

Independent Examination of the Derbyshire and Derby Minerals Local Plan

Matters, Issues and Questions

Derbyshire County Council and Derby City Council's Response

A. LEGAL COMPLIANCE

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

- 20 Should the Plan be updated to reflect the 'Finch' Supreme Court Judgement?

MPA Response

The Councils have considered this issue carefully and would make the following observations.

Firstly, the Finch 'Supreme Court Judgement' was published in June 2024, which well post-dates the publication of the Derbyshire and Derby Pre- Submission Local Plan in January 2023, so there would be no reason at that time for the Plan to include any reference to the Finch Case or take account of its implications in the Plan.

Associated with this, the Final Sustainability Appraisal for the Plan was also completed and published by the MPAs in January 2023 to support the publication of the Pre-Submission Plan. Again, there was reason why at that time the SA would have taken account of the 'Finch' Supreme Court Ruling.

The Strategic Flood Risk Assessment Addendum was commissioned from Aecom in 2024 and was completed and published in August 2024 shortly after the Finch judgement but at a time when the implications of the Finch judgement were still being widely considered both in the legal and planning professions.

The above being the case, the MPAs consider that it would only result in significant delay to the Examination process and the potential adoption of the Plan, if the MPAs had to commission an update / addendum to the SA and SFRA for the Plan to take account of the Finch Supreme Court Judgement.

Whilst it is acknowledged that the implications of the Finch judgement are significant for local planning authorities in the preparation of their Local Plans, at the end of the day, the ruling merely highlights the need for plans and planning applications to take account of the 'downstream' impacts on climate change of new development proposals.

As a result of the above, the MPAs consider that the implications of the Finch judgement can be taken account in the Plan by proposed modifications to the Plan rather than the need to update the SA and SRFA that supports the Plan. In any event, proposed modifications to the plan recommended by the Inspectors would then need to be subject to SA, so the implications of the Finch judgement could be taken into account at that point.

The MPAs, therefore, propose the following modifications to the Plan, which are set out in Submission Document SD03: Appendix A on page 2 for Policy SP2 Climate Change.

- Amend the final paragraph of Policy SP2 as follows:
 - *The Climate Change Impact Assessment should include an assessment of whether there is causal connection between the proposal and any impact on the environment associated with any indirect emissions and whether this constitutes a likely significant indirect effect of the proposed development.*
- Amend Second Sentence as follows:
 - The Climate Change Impact Assessment should include an assessment of whether there is causal connection between the proposal and any impact on the environment associated with the indirect emission and, whether this constitutes a likely significant indirect effect of the proposed development.