



Independent Examination of the Nottinghamshire and Nottingham Waste Local Plan Matters, Issues and Questions

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Inspector appointed by the Secretary of State

Introduction

1. Following the initial examination of the Pre-Submission Draft Waste Local Plan (August 2023) (the Plan) and the supporting material, set out below are the Matters (topics) and Issues (points for consideration) that will form the basis for discussions during the Hearing sessions. Matters and Issues may change as the Examination progresses, although participants will be given an opportunity to comment on any new issues that may arise. This document should be read alongside the accompanying Guidance Note, which gives further advice and information on procedural aspects of the Examination.
2. This note provides questions to the Councils that potentially go to matters of soundness and, in some cases, are based on the representations that have been made. National policy expressed in the National Planning Policy Framework (September 2023) (NPPF) and the National Planning Policy for Waste (October 2014) (NPPW) will apply for the purposes of the Examination of the Plan, which will also take into account the advice set out in the Government's Planning Practice Guidance (PPG). In my assessment of legal compliance, I will consider, in particular, whether the Plan meets the requirements of the Planning and Compulsory Purchase Act 2004 (as amended) (the 2004 Act); the Town and Country Planning (Local Planning) (England) Regulations 2012 (the 2012 Regulations); and the Conservation of Habitats and Species Regulations 2017 (as amended) (the Habitats Regulations).
3. In framing the Matters, Issues and Questions (MIQs) consideration has been given not only to the definition of soundness at paragraph 35 of the NPPF but also the principles for Local Plans set out in paragraph 16. The NPPF establishes that policies should be clearly written and unambiguous, so that it is evident how a decision maker should react to a development proposal. The Plan should therefore set out clear policies on what will or

will not be permitted.

4. It is important to note that the MIQs set out below have arisen from my initial assessment of the submission documents and the responses made by interested parties thus far. They may evolve throughout the Examination, not least following on from any responses from the Councils or others.
5. I have set out separately and more fully in the Guidance Note how the Councils and others can respond to these MIQs in the run up to the Hearing sessions scheduled for 15 October 2024 to 17 October 2024 (inclusive) and 18 October 2024 (reserve session, if needed).
6. Below are general and detailed comments and questions which should be addressed in hearing statements. Answers should be supported by reasons and section(s) of the supporting documents and the evidence base should be referred to as appropriate. A separate document should be submitted in response to each Main Matter. **The Councils and all other participants should submit hearing statements to the Programme Officer by Friday 30th August 2024.**
7. If any clarification is required on what follows, please contact the Inspector via the Programme Officer.

A. LEGAL COMPLIANCE

Main Matter 1 – Legal Compliance and the Duty to Co-operate

Issue: Whether the Duty to Co-operate is adequately demonstrated and met, and whether the Plan is compliant with relevant legislation.

Duty to Co-operate

1. Have the Councils engaged constructively, actively and on an ongoing basis with all relevant organisations on strategic matters of relevance to the Plan's preparation, as required by the Duty to Co-operate (under s20(5)(c) and 33A of the 2004 Act?)
2. On which issues has co-operation taken place?
3. How was co-operation carried out and with what results? Has this been documented? Are there any outstanding issues?
4. How has the Duty to Co-operate been met with regard to the spatial plans of the constituent District Councils, Borough Councils, Parish Councils, neighbouring Councils and prescribed bodies on strategic and cross boundary matters?
5. Are there any strategic matters relevant to the Plan which would require cooperation with waste planning authorities in locations further afield than those adjacent to the Nottinghamshire County boundaries? If so, what engagement has taken place with the relevant authorities?

Planning and Compulsory Purchase Act 2004, Section 19 and the Town and Country Planning (Local Planning) (England) Regulations 2012 (as amended)

6. Has the Plan been prepared in accordance with the Councils' Local Development Schemes including content and timescale?
7. Has the Plan been prepared in compliance with the adopted Statements of Community Involvements (SCIs), allowing for effective engagement of all interested parties and meeting the minimum consultation requirements set out in the regulations?
8. Have the publication, advertisement and availability of the Plan followed the procedures set out in the 2004 Act and 2012 Regulations?

Whether the Sustainability Appraisal (SA) complies with the requirements of the 2004 Act, the Strategic Environmental Assessment Directive (SEA Directive) and the Environmental Assessment of Plans and Programmes Regulations 2004 (the SEA Regulations)

9. Has the SA process complied with the requirements of the SEA Directive and the SEA Regulations?
10. Is there clear evidence to indicate why, having considered reasonable alternatives in the SA, the strategy in the Plan is an appropriate response? Does the methodology conform to that in the NPPF and Planning Practice Guidance (PPG)?
11. Has the SA process been genuinely iterative and carried out in step with the stages of plan preparation?
12. Are the alternatives considered by the SA sufficiently distinct to highlight the different sustainability implications of each?
13. Is there clear evidence to indicate why, having considered reasonable alternatives, the Plan's strategy is an appropriate one?
14. Is the Plan consistent with national policy, including the NPPF, National Planning Policy for Waste (NPPW) and PPG? Are there any significant departures from national policy? If so, have they been justified?
15. Does the Plan comply with the 2004 Act and the 2012 Regulations in terms of publishing and making available the prescribed documents?

Conservation of Habitats and Species Regulations 2017

16. Does the Plan meet the requirements of the Conservation of Habitats and Species Regulations 2017, including any relevant case law [in particular the ruling of 12 April 2018 by the Court of Justice of the European Union (CJEU) *People over Wind, Peter Sweetman v Coillte Teoranta*, Case 323/17 and the High Court Judgement *Wealden v SSCLG [2017] EWHC 351Admin*] to consider the likely significant effects of projects or plans on

European protected sites, individually or in-combination? In particular, have Appropriate Assessments been undertaken under the Habitats Directive? If not, has a screening exercise shown that there is no need for such assessments?

17. How has the Plan taken account of its findings?

Does the Plan contain policies designed to secure that the development and use of land in the Plan area contributes to the mitigation of, and adaptation to, climate change?

18. To what extent does the development plan contain policies designed to secure that the development and use of land in the Plan area contributes to the mitigation of, and adaptation to, climate change?

Does the Plan raise any issues which are of relevance to the Public Sector Equality Duty?

19. Has the Plan been informed by a robust assessment of its potential equality impacts?

20. How have issues of equality been addressed in the Plan? In particular, how will the Plan help to advance equality of opportunity between people who share a "protected characteristic" as defined in the Equality Act 2010¹ and those that do not share it and further the other two aims of the Act?

¹ "Protected characteristics" are age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; and sexual orientation.

B. SOUNDNESS

Main Matter 2 – Scope and Context of the Plan and Waste Management in the Plan Area.

Issue: Whether the identification of future waste needs is sufficiently evidenced based and robust.

1. Does the Waste Needs Assessment (May 2023) (WNA) provide an appropriate and robust mechanism to support the identification of the future waste management needs in the Plan area and does it adequately take into account future growth forecasts and Government targets to reduce residual waste and increase recycling rates?
2. Does the WNA adequately take into account levels of waste management capacity in neighbouring authorities?
3. Does the WNA and the Plan adequately consider the relationship between increased energy recovery capacity and landfill capacity?
4. Are the chosen scenarios for forecast waste arisings sufficiently evidenced based to be considered as the preferred options upon which to base the Plan?
5. Does the approach taken in the Plan to not identify any specific allocations for new waste management facilities inhibit the attainment of the preferred high recycling scenarios for LACW, C&I and CD&E Waste?
6. How does the Plan influence the attainment of the preferred high recycling scenarios to ensure that the capacity gaps identified in Tables 11 and 12 are robust?
7. Does the Plan make adequate provision for future non-hazardous landfill to manage LACW and C&I in circumstances where paragraph 5.49 of the Plan identifies that opportunities for new provision during the Plan period may be limited?
8. Does the approach taken in the Plan to not identify any specific allocations for new waste management facilities inhibit the movement of waste management up the waste hierarchy and adequately support the circular economy? In this respect would the Plan be consistent with the NPPW² in terms of looking for opportunities to co-locate waste management, and in terms of care being taken to avoid stifling innovation?
9. Does the Plan adequately take into account the implications of the declarations of climate change emergencies and consequent reductions

² Per paragraph 4

in CO₂ emissions targets and the impacts this might have on sites with contracts for the management of household, industrial and commercial waste with those bodies?

10. Should the Plan be more explicit regarding the approach to net self-sufficiency with particular regard to energy recovery?
11. Should the Plan be more explicit with regard to the co-location of waste management facilities?
12. Do the Scope and Context of the Plan consider the relationship with the Nottinghamshire Minerals Local Plan (2021) in relation to the production and use of secondary and recycled aggregates?

Main Matter 3 - Vision and Strategic Objectives of the Plan

Issue: Whether the Vision and Strategic Objectives of the Plan are the most appropriate, are soundly based and provide an appropriate basis for meeting the future waste management needs sustainably.

1. Is delivery of the Vision realistic and does it adequately and accurately reflect the future environmental, economic and social dimensions of the County and City to ensure the sustainable management of waste?
2. Does the Vision and Objectives (and the Plan more generally) demonstrate that adequate consideration has been given to any cross-boundary issues, and any strategic growth priorities?
3. Should the Vision reflect an aspiration for net self-sufficiency and, if so, should the Plan explain how this could be achieved?
4. How does the Plan contribute to the improvement in the quality of life of those living, visiting and working in the Plan area and, in particular, how do the Strategic Objectives contribute to the delivery of this aspect of the Vision?
5. Does the Vision accord with the NPPW insofar as it states that waste planning authorities “should prepare Local Plans which identify sufficient opportunities to meet identified needs for their area for the management of waste streams”³
6. Does the Vision and Objectives (and the Plan more generally) adequately promote the proximity principle, circular economy principles, and the waste hierarchy?
7. Are the Plan’s objectives consistent with the NPPW insofar as it states that waste planning authorities should look for opportunities to co-locate waste management facilities together and with complementary activities?⁴

³ At paragraph 3

⁴ At paragraph 4, bullet 4

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8. Does the Vision and Strategic Objectives adequately protect the historic environment?
 9. In the absence of any specific allocations for new waste management facilities, how does the Plan deliver Strategic Objective 1 with particular regard to ensuring that there is a mix of site types, sizes and locations to help manage waste sustainably?
 10. In circumstances where alternatives to road transport are not possible or feasible, how does the plan achieve compliance with Strategic Objective 6?

Main Matter 4 – Strategic Policies

Issue: Do the Strategic Policies reflect the Vision of the Plan and deliver the Strategic Objectives; and are they justified and consistent with national policy?

Policy SP1

1. Are the justification paragraphs 7.9 and 7.10 sufficiently implicit in the policy or elsewhere in the Plan?

Policy SP2

2. In the absence of any specific site allocations for waste management development, how does the Plan provide sufficient waste management capacity to meet identified needs over the Plan period?
3. Is the policy sufficiently supportive of the waste hierarchy and is it sufficiently capable of ensuring that future waste management provision ensures that waste is managed higher up in the waste hierarchy?

Policy SP4

4. Is the policy appropriately worded and sufficiently flexible to ensure that it is supportive and not prejudicial to the use of inert waste to achieve the restoration of mineral sites?
5. Does paragraph 7.38, which suggests that non-hazardous and hazardous waste may not necessarily be managed within the Plan, conflict with the provisions of Policy SP2?

Policy SP5

6. Should the policy and/or the justification text make reference to the effect of managing waste higher up the waste hierarchy on climate change?
7. Should the justification text explain the relationship between the planning regime and the pollution control/permitting regime in relation to climate change?

Policy SP6

8. Is the Plan sufficiently clear as to how the use of alternative modes of transport in waste management development should be first considered and demonstrated and should this be more explicit in a Development Management Policy?
9. In circumstances where the use of alternative modes of transport to the use of the highway network is not available, practical or viable, should the policy refer to the need for the use of low or zero emission vehicles?
10. Should the Policy cross-reference the requirements of Policy DM12?
11. Does clause 2 of the policy achieve the appropriate balance of supporting the Vision and Strategic Objectives of the Plan whilst recognising that some waste may need to be managed from areas outside the Plan area and should any reference be made to the concept of net self-sufficiency?

Policy SP8

12. Is the appropriate balance struck between the needs of competing development with the need to protect waste management facilities?
13. Does the Plan provide sufficient guidance to applicants for non-waste management development and District/Borough Council's as to how Policy SP8 should be implemented?
14. Should the Plan identify any forms of development that would be acceptable within proximity of an existing waste management facility and which would not require any consultation with the Waste Planning Authority?

Main Matter 5 – Development Management Policies

Issue: Whether the development management policies strike an appropriate balance between seeking to provide sustainable development and protecting people and the environment and are they justified, effective and consistent with national policy?

Policy DM1

1. Is all employment land suitable for waste management development? If not, should the policy explain that some employment sites may be unsuitable or require mitigation measures, such as activities to be undertaken within the confines of a building?

Policy DM2

2. Should the justification text be more explicit regarding the role of the environmental permitting regime and its relationship with the planning regime with particular regard to emission controls?

Policy DM3

3. Does the policy adequately consider the impact of waste management development on the historic environment?
4. Should the policy/justification explain that the design of waste management facilities should also reflect the 'Agent of Change' principle by requiring that the waste management facilities are designed to ensure that the operation/use of nearby land uses is not prejudiced?

Policy DM4

5. Is it sufficiently implicit in the policy and/or Policy DM3 that waste management development should be designed and/or provided with appropriate landscape treatment to mitigate the visual impact of such facilities?

Policy DM6

6. Is the policy consistent with national planning policy with regard to the protection of the historic environment?

Policy DM11

7. Is the policy sufficiently clear regarding the planning considerations that a developer may need to take into account in respect of development proposed within an Airfield Safeguarding Area?
8. Are the Airfield Safeguarding Areas shown on Plan 2 indicative in their size or geographically correct in the area shown on the plan? In any event, are the Airfield Safeguarding Areas shown in more detail on the Policies Map and, if so, should the justification text identify where more geographical detail can be found?

Policy DM12

9. Is the policy/justification sufficient clear to explain how consideration of alternative transport modes should be demonstrated?
10. Should the policy be more explicit regarding the need for Transport Assessments to accompany waste management development?
11. Should the policy refer to the need for development proposals to demonstrate the use of low or zero emission vehicles?
12. Should the policy be more pro-active in terms of its approach to alternative and sustainable transport provision for visitors and staff in waste management development proposals?

Main Matter 6 – Implementation and Monitoring

Issue: Whether the implementation and monitoring of the Plan will be effective.

1. Is the approach to monitoring and Implementation in the Plan robust and practicable?
2. Is it clear how the monitoring arrangements demonstrate that the Plan takes a pro-active approach to mitigating and adapting to climate change?
3. Does the monitoring process provide for co-operation and participation and are appropriate participants involved? Where monitoring indicates that review/update of the Plan's policies might be necessary how would the monitoring and implementation framework ensure that Boroughs engage with DtC bodies on a constructive, an active and an ongoing basis on any relevant strategic matters?
4. Should the corrective action for SP2 and SP4 include a review of the Plan to consider the allocation of specific sites or areas of search for new waste management facilities?

Stephen Normington

INSPECTOR