clearly a general requirement which applies to all possible sites, including co-location sites. Draft Policy 4 does not currently make it clear that even proposals to co-locate facilities should prioritise the use of brownfield locations.

29. For these reasons, Policy 4 as currently drafted is materially inconsistent with the NPPW and should therefore be amended.

Unclear meaning of 'Urban Area'

30. It is wholly unclear what constitutes the 'urban area' for the named settlements, and where the edge of the urban area is. The Group notes that Policy 5 refers to and defines "settlement boundaries". To avoid confusion the same term should be used in Policy 4 to replace the term "urban area" and the definitions in Policy 5 of 'settlement' and 'edge of settlement' should equally be carried over to Policy 4 (with any appropriate and consequential changes).

31. It is similarly unclear from Policy 4 how the 'suitability' of a proposed site will be assessed. Guidance is provided in Appendix 2 to the MWLP but there is no reference to that appendix in either Policy 4 or its supporting text (for further discussion of Appendix 2, please see below).

32. To avoid confusion it would be advisable to make an express reference to the Appendix 2 in Policy 4 itself.¹
33. It is unclear what outcome is sought via the reference to a 'clear' relationship with the settlements (etc). Presumably, what is sought is a positive outcome in accordance with the locational and access requirements as set out in Appendix 2 and in accordance with the principles of sustainability articulated in paragraph 8 of the NPPF? If so, this should be clarified.

Appendix 2

34. As mentioned above, Policy 4 relies in part for its effect, on Appendix 2. The Group is concerned that key locational and design issues are addressed only in Appendix 2, which is not policy, and therefore does not carry the statutory weight of policy.
35. Paragraph 1.1 of Appendix 2 explains that it is intended as further guidance, expanding on the formal policies within the Local Plan. Paragraph 1.8 goes on to note that "if any text in this appendix conflicts in any way with the provisions of the policies set out in this Local Plan or any other Development Plan Document, then the contents of those policies prevail".
36. Turning to the substance of Appendix 2. The Group supports the locational and design principles set out in Appendix 2. However, they note that policy-like statements are included within blue shaded boxes. While some of these statements are clearly drafted as guidance to applicants and officers, others (in particular using the words 'must' or 'should') appear to contain strict requirements. For example:
- in the box headed 'Siting General Principles', there is a statement that "[w]aste management facilities giving rise to large traffic flows must be located close to the primary road network and roads suitable for use by HCVs (sic)" (Appendix 2, page 4);
 - similarly, in the box headed 'Urban Edge / New Development Principles', is the statement "[t]he needs of the existing community must be taken into account".
37. There are similar 'imperatives' in the supporting text, e.g. "[a]ll landscape proposals must be in accordance with local landscape character and should reflect information on native species appropriate to each character area" (Appendix 2, para 3.21).
38. The Council will be aware that supporting text, such as Appendix 2 does not carry any statutory weight (*R (Cherkley Campaign Ltd) v Mole Valley District Council [2014] EWCA*

¹ Please note that it is not sufficient answer that Appendix 2 is expressly referred to in Policy 17 (Design). This is because Policy 17 addresses the discrete issue of efficient land use and facility design. It is at least arguable that the application of the locational guidance in Appendix 2 has a different and more parochial effect on design assessment than it does on assessing the suitability of a site as a whole. This therefore introduced an element of uncertainty as to the effect of Appendix 2 and the application of Policy 4.

Civ 567). In these circumstances, the imperatives in Appendix 2 that proposals ‘must’ or ‘should’ achieve ‘x’ or ‘y’, will be very difficult to achieve.

39. Moreover, it can be notoriously difficult to decide whether a policy, let alone supporting text, conflicts with another policy, and ultimately, whether or not there is a conflict is a matter of the decision maker’s reasonable planning judgement (*Bloor Homes Est Midlands Limited v SSCLG (and another) [2014] EWHC 754 (Admin)*). Particularly where what is being applied is guidance (rather than policy) this can lead to inconsistency in approach between officers, and result in uncertainty both for applicants, the minerals planning authority, and local communities affected by applications.
40. Such uncertainty as to the meaning and requirements of any formal policies that require a site to be ‘suitable’ is contrary to the requirements of paragraph 16(d) of the NPPF and raises the concern that the MWLP may not be sound in this respect.
41. The Group therefore consider that if the MWLP is to achieve its Headline Objectives, the key ‘imperative provisions’ of Appendix 2 as they relate to site selection should be expressly taken into Policy 4. Similarly, the key imperative provisions as they relate to design should be taken into Policy 17.

Waste Management Areas (WMAs) (Policies 10 and 4)

42. Policy 10 defines waste management areas by reference to the Policies Map and confirms that “development will not normally be permitted, other than that which meets Policy 4”.
43. The Group notes the very large number and variety of WMA’s within the region, and in particular, near to Hemingford Abbots and Hemingford Grey.
44. The Council will appreciate that Policy 4 is a criteria-based ‘permissive’ policy, which under the heading ‘Waste Management Facilities – Co-location’, supports the co-location of “waste management facilities together, or with complementary activities”.
45. Bearing in mind the advice in paragraph 16d of the NPPF, that policies should be drafted to make it evident “how a decision maker should react to development proposals”, the Group has two concerns regarding this part of Policy 4:
 - a. the requirement that new development ‘complements’ existing development should apply equally where a new waste facility is proposed to be co-located with an existing waste facility. This will make it clear that a proposal to co-locate a new facility will not act as a ‘licence’ to materially change the impacts of the WMA as a whole;
 - b. there is no guidance in the WMLP as to what the Council should regard as a ‘complementary activity’. The WMLP should be clarified to include indicative criteria for judging what is a ‘complementary activity’. Those criteria should make it clear that a co-location proposal will not be ‘complementary’ if it materially and adversely changes the impacts of the existing facility.

46. The Group also consider that it is likely to assist both the determining Council and applicants for future waste management developments if in addition to showing the geographic extent of the WMAs on the Policies Map, the type of facility and waste stream was described (either in the key to the Policies Map or in a separate schedule to the WMLP).

Policy 23 (Traffic, Highways and Rights of Way)

47. Sub-paragraph (a) of the policy requires development to take “appropriate opportunities to promote sustainable transport modes ... to the degree reasonably available given the type of development and its location”.

48. This policy requirement is so vague and qualified as to be effectively unenforceable. It clearly does not rule out sites which are poorly located in transport terms, which it should do. The policy itself and its aims should be clarified.

Conclusions

49. The Group welcomes the Vision and Headline Objectives of the MWLP, and considers that subject to the above comments, the MWLP will contribute to achieving sustainable development.

50. Nonetheless, the Group remains concerned that for the reasons explained above, the approach to site selection in Policy 4 is inconsistent with the NPPW, Policies 4 and 23 in particular are uncertain, and that Appendix 2 contains text that is clearly intended to have the force of policy, but is not incorporated into the relevant policies.

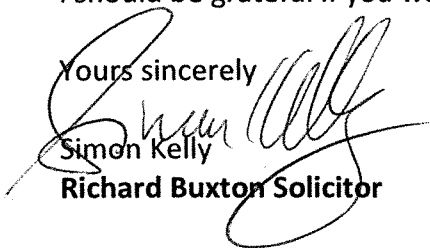
51. As currently drafted, these policies and Appendix 2 are in breach of paragraph 16 of the NPPF, and therefore do not satisfy the soundness requirements at paragraph 35 of the NPPF. There is therefore a risk that the MWLP will be found unsound.

52. For these reason, we respectfully ask the Councils to clarify these policies in particular as outlined above.

53. In addition, the Group also draws the Councils’ attention to the uncertain status of the currently allocated site to the north of Hemingford Abbots Golf Course (known as Land at New Farm, Cambridge Road, Hemingford Abbots). In the light of the information set out above, the Councils are asked to consider whether the draft identification in the policies map of this site as an existing waste management facility should be maintained.

I should be grateful if you would acknowledge receipt of this consultation response.

Yours sincerely


Simon Kelly

Richard Buxton Solicitor