



Nottinghamshire Wildlife Trust (NWT) – Submission for the Nottinghamshire Minerals Local Plan Examination.

MATTER 3 – Minerals Provision Policies

Issue: Whether the minerals provision policies are positively prepared in terms of making adequate provision for minerals, whether they are consistent with national policy, justified and otherwise sound.

27 Should part 3 of Policy MP1 be subject to consideration of environmental, transport and other factors?

It is NWT's position that, as per our previous representations, part 3 should be removed from this policy entirely, as it undermines the Plan-led approach and the need for robust and comparable SA across all possible sites in a consistent manner. Regular review of the Plan with an updated SA would be the proper approach to addressing a need for new allocations, were such a need to arise.

If, however, it is decided that part 3 should remain in the policy, then NWT strongly urges that the wording should be clear that such proposals should be subject to consideration of the full range of factors applied to possible sites at an allocation, and of course, application stage, **with rigour, and with the necessary level of detail as described in the SP policies**. Whilst this is possibly implicit in the policy, for the avoidance of doubt, and to remove the likelihood of misinterpretation, NWT consider this should be explicit.

In the absence of such clarity, there is a risk that the NPPF, Wildlife and Countryside Act 1981(as amended), NERC Act and the Habitats etc. Regulations might be breached, ie, it would not be consistent with either national policy or law. In reality, the inclusion of part 3 without qualification, has the potential to reduce the effectiveness of delivery of the Plan, by possibly bringing forward unsuitable and unsustainable sites.

Policy MP2p: Mill Hill nr Barton in Fabis

34 Please provide an update on the situation regarding the submitted planning application.

NWT has been closely involved with the MPA in the consultation processes regarding this application, including many hours (more than 12 hours) of meetings with the MPA and the Applicant, far more so than is normal for a new sand and gravel site. The application is now at the stage of a **fourth Regulation 25 request**, with the Applicant still failing to provide proper and adequate information to inform a rigorous determination of the application. This is almost unprecedented in Nottinghamshire, and demonstrates the unusually unsustainable and damaging location of this site, and it remains unclear as to why it was allocated, contrary to the poor SA scoring, as identified in our previous representation.

At the current time, there remain substantive unresolved ecological issues for this proposed site, some of which NWT consider cannot be resolved, including loss of and damage to Local Wildlife Sites and Sn41 priority habitats, and potentially un-mitigable impacts on Sn41 species and those protected under EU and UK law (Including Schedule 1 birds and otters). The site could not proceed without substantial changes to the boundary to remove some of the areas



of irreplaceable habitat from the working area, and to date many issues remain outstanding. There has also had to be a complete review of the use of the biodiversity calculator by the applicant, and it has had to be re-calculated.

It remains NWT's view that this site should not be allocated, as it clearly scores poorly in the SA, as detailed in our previous representation, and the application process has demonstrably proven that this site would have unacceptable ecological impacts, and that on that basis it cannot meet either the requirements of the NPPF, the aims of the 25 Year Environment Plan, or the emerging Environment Act.

Policy MP6: Brick Clay Provision

36 Should part 2 of Policy MP6 be subject to consideration of environmental, transport and other factors?

37 There are no site development briefs in Appendix 2 for brick clay sites (as referred to in the last sentence of the policy).

Policy MP7: Gypsum Provision

38 Should part 2 of Policy MP7 be subject to consideration of environmental, transport and other factors?

Policy MP8: Silica Sand Provision

39 Should part 2 of Policy MP8 be subject to consideration of environmental, transport and other factors?

Policy MP9: Industrial Dolomite Provision

40 Should Policy MP9 require consideration of environmental, transport and other factors?

Policy MP10: Building Stone Provision

41 Should part 2 of Policy MP10 be subject to consideration of environmental, transport and other factors?

To avoid repetition, NWT's position on each of questions 36, 38-41 is the same. NWT do not consider that any of the referenced policies above are sound because of the inherent contradiction between the Plan-led approach whilst simultaneously making specific provision for development on non-allocated sites within those Policies. Therefore, either references to bringing forward unallocated sites should be removed altogether from each policy (our preferred approach), or it should be clear that any proposals must be subject to a robust consideration of the full range of potential impacts, including those listed above, in accordance with the SP Policies.

If the plan-making process has been robust and based on good data, then there should be no need for development on non-allocated sites. A robust plan review progress at fixed intervals may identify the need to bring new sites forward for further allocations in a proper manner, where the need has changed, in which case they can be compared to other potential sites in a rigorous way. It is not a rigorous process for a single operator's proposal to be brought forward at a particular point in time, and therefore not be subject to a proper comparative test against other prospective sites, including an SA. Mineral extractions can be a difficult process, with a number of variables that cannot be controlled, particularly in floodplains, and in relation to markets, so NWT understand that it is possible to experience changes in external factors beyond what might have been anticipated. If such an event were to occur, such that further allocations were required, then any consideration of new sites must be subject to the most robust assessment.



By undermining the plan-led approach, it is possible that this policy could inadvertently breach the requirements of the NPPF and so may not be legally compliant.

Policy MP12: Oil and Gas

42 Please comment on any implications for Policy MP12 arising from the judgement that quashes paragraph 209(a) of the Framework.

As it currently stands, MP12 (and its supporting paragraphs) contain no reference to the need to assess the climate change potential of new oil and gas development, whether conventional or unconventional. It is NWT's understanding that the Dove judgement in *Claire Stephenson v. the Secretary of State for Housing and Communities and Local Government*, quashes paragraph 209(a) of the NPPF, as it potentially contravenes the Government's long-established policy in relation to the obligation to reduce green-house gas emissions under the Climate Change Act 2008. The judgement makes clear that plan makers or decision takers can depart from the in principle support for fracking that was once provided by paragraph 209(a) and must instead consider evidence on whether any development can meet the Commission for Climate Change's Three Tests. It is clear that those tests remain in place and will have to be passed in order for shale gas extraction to be consistent with the requirements of the 2008 Act. Consequently individual decisions on plans or applications for unconventional hydrocarbon extraction, will have to take into consideration any objections and evidence produced relating to the impact of shale gas extraction on climate change.

On the above basis, MP12 should at the very least be amended to make it explicit that when determining planning applications decision-makers should take into account the climate change impacts of the development, the potential impact on climate change commitments and decarbonisation goals, and making it explicit that it is up to decision-makers to resolve any conflicts between statements in the NPPF and any objections and evidence produced relating to the impact of shale gas extraction on climate change.

The policy should also make it explicit that it is open to the MPA to refuse an application on climate change grounds, if they believe that the material planning considerations indicate that the benefits of the proposal are outweighed by the adverse climate change impacts of the proposal.

Furthermore MP12 should make an explicit requirement for developers to set out the likely climate change impacts of the proposal and the consistency of the proposal with Government intentions and commitments, including with respect to decarbonisation and the meeting of greenhouse gas reduction commitments.

In addition, NWT considers that the fact that NPPF Paragraph 209a was the context behind the development of MP12, it resulted in unsound policy wording, presumably informed by the thrust and presumption behind 209a at that time. This is clear from the text of Policy MP12 which implies a presumption in favour of allowing exploration and commercial development of oil and gas resources, including shale gas, for which no distinction is made.



Nottinghamshire Wildlife Trust - Nottinghamshire Minerals Local Plan Examination
Matter 3

Further to the quashing of paragraph 209a and its removal from the latest revision of the NPPF, this presumption is incorrect and at the very least 2b) should make it clear that there is **no presumption** that unconventional oil and gas production will be supported, and that all environment impacts of any proposed development, must be robustly assessed, in full accordance with the SP policies.