

Forward Plan reference number: FP/112/07/21

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| Report title: Review of the Essex Minerals Local Plan 2014 – Next Steps | |
| Report to: Councillor Lesley Wagland - Cabinet Member Economic Renewal, Infrastructure and Planning | |
| Report author: Andrew Cook, Director of Highways & Transportation | |
| Date: 16 December 2021 | For: Decision |
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| County Divisions affected: All Essex | |

1. Everyone's Essex

- 1.1 The Essex Minerals Local Plan was adopted in 2014. We are required to review the effectiveness of the plan within five years of adoption to ensure that policies remain relevant and effectively address the needs of the local community. A formal review of the Plan commenced in late 2019 with a consultation¹ on the preferred approach being concluded in late April 2021. Continuous engagement has been carried out notably with our Local Planning Authority partners (under the 'Duty to Cooperate'²) during this period.
- 1.2 Over sixty responses to the consultation have been received and following a further assessment and analysis, including a review of national guidance, it is recommended that the approach to determine the provision of land won sand and gravel in the county is changed to ensure that a steady and adequate supply of aggregates is maintained in the county for seven years beyond the end of the Plan period (i.e., to 2036). As such additional sites will need to be identified to supply this need.
- 1.3 This report seeks the Cabinet Member's approval to carry out a further tailored consultation on the proposed changes, notably covering Policy S6, as well as approval to carry out a call for new sites to come forward and be subsequently assessed in accordance with an agreed methodology.

2. Recommendations

- 2.1 Agree the revised approach to calculate the provision for future sand and gravel extraction as set out at Appendix 1³.

¹ Regulation 18 of the [Town and Country Planning \(Local Planning\) \(England\) Regulations 2012](#)

² Under the [Localism Act 2011](#)

³ This is the main document that supports this engagement exercise. It presents the rationale for the future proposed direction of Policy S6 ahead of another Regulation 18 consultation which will follow this engagement exercise. It also provides a response to all comments received in relation to Policy S6 that came out of the Minerals Local Plan Review Regulation 18 consultation in April 2021.

- 2.2 Agree to hold a 'call for sites' for allocation in the local plan to ensure a steady and adequate supply of aggregates to 2036 in accordance with the draft findings of the assessment at Appendix 1.
- 2.3 Agree that the Chief Planning Officer is authorised to determine the site selection methodology, should sites be put forward for consideration.
- 2.4 Agree the indicative timetable for the review set out at Paragraph 7.4 subject to further consultation (under Regulations 18 and 19 of the Town and Country Planning (Local Planning) (England) Regulations 2012)⁴.
- 2.5 Agree that the Chief Planning Officer is authorised to update the Minerals and Waste Development Scheme ahead of later consultation on the Minerals Local Plan carried out under Regulation 19 of the Town and Country Planning (Local Planning) (England) Regulations 2012, based on a refinement of the indicative dates set out at Paragraph 7.4.

3. Background and Proposal

- 3.1 The current [Essex Minerals Local Plan](#) was adopted on 8 July 2014.
- 3.2 The County Council has a statutory requirement and responsibility to plan for future minerals supply and to determine minerals planning applications.
- 3.3 Minerals underpin our entire way of life and support our plan-led growth agenda, in being able to create great places for people. Minerals provide the construction materials we need to build the new homes, our places of work, our transport infrastructure and essential services such as health, education and recreational facilities. Minerals and aggregates are essential to energy generation, agriculture, manufacturing and many other businesses. We also have additional very important development and infrastructure projects to deliver in the next decade, not least the emerging Garden Communities, Lower Thames Crossing and a proposed new nuclear power station at Bradwell.
- 3.3 However, minerals are a finite natural resource and can only be worked - extracted from the ground - where they are found. It is vital we only extract what is needed and make best use of them to secure their long-term availability and conservation.
- 3.4 The current Essex Minerals Local Plan provides planning policies for minerals development in Essex until 2029. It sets a policy framework within which the best possible use of mineral resources; mainly sand and gravel in Essex, is achieved. It also allocates sites for future mineral extraction and associated development. The Plan contains policies promoting recycling and secondary processing, the safeguarding of resources and facilities, and high-quality site restoration, all in the pursuit of sustainable development.

⁴ As agreed by the Cabinet of the Council on 26 November 2019

3.5 As National Planning Policy Framework (NPPF) states, “*plans should take a proactive approach to mitigating and adapting to climate change, taking into account the long-term implications for flood risk, coastal change, water supply, biodiversity and landscapes, and the risk of overheating from rising temperatures*” – in line with the Climate Change Act 2008. As the NPPF also dictates, it is essential that there is a sufficient supply of minerals to provide the infrastructure, buildings, energy and goods that the country needs. Government policy therefore facilitates the sustainable use of minerals and this is translated into the local level through the Essex Minerals Local Plan. The Plan facilitates a sustainable use of minerals by, for example:

- Contributing positively to climate change mitigation and adaptation;
- Identifying and safeguarding potentially important mineral resources for future use;
- Encouraging the more prudent use of mineral resources, through sustainable construction, mineral re-use and minimising mineral waste;
- Encouraging the production and use of recycled aggregate;
- Enabling minerals to be processed to optimise the resource for sustainable development;
- Enabling HGV distances to be reduced to minimise carbon emissions;
- Safeguarding rail and water mineral transshipment sites, essential to meeting future needs;
- Managing the adverse impacts of mineral development, to ensure the environment, amenity and communities are protected;
- Achieving positive benefits from the restoration and after-use of minerals sites, such as habitat creation opportunities.

3.6 A review of the Minerals Local Plan is a legal requirement. A detailed assessment of the policies of the Plan was carried out in 2020 and the work concluded that the Plan would benefit from formal changes, subject to consultation. Accordingly, a six-week consultation on the Council’s preferred approach was carried out in Spring 2021.

Regulatory Context

3.7 Regulation 10A of The Town and Country Planning (Local Planning) (England) Regulations 2012 (as amended) requires the local authority to review each local plan at least every 5 years.

3.8 Paragraph 33 of the National Planning Policy Framework (2019) states (inter-alia) that

“Policies in local plans and spatial development strategies should be reviewed to assess whether they need updating at least once every five years and should then be updated as necessary. Reviews should be completed no later than five years from the adoption date of a plan and should take into account changing circumstances affecting the area, or any relevant changes in national policy.”

3.9 National Planning Practice Guidance (PPG) sets out what is required from such a review:

“Reviewing a plan means undertaking an assessment to determine whether the policies need updating, which should include consideration of any changes to local circumstances and national policy. A local planning authority should consider in particular any necessary changes to policies which address their strategic priorities.” (Reference ID: 61-042-20180913).

- 3.10 Following the assessment, ECC (as Minerals Planning Authority) concluded that that some policies need updating as well as updating the Development Scheme to set out the timetable for the proposed revisions to the Plan.

4. Issues for consideration

- 4.1 The consultation responses have been assessed. The responses and our assessment are set out in Appendix 1. This report presents the officer’s recommended conclusions that, amongst other matters, further changes to our approach are required. The initial assessment of the Plan provided draft conclusions. It was previously considered that the Plan continued to plan for a steady and adequate supply of aggregates in Essex and that the existing allocated sites provide sufficient mineral resources to support current need within and outside the county.
- 4.2 It remains the case that there is no indication from site promoters that those sites in the Plan, remaining to come forward, are not still intended to be delivered. It was however previously considered that, although new sites would be required before the end of the plan period in 2029, in order to ensure a steady and adequate supply, any future call for sites would not need to take place until after the current review period. This is no longer considered to be the case and the reasons for this are set out below.
- 4.3 The National Guidelines for Aggregate provision used in the current plan expired at the end of 2020 and as such the Plan’s apportionment-based approach to determine the amount of sand and gravel to be planned for is now obsolete. The Mineral Planning Authority must now fall back on the NPPF which states, inter-alia, that *“Minerals planning authorities should plan for a steady and adequate supply of aggregates by:*
- (a) preparing an annual Local Aggregate Assessment, either individually or jointly, to forecast future demand, based on a rolling average of 10 years’ sales data and other relevant local information, and an assessment of all supply options (including marine dredged, secondary and recycled sources).*
- 4.4 A further assessment of the amount of sand and gravel that would be required to provide a ‘steady and adequate’ supply has been carried out as part of analysing responses to Minerals Local Plan Policy S6 (see Appendix 1). Policy S6 of the Plan is the policy which quantifies mineral need. It also seeks to maintain a landbank of at least seven years for sand and gravel whilst preserving a plan-led approach to mineral provision by resisting applications outside of sites allocated in the MLP, unless certain criteria are met.

- 4.5 As a result of the consultation, a number of amendments are proposed relating to Policy S6. These are considered to be too significant to those originally proposed at Regulation 18 to allow for a progression straight to the Regulation 19 stage of the Plan Review. Therefore, a single-issue Regulation 18 consultation on Policy S6 is proposed on the change. These proposed changes would need to be subject to engagement under the Duty to Cooperate (DtC), Sustainability Appraisal (SA), Habitats Regulations Assessment (HRA), Health Impact Assessment (HIA) and Equality Impact Assessment (EqIA) before public consultation.
- 4.6 The main conclusions with regards to the review of Policy S6 which have led to revised amendments are as follows:
- Following the expiration of the National and sub-national guidelines for aggregate provision, officers have recalculated the annual need for sand and gravel upon which the landbank and future provision is to be based, using the methodology set out in the NPPF. The newly derived figure is 3.74 million tonnes per annum (mtpa), down from 4.31mtpa. The revised figure represents an average of the last 10 years of rolling sales plus a buffer of 20% such that the Plan is imbued with the ability to accommodate future increases in sand and gravel sales;
 - To maintain the NPPF requirement of a seven year landbank at the end of the Plan period (2029), new sites will be needed in Essex to meet the 3.74mtpa figure⁵. The reason for this is explained in more detail in paragraphs 4.7-4.10;
 - Following an assessment of the representations received and a consideration of the latest data, a call for sites is recommended as part of this Review to ensure a Plan-led approach is taken to mineral provision across the County. This would be carried out in parallel with the single-issue Regulation 18 consultation;
 - It is considered that a future MLP would fail the Tests of Soundness set out in the NPPF if it did not contain additional site allocations at this juncture – as it would not be an approach ‘consistent with national policy’, ‘positively prepared’ or ‘justified’;
 - Assuming enough suitable sites are submitted for allocation, sufficient allocations will be made to satisfy a landbank of seven years of sand and gravel at the end of the Plan period in 2029.
 - The Minerals Planning Authority (MPA) acknowledges that mineral provision is not just about satisfying a quantified need; the site assessment process will need to address issues relating to productive capacity, any potential over-reliance on site extensions and the spatial distribution of sites;
 - All current Reserve Site Allocations would be redesignated as Preferred Sites, with all potential future allocations to also be Preferred Sites.
 - Sand and Gravel provision in Essex would continue to be on the basis of a combined sand and gravel landbank, with no assumed increased

⁵ see Appendix 1 paragraph 1.84 onwards - “Revising the Plan Apportionment through the MLP Review”

contribution from windfall, marine or recycled and secondary sources used to seek to reduce the need for terrestrial allocations.

Maintaining a Landbank of Seven Years at the end of the Plan Period

- 4.7 At the point of the adoption of the MLP in 2014, it was understood that a Call for Sites would need to take place at some point before the MLP expires in 2029. This was considered to be a justified approach given the uncertainty raised at the Examination stage with regards to whether it was appropriate to base the Plan provision on the annual apportionment as set out in the then extant National Guidelines or base it more closely on the relatively new ten-year rolling sales methodology set out in the recently adopted NPPF.
- 4.8 NPPF Paragraph 213f requires a MWPA to maintain ‘landbanks of at least 7 years for sand and gravel’. The NPPF does not state that such provision needs to be shown to be capable of being maintained throughout and outside of a Plan period i.e., at the end of the MLP Plan period in 2029, as a requirement of the Plan being capable of adoption. Therefore, there was no requirement to ensure that there will be a seven-year land bank (or at least make sufficient allocations that would allow for a seven-year landbank to be maintained) at the end of the Plan period as a condition of adoption. The NPPF requires that local development plans are reviewed every five years, and this mechanism allows a MWPA to allocate additional sites that would be required to service this landbank requirement through cyclic reviews rather than all at once.
- 4.9 However, it is important to note that the Essex MLP is at a review stage which is likely to be completed at a point of time that broadly represents half of the Plan’s lifetime. This is considered to be significantly different to a situation where a 15-year Plan is about to be adopted and which would be subject to further review in the future.
- 4.10 It is now considered appropriate to allocate sufficient material to allow for the maintenance of at least seven years of sand and gravel at the end of the Plan period in 2029. Such an approach will provide flexibility between the end of the Plan period of this MLP (2029) and the next Plan and, unless sales significantly increase above the newly proposed plan provision figure calculated through an average of the last ten-years sales plus 20%, mean that another Call for Sites would not be required until work begins on the new Plan that would need to be in place in 2029 and which would cover the following 15 years. With the intention to reduce the plan apportionment, the MWPA must also act to ensure the maintenance of a Plan-led system, accord with the need for Development Plans to be flexible and meet the Tests of Soundness of having a positive and justified approach. Providing headroom at the end of the Plan period in 2029 is considered to accord with these tests.

5. Links to our Strategic Ambitions

- 5.1 This report links to the following aims in the Essex Vision

- Develop our County sustainably

This report links to the following strategic priorities in the emerging Organisational Strategy ‘Everyone’s Essex’:

- A strong, inclusive and sustainable economy as the minerals industry not only is a major employer in Essex but the industry supplies the construction industry which in turn has a significant impact upon Essex’s economy
- A high-quality environment as the Minerals Local Plan will ensure high quality beneficial restoration schemes for worked sites

6. Options

- 6.1 The currently recommended preferred option is to continue to carry out the review on the Plan in line with the approach summarised above and detailed at Appendix 1. However, a further consultation is recommended, scoped to Policy S6 only, given that revised amendments signal a departure from the previous preferred approach of the MWPA, includes the assessed need for a simultaneous call for sites. This would allow sufficient time to consult and engage before submission to the Planning Inspectorate in May 2024. To do nothing would be at odds with the relevant planning legislation, as defined earlier.
- 6.2 Another option would be continuing the approach without the need for new sites, however given the time it would take to adopt a new plan, there is a very likely risk that the Plan would be found unsound at examination as it would not be planning for a steady and adequate supply of aggregates as required by the NPPF.
- 6.3 Further, an approach could be to delay or not carry out the Review. However, this would mean that the Plan remains (in part) out of date and not in conformity to current national planning policy. It could also lead to speculative minerals planning applications being submitted across the County to address any shortfall in supply.

7. Next steps

- 7.1 As stated, there are a number of reasons why the Council is required to review the existing Minerals Local Plan. The main reasons are to ensure that the minerals planning policy framework in the county remains up to date, reflects the most recent policy and guidance, and takes account of new information and changing circumstances. This is so that appropriate guidance can be given to the minerals industry and local communities – particularly with regard to where minerals development should take place in Essex to meet future demand.
- 7.2 Should new sites come forward through the call for sites then the suitability of these sites will be assessed in accordance with a methodology which is to be developed and agreed to ensure we have the right sites in the right place to come forward for extraction at the right time – in accordance with the spatial

vision and strategic objectives of the Plan. It is proposed that the Chief Planning Officer will agree the methodology for the review.

- 7.3 Any proposed amendment to the plan, following the review, must follow the prescribed stages of plan production as set out in relevant planning Acts and the appropriate regulations; the Town and Country Planning (Local Planning) (England) Regulations 2012.
- 7.4 It is anticipated that continued engagement will be carried out informing the plan stages as follows:

| | Key Stage | Date (assuming confirmation of approach end Oct 2021). |
|-----|--|---|
| 1. | Authorisation for a call for sites. | December 2021 |
| 2. | Simultaneous Policy S6 Regulation 18 consultation and call for sites engagement. Appoint consultants to carry out site selection exercise and agree site selection methodology | February - Mid April 2022 |
| 3. | Consultation feedback to Political Leadership/Scrutiny Committee. Approval sought for proposed list of Preferred Sites. | October 2022 |
| 4. | Regulation 18 public consultation on new proposed site allocations. | December 2022 – January 2023 |
| 5. | Consultation feedback including conformation of final list of new Preferred Site Allocations to Political Leadership/Scrutiny Committee. | May 2023 |
| 6. | Public and stakeholder consultation (Reg 19). | February – mid March 2024 |
| 7. | Cabinet approval for publication and submission of Plan. | April 2024 |
| 8. | Submission to Planning Inspectorate (Reg 22). | May 2024 |
| 9. | Preparation of evidence for Examination. | June – August 2024 |
| 10. | Examination in Public. | September 2024 |
| 11. | Inspector's Report. | October 2024 |
| 12. | Formal Adoption. | November 2024 |

- 7.5 An updated timetable will need to be added to the Minerals and Waste Local Development Scheme.

8. Financial implications

- 8.1 The resource costs for the Review will be predominately staff costs which are anticipated to be met from within the existing service budget as well as through the existing Service Level Agreement the Planning Service has with the Council's Place Services team. Existing budget is also allocated towards an independent site selection exercise.
- 8.2 Notwithstanding the results of consultation and engagement, which may lead to unforeseen work, it is expected that non-staffing resources are able to be met from existing budgets. As such, at this stage, it is expected that any operational costs can be managed without demand for additional funding. Nonetheless, there is existing budget within the overall Planning service of £1.6m which will be used to fund this.

9. Legal implications

- 9.1 The Planning and Compulsory Purchase Act 2004 and the Town and Country Planning (Local Planning) (England) Regulations 2012 permit the Council to take this approach. The Town and Country Planning (Local Planning) (England) (Amendment) Regulations 2017 require the Review is completed with 5 years of the Plan's adoption. The recommendation to commence a Review is lawful.
- 9.2 As set out elsewhere in the report there is risk involved if the Council does not carry out the Review of the Plan, given the findings set out in this report.

10. Equality and Diversity implications

- 10.1 The Public Sector Equality Duty applies to the Council when it makes decisions. The duty requires us to have regard to the need to:
- (a) Eliminate unlawful discrimination, harassment and victimisation and other behaviour prohibited by the Act. In summary, the Act makes discrimination etc. on the grounds of a protected characteristic unlawful
 - (b) Advance equality of opportunity between people who share a protected characteristic and those who do not.
 - (c) Foster good relations between people who share a protected characteristic and those who do not including tackling prejudice and promoting understanding.
- 10.2 The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, marriage and civil partnership, race, religion or belief, gender, and sexual orientation. The Act states that 'marriage and civil partnership' is not a relevant protected characteristic for (b) or (c) although it is relevant for (a). An equality impact assessment has been carried out.
- 10.3 The equality impact assessment indicates that the proposals in this report will not have a disproportionately adverse impact on any people with a particular characteristic.

11. List of appendices

Appendix 1 - Topic Paper - Policy S6 Provision for Sand and Gravel Extraction 2021 incorporating Policy S6 of the Minerals Local Plan 2014 - Draft Amendments Policy S6 of the Minerals Local Plan 2014 - Amendments Made
Policy S6 of the Minerals Local Plan 2014 - Schedule of Amendments

Appendix 2 – Equality Impact Assessment

12. List of Background papers

- Minerals Local Plan 2014
- Minerals Local Plan 2014: Draft Amendments Regulation 18 2021
- Minerals Local Plan Review 2021 – Rationale behind the Proposed Amendments 2021
- Minerals Local Plan Topic Paper S6
- Authority Monitoring Reports – 2014-2019
- Local Aggregate Assessments – 2014 – 2019
- The Planning and Compulsory Purchase Act 2004
- Town and Country Planning (Local Planning) (England) Regulations 2012
- Town and Country Planning (Local Planning) (England) (Amendment) Regulations 2017

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| I approve the above recommendations set out above for the reasons set out in the report. | Date 16/12/2021 |
| Councillor Lesley Wagland - Cabinet Member Economic Renewal, Infrastructure and Planning | |

In consultation with:

| Role | Date |
|---|-----------------------|
| Andrew Cook, Executive Director, Economy, Localities & Public Health | 22/11/21 |
| Executive Director for Corporate and Customer Services (S151 Officer) | 15/12/21 |
| Nicole Wood | |
| Director, Legal and Assurance (Monitoring Officer) Paul Turner | 3 December 2021 |