

From: Peter Oakford – Deputy Leader with Cabinet responsibility for Minerals and Waste Local Plan Matters

Barbara Cooper, Corporate Director for Growth, Environment and Transport

To: County Council – 10th September 2020

Decision No:

Subject: Adoption of the Kent Mineral Sites Plan and modifications to the Kent Minerals and Waste Local Plan 2013 – 2030 resulting from the Early Partial Review

Classification: Unrestricted

Past Pathway of Paper: Environment and Transport Cabinet Committee – July 2020
Cabinet – July 2020

Future Pathway of Paper: N/A

Electoral Division: Countywide

Summary:

This report seeks the adoption of the Early Partial Review (EPR) of the Kent Minerals and Waste Local Plan and the Mineral Sites Plan (MSP) following independent examination by an Inspector appointed by the Secretary of State. These Plans form part of the Development Plan against which planning applications are determined.

Following the Council's adoption of the Kent Minerals and Waste Local Plan 2013-30 (KMWLP) in 2016, work has been undertaken to prepare the associated Kent Minerals Sites Plan and an Early Partial Review of the KMWLP to reflect amongst other matters that a Waste Sites Plan is not required.

The MSP allocates sites considered suitable in principle for mineral development. Identification of three sites in the MSP followed a call for sites, site appraisal work and public consultation. The EPR modifies the KMWLP such that Council's commitment to the preparation of a Waste Sites Plan is removed which follows a reassessment of future waste management capacity requirements in Kent. Implementation of KMWLP policies concerning mineral and waste safeguarding also identified the need for modifications to improve their effectiveness and this formed part of the EPR.

Following consideration by Environment and Transport Cabinet Committee on 28 November 2018, County Council agreed to the publication of 'Pre-Submission' Drafts of the EPR and the MSP for a statutory period for representations between January and March 2019. A total of 405 representations were received and these were submitted, with the Plans and related evidence base, to the Secretary of State for independent examination. The examination was required to ensure that the Plans are sound and prepared in

accordance with statutory requirements relating to plan-making. On Tuesday 8 October 2019, Planning Inspector Nicholas Palmer BA (Hons) BPI MRTPI commenced hearings associated with the independent examination which ran for four days over a two-week period. During the examination the Inspector identified the need for certain modifications and these were subject to public consultation.

On 23 April 2020 the Council received the Inspector's Report (see Appendix A) which concludes that, subject to modifications, the Plans are sound and legally compliant. Following receipt of the Inspector's Report, Council is now able to adopt the Plans subject to the modifications being made. The modifications clarify the wording of certain policies and confirm safeguards to the environment and communities associated with mineral development at the allocated mineral sites.

Development (mineral extraction) at sites allocated in the Minerals Sites Plan is subject to the Council granting a separate planning permission in response to a planning application from a mineral operator.

Following adoption, the MSP and policies of the KMWLP (as modified) will be monitored to assess whether they are being effective in meeting the KMWLP objectives on waste management and minerals supply. The results of the monitoring will be published annually in the Kent Annual Monitoring Report.

Plans are subject to a statutory formal review every five years and so a review of KMWLP policies not subject to the Early Partial Review needs to be completed by July 2021.

Recommendation(s):

County Council is asked to:

- (i) Consider the Inspector's Report (see Appendix A) on the examination of the EPR and MSP and note and accept his recommended modifications;
- (ii) note the content and recommendations of the Sustainability Appraisals of the EPR and MSP; and
- (iii) **adopt** the Kent Mineral Sites Plan and modifications to the Kent Minerals and Waste Local Plan (as set out by the Early Partial Review) (as modified) as set out in Appendices B and C respectively

In addition to:

- (iv) delegate powers to the Corporate Director for Growth, Environment & Transport to approve any non-material changes to the text of the MSP and modifications to the KMWLP (as set out by the Early Partial Review) in consultation with the Deputy Leader prior to publication.
- (v) note and agree the future work activities on mineral and waste planning activities as set out in para 6.5 as the basis for a revised Local Development Scheme

1. Introduction and Background

- 1.1 The Kent Minerals and Waste Local Plan 2013-30 (KMWLP) was adopted by the County Council in July 2016 as part of the Council's statutory responsibility to plan for

future minerals supply and waste management within Kent. This KMWLP forms part of the Development Plan and is a key policy document for the determination of planning applications. The KMWLP sets out the County Council's strategy and policy framework for minerals and waste development in Kent which includes future capacity and supply requirements. The adopted KMWLP commits the Council to identifying and allocating land considered suitable for minerals and waste development in a subsequent Waste Sites Plan and a Minerals Sites Plan.

- 1.2 An Early Partial Review of the KMWLP was embarked upon following monitoring of future waste capacity requirements in Kent that indicated that a Waste Sites Plan that allocated specific sites for waste management activity was no longer required. In addition, experience of implementing the KMWLP policies regarding mineral and waste safeguarding had revealed ambiguity in the wording of certain of their exempting criteria which was hindering the effectiveness of the policies. It was agreed that modifications were necessary to address this ambiguity.
- 1.3 Monitoring of mineral supply and demand indicated that a Mineral Sites Plan was still needed to identify sites suitable for meeting future requirements for sand and gravel.
- 1.4 Work on the Early Partial Review and the Minerals Sites Plan involved technical assessment and public consultation on draft proposals. Final proposals were considered by the Environment and Transport Cabinet Committee on 28 November 2018. At this meeting the Committee requested the County Council to approve and publish Pre-Submission Drafts of the Kent Mineral Sites Plan and the Early Partial Review of the Kent Minerals and Waste Local Plan for a statutory period of representations on soundness and legal compliance and to submit the Draft Plans to the Secretary of State for independent examination. Following consideration, the Cabinet Member responsible for the Local Plan took the decision to bring this resolution into effect.
- 1.5 Preparation of the Minerals Sites Plan is consistent with Policy CSM2 of the KMWLP that expects the Mineral Sites Plan to allocate sites for soft sand and for sharp sand and gravel based upon the most recent calculations of requirements set out in the Council's Local Aggregates Assessment. To ensure that Kent is planning for sufficient requirements to the end of the Plan period, a review of need was undertaken. This identified a soft sand need of 2.5mt and a sharp sand and gravel need of 5.75 mt. However, it should be noted that the adopted KMWLP recognises that sharp sand and gravel resources in Kent are rapidly depleting. Policy CSM2 of the KMWLP therefore recognises that the need for sharp sand and gravel requirements can only be met whilst resources allow. In light of the greater abundance of soft sand resources there is no similar policy test for soft sand requirements.
- 1.6 The submitted Kent Mineral Sites Plan allocated three sites for sand and gravel extraction as follows:
 - Extension to Stonecastle Farm Quarry, Hadlow (sharp sand and gravel)
 - Land at Moat Farm, Five Oak Green (sharp sand and gravel)
 - Chapel Farm (West), Lenham (soft sand)
- 1.7 The allocations of sites in the Mineral Sites Plan does not necessarily mean that mineral extraction will take place in these locations. A mineral operator(s) will need to

submit a detailed planning application to the County Council and obtain planning permission.

- 1.8 A total of 405 representations were received on the Pre-Submission documents and were considered by an independent planning inspector appointed by the Secretary of State to examine the soundness of the Minerals Sites Plan and the modifications to the KMWLP proposed by the Early Partial Review (in accordance with relevant planning policy and guidance). The National Planning Policy Framework (NPPF) defines a 'sound' local plan as one that is:
- a) Positively prepared – provides a strategy which, as a minimum, seeks to meet the area's objectively assessed need;
 - b) Justified – an appropriate strategy, taking into account the reasonable alternatives, and based on proportionate evidence;
 - c) Effective – deliverable over the plan period, and based on effective joint working on cross-boundary strategic matters that have been dealt with rather than deferred, as evidenced by the statement of common ground; and,
 - d) Consistent with national policy – enabling the delivery of sustainable development in accordance with the policies in the NPPF.
- 1.9 The independent examination also considers whether Local Plans are sound and have been prepared in accordance with plan making legislation.
- 1.10 The independent examination included public hearings which ran for four days in October 2019. During the examination the Inspector identified the need for modifications in light of comments made when the Plans had been published for representations and matters identified by the Inspector himself. The text of the modifications was discussed with the Council and those making representations during the hearings. Following the hearings, the proposed modifications were published for representations over an eight-week period from Tuesday 19 November 2019 to 14 January 2020. Forty-six representations were received during the consultation which were considered by the Inspector but these did not result in any further changes. The Council received the report of the Inspector on 23 April 2020 and this report provides a summary and details of next steps.

2. The Inspector's Report

- 2.1 The Inspector's Report is included in Appendix A and this confirms that, subject to modifications, the submitted Kent Mineral Sites Plan and Kent Minerals and Waste Local Plan Early Partial Review are 'sound' and have been prepared in accordance with statutory plan making requirements.
- 2.2. The modifications are set out in Appendices 1 and 2 of the Inspector's Report with justification included in the body of his report. The modifications are summarised as follows:
- Removal of commitment in the KMWLP to allocate sites for clay and chalk extraction. Evidence presented by the Council demonstrated that there are sufficient reserves of chalk and clay over the plan period and so there is no need to allocate specific sites for the working of such minerals;

- Addition of supporting text to policy on mineral safeguarding in the KMWLP (Policy DM7) to clarify and provide guidance on how the modified policy should be implemented;
- changes to the supporting text concerning existing KMWLP policy (CSW5) on the strategic allocation of Norwood Quarry as a site for the landfill of air pollution control residues (from energy for waste plants) to ensure the supporting text is consistent with the policy;
- addition of a footnote to supporting text to policy CSW7 on the need for waste recovery facilities to ensure the definition of recycling is clear;
- changes to the 'Development Management Criteria' provided for each allocated mineral site intended to signpost matters needing particular attention to minimise risk of unacceptable adverse impacts on the environment and communities. The modifications covered the following matters:
 - Highlighting the need for 'net gains' in biodiversity as a result of the development consistent with revisions to the NPPF;
 - Noting proximity of Stonecastle Farm and Moat Farm to the green belt and hence the need for proposals to be consistent with the green belt policy in the KMWLP (Policy DM4)
 - Signposting need for proposals at all sites to fully consider heritage impacts, in accordance with national policy (and Policies DM5 and DM6 of the KMWLP);
 - The need for any proposals for development at Moat Farm to fully assess potential impacts on water resources at Moat Farm, and necessary mitigation (consistent with the criteria included for the Extension to Stonecastle Farm and with Policy DM10 of the KMWLP);
 - Specific requirements concerning the access to Moat Farm to minimise unacceptable adverse impacts on local roads (consistent with Policy DM13 of the KMWLP);
 - Strengthened requirements for biodiversity, public rights of way and landscape considerations at Chapel Farm (consistent with Policies DM3, DM14 and DM2 (respectively) of the KMWLP); and
 - Clarification regarding the commencement of working at Chapel Farm to minimise the risk of unacceptable cumulative impacts occurring as a result of operations at the existing nearby Burleigh Farm site (consistent with Policies DM12 and DM13 of the KMWLP).

2.3 The modifications are taken into account in the text of the Plans provided in Appendices B and C of this report. Importantly, the modifications do not alter the objectives or intentions of policy or change the sites proposed for allocation. The reports in these appendices will upon adoption become the published Mineral Sites Plan and the revised Kent Minerals and Waste Local Plan Strategy upon which planning decisions in the County will be determined. Appendix D provides details of the changes to the currently adopted KMWLP.

2.4 Some minor non-material changes (e.g. formatting and correction of minor grammatical errors) (known as 'Additional Modifications') were identified as necessary and also published for information alongside the modifications. Further such changes may also be needed following adoption and these changes would only be made following agreement by the Deputy Leader with delegated authority for Minerals and Waste Local Plan Matters.

3. Strategic environmental assessment and sustainability appraisal

- 3.1 During their preparation, the Mineral Sites Plan and Early Partial Review has been subject to sustainability appraisal (SA) (incorporating strategic environmental assessment (SEA)). The SA reports provide assessments of impacts (both beneficial and detrimental) on environmental, social and economic objectives which are expected to arise from development consistent with the Mineral Sites Plan and Early Partial Review. The SA also considered reasonable alternatives to the proposals in the Minerals Sites Plan and Early Partial Review. The recommendations from the SA were taken into account as the Plan was prepared.
- 3.2 A non-technical summary of each SA prepared of the Kent Mineral Sites Plan and Early Partial Review (with modifications recommended by the Inspector) are included in Appendix E and Appendix F. The full SA reports are available on the Council's website [here for the MSP](#) and [here for the EPR](#).

4. Adoption

- 4.1 In accordance with Section 23 (3) of the Planning and Compulsory Purchase Act 2004, having received a report confirming the soundness and legality of the Minerals Sites Plan and the modifications to the KMWLP proposed by the Early Partial Review, provided the Council makes the modifications recommended by the Inspector, it may now adopt the Minerals Sites Plan and Early Partial Review as updated planning policy for minerals supply and waste management in Kent.
- 4.2 The new and revised policy will be used by the County Council when determining planning applications related to proposals for waste management and minerals supply. The updated policies concerning mineral and waste safeguarding will also be used by District and Borough Councils when determining applications for non-waste and mineral development.

5. Consideration by Environment and Transport Cabinet Committee and Cabinet

- 5.1 Similar papers were considered by Environment and Transport Cabinet Committee (ETCC) on 17th July 2020 and Cabinet on the 20th July 2020. Both resolved to note the Inspector's Report on the examination of the EPR and MSP and his recommended modifications, along with the recommendations of the associated Sustainability Appraisals. With the exception of one Member, ETCC and Cabinet resolved to request County Council to accept the modifications recommended by the Inspector to the Kent Mineral Sites Plan and the modifications to the Kent Minerals and Waste Local Plan (as set out by the Early Partial Review) and to adopt the Kent Mineral Sites Plan and the Kent Minerals and Waste Local Plan (as set out by the Early Partial Review).
- 5.2 Cabinet and Cabinet Committee also resolved to delegate powers to the Corporate Director for Growth, Environment and Transport to approve any non-material changes to the text of the MSP and modifications to the KMWLP (as set out by the Early Partial Review) in consultation with the Deputy Leader prior to their publication and to note and agree the future work activities on mineral and waste planning activities as set out in paragraph 6.5 of the report as the basis for a revised Local Development Scheme.

6. Next Steps

- 6.1 Prior to final publication of the documents, minor non-material changes (e.g. changes related to format and grammar) may be needed, and it is proposed if required that the agreement to such changes be delegated to the Corporate Director for Growth, Environment and Transport, in consultation with the Deputy Leader.
- 6.2 Following adoption there is a six-week period for legal challenges. To be successful any such challenge would need to demonstrate that the EPR and/or the Mineral Sites Plan has not been prepared in accordance with the relevant legislation.
- 6.3 In accordance with Regulation 26 of the Town and Country Planning (Local Planning) (England) Regulations 2012 (as amended) stakeholders will be notified of the Council's adoption of the updated planning policy.
- 6.4 Once adopted, policies in the Plans will be implemented and monitoring will be undertaken to assess the effect of the policies. Legislation requires a review of planning policy every five years and so the outcome of a review of KMWLP policies not updated by the Early Partial Review will be required by July 2021.
- 6.5 Following adoption, further mineral and waste planning policy work will be required to meet statutory plan making requirements. These include updates to the Kent Minerals and Waste Safeguarding Supplementary Planning Document (SPD); a review and update of the Council's Statement of Community Involvement (SCI) which sets out engagement for planning application and plan making matters, along with the 5-year review of the Kent Minerals and Waste Local Plan 2013-30. The Kent Minerals and Waste Local Plan 2013-30 was adopted in July 2016 and the Council is statutorily required to review adopted planning policy at least every five years. The elements of the plan recently updated by the Early Partial Review will not require review until 2025. Further work as set out in Appendix G will form the basis of a revised Local Development Scheme. This new policy work will become the responsibility of Susan Carey as Cabinet Member for Environment, rather than Peter Oakford.

7. Financial Implications

- 7.1 The costs of preparing the Kent Mineral Sites Plan and the Early Partial Review of the MWLP are met from the Environment, Planning and Enforcement Division's budget.

8. Policy Framework

8. The Kent Mineral Sites Plan and the policies within the KMWLP itself support the County Council's corporate policies contained within the Council's Strategic Statement 'Increasing Opportunities, Improving Outcomes – Kent County Council's Strategic Statement 2015-2020'. The Minerals Sites Plan will support and facilitate sustainable growth in Kent's economy and support the creation of a high-quality built environment, with accessible local services that reflect the community's needs and support its health, social and cultural well-being. Both the MSP and the EPR Plans support national planning policy and guidance.

9. Legal Implications

- 9.1 The County Council has a legal obligation under the Town and Country Planning Acts to prepare a statutory Development Plan for planning purposes (commonly known as the Local Plan).
- 9.2 The County Council is also required by national planning policy to ensure that local plans promote sustainable minerals and waste development. The Early Partial Review plays an important role in ensuring that minerals and waste development in Kent is in line with national planning policy.
- 9.3 There is an expectation by the Minister for Housing, Communities and Local Government that all planning authorities have an up to date Local Plan in place. Without an up to date adopted plan, there is a risk that central government will step in as the plan making authority, reducing local accountability.
- 9.4 During preparation, the Mineral Sites Plan and Early Partial Review has been the subject of Strategic Environmental Assessment in accordance with the Environmental Assessment of Plans and Programme Regulations 2004, and an Appropriate Assessment in accordance with the Conservation of Habitats and Species Regulations 2017.
- 9.5 The resulting Sustainability Appraisals and the Habitats Regulations Assessment were published for consultation and taken into consideration when making decisions with regard to the Mineral Sites Plan and Early Partial Review. These reports are available as background papers.

10. Equalities implications

- 10.1 An equality impact assessment (EQIA) has been completed and no equality implications have been identified. A copy of the assessment is attached at Appendix H. The earlier Local Plan work was accompanied by a separate EQIA.

11. Conclusion

- 11.1 The Town and Country Planning Acts requires the County Council to prepare a Development Plan setting out how mineral and waste planning matters will be considered in Kent. The KMWLP adopted in July 2016 sets out the overarching strategy and vision until 2030 and commits the County Council to preparing Mineral and Waste Sites Plans that allocate individual sites for development that align with the KMWLP strategy.
- 11.2 An Early Partial Review of the KMWLP has been undertaken that removes the commitment to prepare a Waste Sites Plan and improves the effectiveness of safeguarding policies. A Mineral Sites Plan has been prepared that allocates three sites for sand and gravel extraction.
- 11.3 Before the changes to the KMWLP and Mineral Sites Plan can be adopted the Council must receive a report from the Planning Inspectorate (on behalf of the Secretary of State) which states that they are sound and have been prepared in accordance with making legislation. This report follows an independent examination conducted by a Planning Inspector.

11.4 On 23 April 2020, the Council received the report of the Inspector who examined the changes to the KMWLP (proposed by the Early Partial Review) and Mineral Sites Plan and this states that the legislation was followed and that, subject to modifications that were promoted and considered during the examination, the changes and the Mineral Sites Plan are sound. The modifications strengthen and clarify policy in the Plans and do not propose changes to the sites included in the Mineral Sites Plan. Having received the Inspector's report, if the Council accepts the recommended modifications it can now adopt the Plans. Upon adoption, the two Plans will form an important part of the Development Plan against which planning applications are determined.

12. Recommendation(s):

County Council is asked to:

- (i) Consider the Inspector's Report (see Appendix A) on the examination of the EPR and MSP and note and accept his recommended modifications;
- (ii) note the content and recommendations of the Sustainability Appraisals of the EPR and MSP; and
- (iii) **adopt** the Kent Mineral Sites Plan and modifications to the Kent Minerals and Waste Local Plan (as set out by the Early Partial Review) (as modified) as set out in Appendices B and C respectively

In addition, County Council is asked to:

- (iv) delegate powers to the Corporate Director for Growth, Environment & Transport to approve any non-material changes to the text of the MSP and modifications to the KMWLP (as set out by the Early Partial Review) in consultation with the Deputy Leader prior to publication.
- (v) note and agree the future work activities on mineral and waste planning activities as set out in para 6.5 as the basis for a revised Local Development Scheme

13. Contact details

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Appendix A:

Planning Inspector's Report on the Examination of the Kent Minerals and Waste Local Plan Early Partial Review and Kent Mineral Sites Plan including appendices

Appendix B:

Kent Mineral Sites Plan (as modified by the Inspector's recommendations) – the Plan for adoption

Appendix C:

Modifications to the Kent Minerals and Waste Local Plan as set out by the Early Partial Review (as modified by the Inspector's recommendations) - the Plan for adoption

Appendix D:

Changes to the adopted Kent Minerals and Waste Local Plan as a result of the EPR Plan

Appendix E:

Sustainability Appraisal of the Kent Mineral Sites Plan (as modified by the Inspector's recommendations) - Non-Technical Summary. The main document is available via this [hyperlink](#).

Appendix F:

Sustainability Appraisal of the Modifications to the Kent Minerals and Waste Local Plan as set out by the Early Partial Review (as modified by the Inspector's recommendations) - Non-Technical Summary. The main document is available via this [hyperlink](#).

Appendix G:

Kent Minerals and Waste Local Plan – Proposed Planning Policy Activities Post Adoption of Kent Mineral Sites Plan and Early Partial Review of Kent Minerals and Waste Local Plan 2013-30

Appendix H:

Kent Mineral Sites Plan (as modified by the Inspector's recommendations) and Modifications to the Kent Minerals and Waste Local Plan as set out by the Early Partial Review (as modified by the Inspector's recommendations) – Equality Impact Assessment

Background Documents

The supporting documents to the Mineral and Waste Local Plan work are available on the Council's website as part of the Examination library via this link [here](#).

The earlier report to Environment and Transport Cabinet Committee is available via this link [here](#).