

Policy Evidence Report

Policy 5: Mineral Safeguarding Areas

**Hertfordshire Minerals and Waste
Local Plan 2040**

Hertfordshire County Council



Supporting Regulation 22(c)(iii)(iv)

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1. Introduction

- 1.1. Hertfordshire County Council is reviewing its adopted Minerals Local Plan, Waste Local Plan and supporting documents. These comprise the following documents (with adoption date):
 - Minerals Local Plan Review (March 2007)
 - Minerals Consultation Areas SPD (November 2007)
 - Waste Core Strategy and Development Management Policies DPD (November 2012)
 - Waste Site Allocations DPD (July 2014)
 - Employment Land Areas of Search SPD (November 2015)
- 1.2. The documents listed above are to be replaced by a single Minerals and Waste Local Plan (MWLP) covering the period to 2040. The new MWLP will set the overall spatial framework and development management policies for sustainable minerals and waste management development in Hertfordshire.
- 1.3. This Policy Evidence Report provides a context and justification for the creation of Policy 5: Mineral Safeguarding Areas in the emerging Minerals and Waste Local Plan.

2. National Policy Context

- 2.1. The National Planning Policy Framework (NPPF 2021) and National Planning Practice Guidance (PPG) provide the basis of national planning policy.
- 2.2. The following points within the NPPF relate to Policy 5:
 - Paragraph 8 states the environmental objective in order to achieve sustainable development: ‘to protect and enhance our natural, built and historic environment; including making effective use of land, improving biodiversity, using natural resources prudently, minimising waste and pollution...’.
 - Paragraph 209 highlights the need to safeguard mineral resources: ‘It is essential that there is a sufficient supply of minerals to provide the infrastructure, buildings, energy and goods that the country needs. Since minerals are a finite natural resource, and can only be worked where they are found, best use needs to be made of them to secure their long-term conservation.’
 - Paragraph 210 states that ‘planning policies should ... c) safeguard mineral resources by defining Mineral Safeguarding Areas and Mineral Consultation Areas; and adopt appropriate policies so that known locations of specific minerals resources of local and national importance are not sterilised by non-mineral development where this should be avoided (whilst not creating a presumption that the resources defined will be worked); d) set out policies to encourage the

prior extraction of minerals, where practical and environmentally feasible, if it is necessary for non-mineral development to take place ...’.

- Paragraph 212 states: ‘Local planning authorities should not normally permit other development proposals in Mineral Safeguarding Areas if it might constrain potential future use for mineral working.’
- The NPPF offers definitions for Mineral Consultation and Safeguarding Areas:
 - **‘Mineral Consultation Area:** a geographical area based on a Mineral Safeguarding Area, where the district or borough council should consult the Mineral Planning Authority for any proposals for non-minerals development.
 - **Mineral Safeguarding Area:** An area designated by minerals planning authorities which covers known deposits of minerals which are desired to be kept safeguarded from unnecessary sterilisation by non-mineral development.’

2.3. The PPG section on Minerals states:

- ‘minerals can only be worked (ie extracted) where they naturally occur, so location options for the economically viable and environmentally acceptable extraction of minerals may be limited. This means that it is necessary to consider protecting minerals from non-minerals development and has implications for the preparation of minerals plans and approving non-mineral development in defined mineral safeguarding areas ...’.

Paragraph: 001 Reference ID: 27-001-20140306

- Mineral planning authorities should adopt a systematic approach for safeguarding mineral resources, which:
 - uses the best available information on the location of all mineral resources in the authority area. This may include use of British Geological Survey maps as well as industry sources;
 - consults with the minerals industry, other local authorities (especially district authorities in 2-tier areas), local communities and other relevant interests to define Minerals Safeguarding Areas;
 - sets out Minerals Safeguarding Areas on the policies map that accompanies the local plan and define Mineral Consultation Areas; and
 - adopts clear development management policies which set out how proposals for non-minerals development in Minerals Safeguarding Areas will be handled, and what action applicants for development should take to address the risk of losing the ability to extract the resource. This may include policies that encourage the prior extraction of minerals, where practicable, if it is necessary for non-mineral development to take place in Minerals Safeguarding Areas and to prevent the unnecessary sterilisation of minerals.

Paragraph: 003 Reference ID: 27-003-20140306

- Whilst district councils are not mineral planning authorities, they have an important role in safeguarding minerals in 3 ways:

- having regard to the local minerals plan when identifying suitable areas for non-mineral development in their local plans. District councils should show Mineral Safeguarding Areas on their Policies Maps;
- in those areas where a mineral planning authority has defined a Minerals Consultation Area, consulting the mineral planning authority and taking account of the local minerals plan before determining a planning application on any proposal for non-minerals development within it; and
- when determining planning applications, doing so in accordance with development policy on minerals safeguarding, and taking account of the views of the mineral planning authority on the risk of preventing minerals extraction.

Paragraph: 005 Reference ID: 27-005-20140306

3. Local Context

- 3.1. Much of Hertfordshire is underlain by sand and gravel deposits which provide valuable resources for construction materials and the future needs of Hertfordshire. Minerals are finite resources and can only be worked where they are found. Allowing new built development to take place on top of these deposits could make these valuable mineral resources inaccessible for future extraction, by ‘sterilising’ them from potential future use. This sterilisation can occur either directly by building on top of the deposits, or indirectly, for example, by building new houses close to a mineral deposit, and thus preventing extraction due to the proximity to the new development.
- 3.2. For Hertfordshire, Mineral Safeguarding Areas (MSAs) have been identified based on British Geological Survey (BGS) data.
- 3.3. The county council and district/borough councils will work collaboratively through early engagement during Local Plan preparations and pre-applications to promote mineral safeguarding.
- 3.4. If planning applications for non-minerals development submitted to the district/borough councils (unless it falls within the stated thresholds for excluded development) fall within an MSA, the Minerals Planning Authority must be consulted to have the opportunity to consider whether the development proposed would lead to unacceptable sterilisation of potentially extractable mineral resources. This process allows for the county council and district/borough councils to work together to protect the resources within the identified MSAs.

4. Minerals & Waste Local Plan Policy

4.1. Prior to the publication of the emerging MWLP, the Council was preparing separate Minerals and Waste Plans, which were at differing stages of production. The emerging Minerals Local Plan (MLP) was published for a Regulation 19 Proposed Submission consultation in 2019, and the emerging Waste Local Plan (WLP) was published for a Regulation 18 Draft Plan consultation in 2021. These emerging Plans have now been brought together into a single MWLP. The Policy which this Evidence Report relates to has been formulated from one or more relevant policies in those previous emerging Plans, and takes into account the representations received at those previous stages of consultation.

Proposed Submission Minerals Local Plan 2019

4.2. The Proposed Submission Minerals Local Plan was published for a ten week Regulation 19 consultation from 14 January 2019 to 22 March 2019. This document included Policy 8: Mineral Safeguarding. The policy read as follows:

Policy 8: Mineral Safeguarding

The county council will safeguard known mineral resources of sand and gravel and brick clay from unnecessary sterilisation by non-mineral development by implementing Mineral Safeguarding Areas as indicated on the Policies Map.

Any proposals for non-mineral development which fall within the Mineral Safeguarding Areas, other than applications considered as 'excluded development', will be subject to consultation with the Minerals Planning Authority.

After consultation with the Minerals Planning Authority, the submission of a Mineral Resource Assessment may be required to establish the existence or otherwise of a viable mineral resource. Assessments shall be site specific and include geological survey data undertaken by a suitably qualified professional.

The Minerals Planning Authority will object to proposals for non-mineral development within the Mineral Safeguarding Areas, as shown on the Policies Map, based on the findings of the Mineral Resource Assessment, unless it is clearly demonstrated to the Minerals Planning Authority that:

- mineral extraction is not environmentally acceptable; or
- the need for the non-mineral development clearly outweighs the need for the mineral resource and therefore sterilisation of the mineral resources; or
- the proposed development does not constrain potential future extraction i.e. playing fields or open land; or

- the development would not constrain effective present and future mineral development.

Prior extraction will be sought where practicable unless it is demonstrated that the mineral cannot practically be extracted in advance of the proposed development. In these circumstances, full consideration should be given to the use of raised sand and gravel material on site in construction projects to reduce the need to import material as opportunistic use.

4.3. During the Regulation 19 consultation, 19 representations were made in relation to this policy. The main points of these are summarised below:

- a) The policy is considered not to align with national policy and alternative wording is provided:
- *'The county council will safeguard known mineral resources of sand and gravel and brick clay from unnecessary sterilisation by non-mineral development by implementing Mineral Safeguarding Areas, and within a buffer of 250m from the boundary of any mineral safeguarding areas, and within 250m from a permitted mineral operation as indicated on the Policies Map.*
 - *Any proposals for non-mineral development which fall within the Mineral Safeguarding Areas, other than applications considered as 'excluded development', will be subject to consultation with the Minerals Planning Authority.*
 - *After consultation with the Minerals Planning Authority, the submission of a Mineral Resource Assessment may be required to establish the existence or otherwise of a viable mineral resource. Assessments shall be site specific and include geological survey data undertaken by a suitably qualified and competent professional.*
 - *The Minerals Planning Authority will object to proposals for non-mineral development within the Mineral Safeguarding Areas, and within a buffer of 250m from the boundary of any mineral safeguarding areas, and within 250m from a permitted mineral operation as shown on the Policies Map, based on the findings of the Mineral Resource Assessment, unless it is clearly demonstrated to the Minerals Planning Authority that:*
 - *mineral extraction is not environmentally acceptable; or*
 - *the need for the non-mineral development clearly outweighs the need for the mineral resource and therefore sterilisation of the mineral resources; or*
 - *the proposed development does not constrain potential future extraction i.e. playing fields or open land; or*
 - *the development would not constrain effective present and future mineral development.*
 - *In the event that permission is granted for non-mineral development the agent of change principle will be applied to that development to ensure*

that future extraction of mineral resource protected by a mineral safeguarded area, and its buffer is not in any way prejudiced.

- *Prior extraction will be sought where practicable unless it is demonstrated that the mineral cannot practically be extracted in advance of the proposed development. In these circumstances, full consideration should be given to the use of raised sand and gravel material on site in construction projects to reduce the need to import material as opportunistic use.*
- b) It is not clear as to whether the MSAs include a buffer which is standard practice for a policy.
- c) It is suggested that the policy needs appropriate reference to national guidance issued by the BGS to ensure that proximal development is suitably considered, and as such minerals sites are better protected from incursion by incompatible land uses.
- d) It is suggested that suitable cross referencing is provided to the policies map or the site selection report. This would ensure better consistency with Paragraph: 027 Reference ID: 61-027-20180913 of the Local Plans PPG.
- e) The third paragraph needs to include clear reference to paragraph 187 of the NPPF to ensure that existing consented minerals sites don't "have unreasonable restrictions placed on them as a result of development permitted after they were established".
- f) It is suggested to clarify whether the Authority would support the removal of prior extracted material off-site, subject to the other policies in the Plan.
- g) The policy implies that HCC will object to proposals for non-mineral development within the MSA even if prior extraction is agreed (unless this is adequately covered by the phrase 'based on the findings of the Mineral Resource Assessment'). The policy could provide more certainty for developers or LPAs. Having four either/or criteria grounds for objection creates uncertainty.
- h) The policy should be amended to state that development will only be permitted in an MSA in exceptional circumstances which would not include self-inflicted need for housing where a LPA has allocated sites within a MSA in preference to sites outside an MSA.
- i) The policy requires a clear definition and benchmark for a Mineral Resource Assessment.
- j) The policy should not state "*Prior extraction will be sought where practicable unless it is demonstrated that the mineral cannot practically be extracted in advance of the proposed development*". The phrase is considered weak and the policy should state that "*Prior extraction will be required unless there are exceptional circumstances.....*".
- k) It is considered that the type of proposed development that should be notified to the MPA is too extensive and should be limited to the types of development that could lead to significant sterilisation. Therefore, the following alternative criteria is provided, noting when the MPA should be notified:
- *'Significant development within existing urban (built-up) areas:*
 - *Development involving any one or more of the following:*

- *the provision of dwelling houses where - i. the number of dwelling houses to be provided is 10 or more, or ii. the development is to be carried out on a site having an area of 0.5 hectare or more and it is not known whether the development falls within paragraph (a)(i),*
- *the provision of a building or buildings where the floor space to be created by the development is 1,000 square metres or more, or*
- *development carried out on a site having an area of 1 hectare or more, or*
- *any development subject to an Environmental Impact Assessment under the Environmental Impact Regulations.*
- *Significant development elsewhere:*
- *Development involving any one or more of the following:*
- *the provision of one or more dwelling houses but not including extensions to existing dwelling houses or those within the recognised settlement boundaries, or*
- *the provision of permanent buildings or structures but not including extensions under 1,000 square metres, conversions, or demolition, or*
- *redevelopment of commercial or industrial sites over 1 hectare or more, or*
- *any development subject to an Environmental Impact Assessment under the Environmental Impact Regulations.'*

l) Viability should be of greater consideration for prior extraction. It should be considered whether prior extraction would have an impact on the viability and delivery of the proposed non-mineral development. MLP should be amended to reflect this.

m) The last paragraph of the policy should be updated to read:

- a. *"Prior extraction will be sought where practicable unless it is demonstrated that the mineral cannot practically be extracted in advance of the proposed development. The practicalities of extraction should give due weight to the feasibility and viability of prior extraction both in relation to the (prior) extraction of the resource and whether the prior extraction itself could harm the viability of the overall proposed development. Where no prior extraction is to take place then in these circumstances, full consideration should be given to the use of raised sand and gravel material on site in construction projects to reduce the need to import material as opportunistic use."*

n) The current MSA overlooks that not all mineral deposits will be of a quality or viability to warrant protection from sterilisation. The current MSA covers area of southern Hertfordshire where new strategic development is likely to come forward – these sites will be affected by the MSA policy. Suggested policy wording is offered:

- *'The County Council will, where justified, seek to safeguard known viable mineral resources of sand and gravel and brick clay from unnecessary sterilisation by non-mineral development, by implementing Mineral Safeguarding Areas, as indicated on the Policies Map.*

- *Any proposals for non-mineral development which fall within the Mineral Safeguarding Areas, other than applications considered as ‘excluded development’, will be subject to consultation with the Minerals Planning Authority.*
 - *Proposals for new housing development which accord with Development Plan allocations made in Local Plans will be assessed without prejudicing the required rate of delivery of the allocation during the Local Plan period.*
 - *After consultation with the Minerals Planning Authority, the submission of a Mineral Resource Assessment may be required to establish the existence, or otherwise, of an economically viable mineral resource. Assessments shall be site-specific and include geological survey data undertaken by a suitably qualified professional.*
 - *The Minerals Planning Authority will not object to proposals for strategic non-mineral development on Local Plan allocation sites within the Mineral Safeguarding Areas, as shown on the Policies Map, based on the findings of the submitted Mineral Resource Assessment, where it has been reasonably demonstrated to the Minerals Planning Authority that:*
 - *mineral extraction is not economically or otherwise viable; or*
 - *mineral extraction would not be environmentally acceptable; or*
 - *the need for the non-mineral development clearly outweighs the need for the mineral resource and therefore sterilisation of the mineral resources; or*
 - *the proposed development does not constrain potential future extraction i.e. playing fields or open land; or*
 - *the development would not constrain effective present and future mineral development.*
 - *Where practicable, prior extraction will be encouraged only on the largest strategic allocations within Local Plans unless it is demonstrated that the mineral cannot practically be extracted in advance of the proposed development, taking into consideration the required timescale for the implementation of the development. In these circumstances, full consideration should be given to the use of raised sand and gravel material on site in construction projects to reduce the need to import material as opportunistic use.’*
- o) The PSMLP makes very good provision for the anticipated future mineral needs of Hertfordshire, to the extent that exceptional circumstances will be required to justify any mineral extraction from sites other than those specifically allocated in the PSMLP. Therefore, it is considered that the policy to safeguard the entire area of the MSA is not necessary as it could affect the delivery of other infrastructure.
- p) It is considered that the policy does not recognise the lack of quality or economic viability of an assessed mineral resource as a relevant criterion. Strategic new development should be recognised as ‘Excluded Development’ unless the Local Plan pre-determined that prior extraction was not necessary as part of the Plan

making process. The policy implies the MPA can object to schemes regardless of scale or required delivery timings – this may unnecessarily delay the provision of small to medium scale strategic allocations.

- q) It is considered that the policy is not appropriate for strategic proposals which have been approved for allocation by the Secretary of State. The policy should be reworded to assist in bringing development forward whilst encouraging best practice to secure opportunistic mineral gains where economically and practical to do so. As it stands, it is considered that the policy will create delays in the delivery of strategic infrastructure.

4.4. The county council's response to the representations received is stated below:

- a) The supporting text to the policy explains that a buffer is included within the Mineral Safeguarding Area – the MSA is the identified area of mineral resource with an additional 100m buffer, which the Council believes is an appropriate distance. Therefore no specific reference to the buffer in the policy is required. The agent of change principle only applies to 'existing businesses and community facilities', not to areas with potential mineral reserves, therefore it is not appropriate to include reference to the agent of change principle in the policy.
- b) The MSA includes a buffer, this is highlighted in the supporting text and the supporting documentation relating to establishing MSAs
- c) The NPPF requires MPAs to safeguard mineral resources through MSAs and MCAs. PPG also provides further guidance, including reference to the BGS guidance. The policy requires proposals for non-mineral development (subject to a list of exceptions) within an MSA to consult the MPA, to ensure that any non-mineral development would not have a significant impact on the availability of the resource. No change therefore is required to the policy in this regard.
- d) The policy now references the Policies Map.
- e) This policy does not safeguard existing mineral infrastructure sites, rather the potential mineral resource itself and the sterilisation of it. Policy 4: Site Safeguarding and Consultation Areas safeguards existing mineral infrastructure from other development.
- f) The policy does not prevent the off-site removal or prior extracted mineral, rather it simply seeks to reduce sterilisation of mineral by ensuring prior extraction where possible. Where this is not possible, the policy does require full consideration to be had to opportunistic extraction on site.
- g) A criterion has been added to the policy to clarify that there will not be an objection to development if prior extraction is agreed.
- h) The MPA is not able to restrict all development within MSAs, however the policy states that the MPA will object to proposals that could sterilise the mineral resource unless certain criteria are met. The allocation of housing sites by LPAs will be subject to extensive consultation with the MPA and the 'balance' between the need for the development and the potential sterilisation will be addressed through that process.

- i) Supporting text to the policy states further requirements of what a Minerals Resource Assessment should cover as a minimum, and that further information can be found in the County Council's Mineral Resource Assessment Technical Note.
- j) The policy has been amended to strengthen the MPA's position on prior extraction and opportunistic extraction of minerals.
- k) It is noted that the excluded development list is extensive, therefore a shorter, more concise list has been included within the policy. This approach uses development limits of settlements to eliminate the need to list a wide range of planning application types.
- l) The need for prior extraction will be informed by a Minerals Resource Assessment. The policy states that the MPA will object to non-mineral development in MSAs unless 'the need for non-mineral development outweighs the sterilisation of the mineral'. This need will be demonstrated by the applicant for the non-mineral development and would include an assessment of viability.
- m) The effect of prior extraction on the viability of proposed non-mineral development will be covered in the demonstration of need. The policy requires full consideration of opportunistic extraction.
- n) It is not necessary to amend the policy wording to allow for development on sites which are allocated in the Development Plan. Such sites will, through the Local Plan preparation process, go through extensive consultation with the MPA. The policy lists these sites as exceptions to the requirement to consult the MPA.
- o) Safeguarding known deposits of mineral through MSAs is a requirement of national policy. The safeguarding does not prohibit development in these areas, rather it allows for the impact of proposed development, and the possible sterilisation of mineral, to be fully considered.
- p) The policy has been amended to exclude sites which are allocated in the Development Plan.
- q) The policy as re-worded should not create unnecessary delays in the delivery of strategic infrastructure, with criteria allowing for the overriding need for non-mineral development.

5. Alternative Reasonable Options

5.1. The following alternative options have been considered (and fully assessed in the Sustainability Appraisal Report):

- Option 1 – A less restrictive policy which would potentially allow more development to take place within MSA's, without the need to consult the MPA
- Option 2 – A policy which safeguards known deposits of sand and gravel and brick clay through the use of MSA's and includes criteria which determine when the MPA must be consulted (preferred)

- Option 3 – A more restrictive policy than Option 2, with more stringent requirements for prior extraction and for when the MPA must be consulted

6. Conclusion

- 6.1. This Policy Evidence Report demonstrates the justification for the inclusion of this policy in the emerging Minerals and Waste Local Plan Draft Plan. It summarises the national policy context and local context, along with the main issues raised through previous consultation and how the council has addressed those issues.
- 6.2. Any representations received on this policy at the Regulation 18 consultation stage will be carefully considered by the county council and used to inform any changes to the policy wording as appropriate.
- 6.3. This Policy Evidence Report was written to support the Draft Plan (Regulation 18) consultation. The next iteration of this report, to be published in support of the Proposed Submission (Regulation 19) version of the Plan, will summarise the main issues arising from the Regulation 18 consultation and will form part of the Regulation 22 statement, as set out by the Town and Country Planning (Local Planning) (England) Regulations 2012.