

**Open Report on behalf of Richard Wills  
Executive Director for Environment and Economy**

Report to:	<b>County Council</b>
Date:	<b>20 May 2016</b>
Subject:	<b>Lincolnshire Minerals and Waste Local Plan: Core Strategy and Development Management Policies</b>

**Summary:**

The County Council as the mineral and waste planning authority for the County is currently preparing a Minerals and Waste Local Plan to replace the existing Minerals Local Plan (1991) and Waste Local Plan (2006). The Plan is being prepared in two parts:

- the Core Strategy and Development Management Policies (CSDMP) document, the subject of this report; and
- the Site Locations document.

The County Council approved the submission of the CSDMP (Pre-Submission Draft) together with a Schedule of Modifications to the Secretary of State for examination on 15 May 2015. The County Council also authorised officers to propose further modifications to the document to address any issues raised during that examination.

The examination was carried out by an Inspector and included public hearing sessions held in October 2015. During the examination officers proposed Main Modifications (to make the document sound and legally compliant) and Additional Modifications (of a more minor nature and included mainly to improve clarity). These modifications were subject to consultation during the examination.

The Inspector has now issued his report in which he has concluded that with the Main Modifications the CSDMP document is sound and legally compliant (Appendix A). He has also advised that the inclusion of the Additional Modifications would not affect this status. As a result, the County Council can only resolve to formally adopt the document as part of the statutory development plan for the County if it agrees to the incorporation of the Main Modifications. The County Council does, however, have discretion over whether the Additional Modifications are incorporated into the CSDMP.

If any of the Main Modifications are not acceptable to the County Council the CSDMP cannot be adopted and work would have to commence on preparing a new replacement Plan.

Should the County Council be minded to adopt the CSDMP document incorporating the Main Modifications and the Additional Modifications (Appendix B), there would be a statutory period of six weeks following adoption in which the decision could be challenged by an aggrieved person in the High Court. It is therefore proposed that the document is adopted on 1 June 2016, which would allow time for the County Council's decision to be publicised in advance of the statutory period of challenge.

**Recommendation(s):**

That the County Council resolves that the Lincolnshire Minerals and Waste Local Plan: Core Strategy and Development Management Policies document incorporating the Main Modifications recommended by the Inspector and the Additional Modifications proposed by officers (as set out in Appendix B) be adopted on 1 June 2016 under Section 23 of the Planning and Compulsory Purchase Act 2004.

**1. Background**

- 1.1 Within its role as Minerals and Waste Planning Authority for Lincolnshire, the County Council has the statutory responsibility of producing a Minerals and Waste Local Plan (MWLP) that will replace the existing Minerals Local Plan (1991) and Waste Local Plan (2006). The MWLP will cover the period up to 2031 and will consist of two documents: the "Core Strategy and Development Management Policies" document (the subject of this report) and the "Site Locations document".
- 1.2 The Core Strategy and Development Management Policies document, which is now in its final form pending adoption, sets out the key priorities to guide the future winning and working of minerals and the form of waste management development in the County. It also includes Development Management Policies setting out the criteria against which planning applications for minerals and waste development will be considered (Appendix B).
- 1.3 The Site Locations document, which is at an earlier stage of preparation, includes specific proposals and policies for the provision of land for minerals and waste development. A draft version of this document was subject to public consultation from 4 December 2015 to 29 January 2016. That document is currently being reviewed in the light of representations received. It is anticipated that a revised draft Site Locations document will be ready for "pre-submission" consultation in the autumn.
- 1.4 The CSDMP must take into account European and National policy and legislation, and has a fundamental role to play in supporting anticipated future growth and development within Lincolnshire. It sets out a framework for the supply of the essential raw materials required to meet the County's future development needs, and will ensure that the waste generated by an

increasing population is dealt with in the most sustainable way possible. Its policies will also be used to assess the sites/areas promoted for inclusion in the Site Locations document for future minerals/waste development.

### **Amendments to the Core Strategy and Development Management Policies (Pre-Submission Draft) document**

- 1.5 The Executive approved the "Pre-Submission" Draft version of the Core Strategy and Development Management Policies (CSDMP) document for public consultation on 7 October 2014. This consultation subsequently took place between 5 January and 16 February 2015.
- 1.6 On 15 May 2015 the County Council:
  - approved the CSDMP (Pre-Submission Draft) document for submission to the Planning Inspectorate for examination;
  - approved a Statement of Representations (summarising the representations received on the document) and a Schedule of Proposed Minor Modifications, which were also submitted to the Planning Inspectorate for consideration; and
  - authorised the Strategic Planning Manager to make further modifications as necessary to address issues raised during the examination, and to consult on those proposed modifications.
- 1.7 The CSDMP (Pre-Submission Draft) was submitted to the Planning Inspectorate for examination on 5 June 2015. This examination included public hearing sessions that took place between 13 October 2015 and 16 October 2015. Following these hearings, a Schedule of Modifications was prepared in response to the issues raised during the examination. These were divided into two categories: Main Modifications, which are considered necessary to make the document sound and legally compliant; and Additional Modifications, which are of a more minor nature - such as the inclusion of points of clarification.
- 1.8 The Schedule of Modifications was subject to public consultation between 20 November 2015 and 8 January 2016. At the request of the Inspector, the representations received were then summarised in a "Consultations on Proposed Modifications: Outcomes Report" together with the officers' response. The document forms one of the background papers to this Report. The officers' response included non-material changes to three of the proposed Main Modifications (which were made for the avoidance of doubt and in the interests of simplicity, consistency, clarity and effectiveness). Similarly, non-material changes were also proposed to some of the Additional Modifications.
- 1.9 The examination ended on 22 February 2016 with the issuing of the Inspector's report (Appendix A). In this, he concludes that there are a number of deficiencies in relation to soundness of the CSDMP (Pre-Submission Draft). However, with the inclusion of the Main Modifications appended to his report (which are the same as the Main Modifications put

forward by officers, as modified by the amendments set out in the "Consultations on Proposed Modifications: Outcomes Report" referred to above), the document is sound and legally compliant. The Inspector has also confirmed that the Additional Modifications put forward by the Council are minor in nature and will not affect the document's sound and legally compliant status.

- 1.10 Although the Modifications cover a wide range of issues, as set out in the Inspector's Report, it is considered that the modifications arising from two issues are of particular significance: the allocation of sand and gravel, and the future need for inert landfill.

#### The allocation of sand and gravel

- 1.11 The CSDMP (Pre-Submission Draft) proposed to base the allocation of sand and gravel for extraction during the Plan period on the Sub-Regional Apportionment (SRA) set by the former East Midlands Regional Assembly in 2010. At the time the Council appreciated that demand was well below the level envisaged by the SRA, but used high housing projections to justify the continued use of the SRA. Unfortunately, as the draft Plan has progressed, it has become more difficult to justify the continued use of the SRA – particularly as markets have remained depressed, whilst the Government's housing projections have been reduced. This has been compounded by the lack of up-to-date housing provision in the various district local plans. Therefore during the examination, the officers asked the Inspector to consider a reduction in the amount of sand and gravel to be allocated – basing this on the previous 10 years' average sales (in line with the National Planning Policy Framework). This would reduce the annual requirement from 3.28 mt to 2.37 mt.
- 1.12 In response, the Industry's trade body (the Mineral Products Association) raised concerns, but conceded that the SRA could no longer be justified. They therefore agreed to the modification, subject to the Plan being reviewed in the event of a sustained recovery in sales. Although some developers/landowners maintained their objections to the reduction in the allocation of sand and gravel, the Inspector has agreed that this is an appropriate approach and has recommended the Plan is modified accordingly. If accepted by the County Council, the main advantage of the lower allocation will be that less land will need to be allocated in the Site Locations document for sand and gravel extraction. This will therefore give the Council more flexibility in the choice of sites selected for inclusion in the next (Pre-Submission) draft version of that document.
- 1.13 As with all development plan documents, the CSDMP document will need to be monitored. If there is a sustained upturn in the market, the CSDMP document and the Site Locations document may need to be reviewed. However, prior to such a review taking place, the policies in the CSDMP document are flexible and would allow additional land to be brought forward for extraction to meet any shortfall in the landbank of permitted reserves. It

is therefore considered that this amendment to the CSDMP document will not impede any growth in the County.

#### Future need for inert landfill

- 1.14 The CSDMP (Pre Submission Draft) document contains a restrictive policy on landfill. This is because landfill lies at the bottom of the waste hierarchy (i.e. it is the least sustainable means of dealing with waste) and because the County is likely to have sufficient landfill capacity during the Plan period. This was contested by a developer who questioned the figures in the Council's Waste Needs Assessment and argued that there would be a capacity gap in the provision of inert landfill during the Plan period. As a result, officers reviewed the Council's Waste Needs Assessment and have acknowledged that there is a capacity gap during the Plan period. However, it has been contended by officers that this could be met by the disposal of inert waste at non-hazardous landfill sites and potentially by an increase in recycling.
- 1.15 In his conclusion, the Inspector has accepted the point made by officers and has recommended the inclusion of modifications to:
- update the information used in the document;
  - strengthen the policy relating to landfill; and
  - in the event that it becomes apparent through the monitoring of the document that additional landfill suitable for inert disposal is required, commits the Council to an early review of the Plan.

The implication of this is that applicants will have to put forward very robust evidence to justify any proposals for the provision of additional inert landfill.

#### The Adoption Procedure

- 1.16 Under Section 23 of the Planning and Compulsory Purchase Act 2004, the County Council can only resolve to adopt the CSDMP document subject to the inclusion of the Main Modifications recommended by the Inspector. If any of the Main Modifications are rejected by the County Council, the document cannot be adopted and work on a new replacement minerals and waste local plan would need to commence.
- 1.17 If the County Council is minded to adopt the CSDMP document, it does not have to incorporate the Additional Modifications. However, these are minor in nature and include the correction of typographical errors, as well as providing clarification on various aspects of the document. The rejection of the Additional Modifications would therefore make the CSDMP document more difficult to interpret.
- 1.18 Should the County Council be minded to adopt the CSDMP document incorporating the Main Modifications and the Additional Modifications (Appendix B), there would be a statutory period of six weeks following adoption in which the decision could be challenged by an aggrieved

person in the High Court. It is therefore proposed that the document be adopted on 1 June 2016, which would allow time for the County Council's decision to be publicised in advance of the statutory period of challenge.

#### Other Statutory Considerations

- 1.19 The Council's duty under the Equality Act 2010 needs to be taken into account when coming to a decision.
- 1.20 The Council must, in the exercise of its functions, have due regard to the need to:
- eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;
  - advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
  - foster good relations between persons who share a relevant protected characteristic and persons who do not share it: Equality Act 2010 section 149(1). The relevant protected characteristics are age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; sexual orientation: section 149(7).
- 1.21 Having due regard to the need to advance equality of opportunity involves having due regard, in particular, to the need to:
- remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;
  - take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;
  - encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.
- 1.22 The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.
- 1.23 Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to tackle prejudice, and promote understanding.
- 1.24 Compliance with the duties in this section may involve treating some persons more favourably than others.
- 1.25 A reference to conduct that is prohibited by or under this Act includes a reference to:

- (a) a breach of an equality clause or rule
  - (b) a breach of a non-discrimination rule.
- 1.26 It is important that the Council is aware of the special duties it owes to persons who have a protected characteristic as the duty cannot be delegated and must be discharged by the Council. The duty applies to all decisions taken by public bodies including policy decisions and decisions on individual cases and includes this decision.
- 1.27 To discharge the statutory duty the Council must analyse all the relevant material with the specific statutory obligations in mind. If a risk of adverse impact is identified consideration must be given to measures to avoid that impact as part of the decision making process.
- 1.28 An impact analysis was undertaken on the CSDMP (Pre-Submission Draft) prior to submission to the Secretary of State in accordance with the Statement of Community Involvement. As the approval of an overarching plan for waste and minerals planning, the decision is considered to be neutral between persons having all or any of the protected characteristics and persons who do not. In particular the plan will govern future decision-making regardless of whether any proposal is made by a person with or without a protected characteristic.
- 1.29 The Council is under a duty in the exercise of its functions to have regard to its Child Poverty Strategy. Child poverty is one of the key risk factors that can negatively influence a child's life chances. Children that live in poverty are at greater risk of social exclusion which, in turn, can lead to poor outcomes for the individual and for society as a whole.
- 1.30 The Strategy has been taken into account in this instance and the decision is not considered to impact on child poverty.
- 1.31 The Council is required to have regard to the Lincolnshire Joint Strategic Needs Assessment and the Joint Health and Wellbeing Strategy. These documents have been taken into account and the Minerals and Waste Local Plan is considered to contribute to the aims of the strategy by providing a framework for development that takes into account and minimises impact on the environment.
- 1.32 Under section 17 of the Crime and Disorder Act 1998, the Council must exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent crime and disorder in its area (including anti-social and other behaviour adversely affecting the local environment), the misuse of drugs, alcohol and other substances in its area and re-offending in its area. This obligation has been considered but is not thought to be directly affected by the proposals in this Report.

## Recommendation of the Executive

- 1.33 On 4 May 2016 the Executive endorsed the CSDMP as modified by the Main Modifications (recommended by the Inspector) and the Additional Modifications (proposed by officers), recommending that the County Council adopt the document (as detailed at Appendix B).

## **2. Conclusion**

- 2.1 The Main Modifications recommended by the Inspector are necessary to make the CSDMP (Pre-Submission Draft) document sound and legally compliant, whilst the Additional Modifications add clarification to the document. The proposed modifications were prepared by officers in consultation with interested parties during the examination and were then publicised prior to submission to the Inspector.
- 2.2 It is considered that all the modifications improve/strengthen the CSDMP document and that, in its modified form, this document will make appropriate provision for minerals and waste development during the Plan period, a view endorsed by the Executive.

## **3. Legal Comments:**

The Minerals and Waste Local Plan forms part of the Policy Framework. Approval of the Plan therefore falls to the full Council on the recommendation of the Executive. The report presents the results of a statutory process of development consultation and examination and records that the Executive has resolved to recommend the Plan to full Council.

The Report sets out the options open to the Council in that it can only adopt the Plan if it does so with the Main Modifications and may adopt it with the Additional Modifications.

The recommendation is lawful and the decision is within the remit of the full Council.

## **4. Resource Comments:**

There are no material financial implications arising from the acceptance of the recommendation in this report.

## 5. Consultation

### a) Has Local Member Been Consulted?

n/a

### b) Has Executive Councillor Been Consulted?

Yes

### c) Scrutiny Comments

The modified CSDMP document has not been reported to the Environmental Scrutiny Committee.

### d) Policy Proofing Actions Required

n/a

## 6. Appendices

These are listed below and attached at the back of the report (NOTE: due to the size of the appendices they have only been circulated electronically. A paper copy is available for inspection by contacting Democratic Services)	
Appendix A	Inspector's Report (22 February 2016)
Appendix B	Lincolnshire Minerals and Waste Local Plan: Core Strategy and Development Management Policies [incorporating Main Modifications and Additional Modifications]

## 7. Background Papers

Document title	Where the document can be viewed
Schedule of Proposed Modifications November 2015	<a href="http://www.lincolnshire.gov.uk//mineralsandwaste">http://www.lincolnshire.gov.uk//mineralsandwaste</a>
Consultations on Proposed Modifications: Outcomes Report	<a href="http://www.lincolnshire.gov.uk//mineralsandwaste">http://www.lincolnshire.gov.uk//mineralsandwaste</a>
Impact Analysis to Enable Informed Decisions	<a href="http://www.lincolnshire.gov.uk//mineralsandwaste">http://www.lincolnshire.gov.uk//mineralsandwaste</a>
Statement of Community Involvement	<a href="http://www.lincolnshire.gov.uk//mineralsandwaste">http://www.lincolnshire.gov.uk//mineralsandwaste</a>

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