

Division(s): N/A

COUNCIL – 9 JULY 2013

OXFORDSHIRE MINERALS AND WASTE PLAN: MINERALS AND WASTE CORE STRATEGY

Report by Deputy Director for Environment & Economy (Strategy & Infrastructure Planning)

Introduction and Context

1. The County Council is responsible for preparing the Oxfordshire Minerals and Waste Plan. The Minerals and Waste Core Strategy will form the central part of this plan. The Core Strategy Proposed Submission Document was approved by full Council on 3 April 2012 for publication for representations to be made and subsequent submission to the Government for independent examination.
2. The Core Strategy sets out the vision, objectives, spatial strategy and core policies for the supply of minerals and management of waste in Oxfordshire to 2030. Detailed site allocations are to be identified in a subsequent document.
3. Following approval by full Council, the Minerals and Waste Core Strategy Proposed Submission Document was published on 25 May 2012.
4. The Core Strategy was submitted to the Government on 31 October 2012 and the Planning Inspectorate appointed Mr JG King as the Inspector to carry out the independent examination of the plan. All the Council's submitted documents and related evidence are on the examination webpage at: <http://www.oxfordshire.gov.uk/cms/content/minerals-and-waste-core-strategy-examination>

Current Position

5. The Inspector sent four technical notes reflecting his initial observations on the Core Strategy to the County Council in November and December 2012. A series of written correspondence between the Inspector and the Council followed in January and February 2013. All of this material is also available for inspection on the County Council's website.
6. In his technical notes, the Inspector requested that the Council carry out the following work before the examination hearings are held:
 - a) Prepare a statement showing how the Council has complied with the duty to co-operate (a new duty brought in by the Localism Act in November 2011).

- b) Provide answers to an initial set of questions about the plan's provision for aggregates supply and the Local Assessment of Aggregate Supply Requirements which Atkins (consultants) prepared for the Council in January 2011.
 - c) Review the background papers and update them to reflect current national policy in the National Planning Policy Framework, March 2012; and to show how national policy and other evidence provide justification for the policies in the Core Strategy.
 - d) Provide a comprehensive schedule of all documents that comprise the evidence base for the Core Strategy, with links to the documents, on the examination webpage.
7. The Inspector subsequently raised questions in January this year over the Council's compliance with the duty to co-operate in the preparation of the Core Strategy, particularly whether the duty had been met in relation to a Local Aggregate Assessment that complied with the National Planning Policy Framework.
8. On 14 February 2013, with the authority's agreement, the Inspector suspended the examination until 31 May 2013. This was to provide sufficient time for officers to complete the requested work and further consider the issue of compliance with the new duty to co-operate and the implications for the examination of the Core Strategy. It was also to allow the Council to review the soundness of the Core Strategy, particularly in relation to the National Planning Policy Framework (which was published after the preparation of and immediately prior to the County Council's approval of the submission document) and the recent revocation of the South East Plan.
9. The Council wrote to the Inspector on 31 May giving an update on its position and on 4 June the Inspector continued the suspension of the examination until 19 July. This was to allow the Council to consider at this meeting how it wishes to proceed with the Core Strategy.

Key Issues

Local Aggregate Assessment

10. The National Planning Policy Framework brought in a new requirement for Mineral Planning Authorities to prepare an annual Local Aggregate Assessment, to establish the provision to be made in their minerals plans. The assessment is to be 'based on a rolling average of 10 years sales data and other relevant local information, and an assessment of all supply options'.
11. The January 2011 Assessment, on which the submitted Core Strategy is based, was prepared under previous national planning policies. Subsequent to the Plan's preparation, Government published the National Planning Policy Framework in March 2012 and related Guidance on minerals planning in October 2012.

12. Work is well underway in preparing a new Local Aggregates Assessment, again using Atkins to provide technical advice. It is a new requirement of the National Planning Policy Framework that the Council must engage with other Mineral Planning Authorities, the minerals industry and the Aggregate Working Parties for the South East and for those other areas that supply aggregates to Oxfordshire or receive aggregates from it, before the Assessment is finalised. A draft of the 2013 Assessment will have been considered by the South East England Aggregates Working Party (of which this Council is a member) on 3 July. Officer meetings with adjoining Mineral Planning Authorities and the minerals industry (as part of the duty to co-operate) are being held during July. Given the nature of the issues involved, it is expected that this part of the duty to co-operate will take until the autumn and that the Assessment will be finalised in November.

Duty to Co-operate and Soundness

13. The Localism Act 2011 requires the Council to co-operate with other authorities and prescribed bodies in preparing the Minerals and Waste Plan. In view of the crucial importance of this duty to co-operate to our plan-making activities – and having regard to the Inspector’s questioning of our compliance with the duty – the Council has obtained advice from Counsel in relation to this, with particular regard to the January 2011 Aggregate Assessment on which the plan was based.
14. Counsel has advised that the duty to co-operate came into force on 15 November 2011 and does not apply retrospectively, and therefore does not apply to the January 2011 Assessment. However, the Inspector is still required to assess whether the duty was met between 15 November 2011 and 31 October 2012, when the Core Strategy was submitted. There is no legal requirement that the Core Strategy has to be supported by an Assessment prepared in accordance with the National Planning Policy Framework but in assessing its soundness the Inspector will need to look at whether the Core Strategy complies with the new framework.
15. Counsel considers there is a very real risk that the Inspector will find the Core Strategy to be unsound on the ground that it is based on an Assessment which does not accord with the National Planning Policy Framework. He advises that this risk could be reduced if:
 - A revised Assessment is prepared in accordance with the National Planning Policy Framework;
 - The revised Assessment is the subject of engagement with other relevant bodies, including the Aggregates Working Party (i.e. the duty to co-operate is met); and
 - The policies in the Core Strategy are supported by and consistent with the revised Assessment (or can be modified to ensure they are).
16. Counsel has also advised on whether, in the light of the EU Waste Framework Directive, the Core Strategy should identify sites for waste management facilities (the current intention is that sites for waste facilities be identified in a

separate Site Allocations Document.) Counsel's advice is that there is no legal or policy requirement for the Core Strategy to allocate sites and that non-inclusion of sites does not of itself make the Core Strategy unsound.

17. The Council has also obtained advice from Counsel on the soundness of the Core Strategy. Counsel's opinion is that the Core Strategy is unlikely to be found sound against the requirements of the National Planning Policy Framework and that the deficiencies are too many and significant to have a realistic prospect of being remedied by modifications to the plan.
18. Counsel's view is that the time and resources that would be required to continue with the Examination would be better spent on revising the Core Strategy to comprehensively reflect the National Planning Policy Framework and the new Local Aggregates Assessment and therefore the Council should give serious consideration to withdrawing the Core Strategy.
19. In addition, we have sought technical advice from independent planning specialists on two specific issues:
 - a) The Duty to Co-operate – where the advice is that the Council has not demonstrated *de facto* conformity with the key principles set out in the duty to co-operate in relation to aggregates supply policy; but that it is probable that the duty to co-operate has been met on provision for the management of waste.
 - b) Soundness – a waste specialist has advised that there are some deficiencies in the waste data underpinning the Core Strategy which could affect its soundness; these require revisions to the evidence base but it is uncertain whether it would be possible to address any implications for policies in the Core Strategy through modifications.

Conclusions from Legal and Technical Advice – the Key Risks

20. The main conclusions to be drawn from the above matters are:
 - i. The Core Strategy is vulnerable to a finding of failure to meet the duty to co-operate in relation to aggregates supply and the Local Aggregates Assessment;
 - ii. Even if it meets the duty to co-operate, there is a very real risk that the Inspector will find the Core Strategy to be unsound on the ground that it is based on an Assessment which does not accord with the National Planning Policy Framework.
 - iii. The risk of unsoundness could be reduced by preparation of a new, National Planning Policy Framework-compliant Assessment, involving engagement with other relevant bodies, provided that the policies in the Core Strategy are supported by it.

- iv. There are deficiencies in the submitted Core Strategy that need to be addressed: these are too many and significant to have a realistic prospect of being remedied by modifications to the submitted plan.

Options Available to the County Council

- 21. The Council needs to inform the Inspector after this meeting how it wishes to proceed with the Core Strategy – i.e. whether it wishes to continue with the examination of the submitted version or whether it wishes to withdraw the submitted document and re-submit a revised plan at a later date.

Continuation with the Examination

- 22. The option to continue with the examination of the submitted Core Strategy is considered to be extremely high risk; this is because:
 - a) The Inspector has indicated that he would first consider whether the duty to co-operate has been met. He has indicated that if the Council wished to continue with the current Core Strategy he would hold an advance hearing to consider this issue in the autumn. Counsel's opinion suggests that there is a significant risk that the Inspector would find that the Core Strategy does not meet the duty, in which case it would have to be withdrawn.
 - b) Even if the duty to co-operate test was passed, there is a very real risk that the Inspector would still find the Core Strategy unsound. This risk could be reduced by the Council preparing a new Local Aggregates Assessment in accordance with the National Planning Policy Framework, provided it is subject to engagement with other relevant bodies (including the South East England Aggregates Working Party, the minerals industry and other mineral planning authorities) and the policies in the Core Strategy are supported by it.
 - c) There is a significant risk that, through the duty to co-operate process associated with the new Assessment, there will be pressure from the other bodies to increase the level of provision made for sand and gravel in Oxfordshire. The significance of the duty to co-operate to the whole plan making process under the National Planning Policy Framework is such that the process of finalising the Assessment is unlikely to be straight forward.
 - d) If the new Assessment leads to a need to change significantly the strategy for mineral working, it is most unlikely that this could reasonably be done through modifications to the submitted Core Strategy. Unless then withdrawn, the Core Strategy would be very likely to be found unsound.
- 23. In addition to the above issues, the work undertaken during the suspension of the Examination process has identified a significant number of areas of the Core Strategy that would need to be modified in order to make it sound. The

nature of the modifications is such that they would need to be subject to public consultation and sustainability appraisal as well as examination by the Inspector. This would further increase the risk attached to this approach as well as adding to the timescale.

Withdrawal of the Core Strategy

24. Withdrawal of the Core Strategy would allow a new Local Aggregates Assessment to be prepared that is in full accordance with the National Planning Policy Framework and fulfils the duty to co-operate. It would also provide the Council with the opportunity to consider afresh what changes might need to be made to the Core Strategy to ensure that it is sound, in particular that it is compliant with the National Planning Policy Framework and to reflect the revocation of the South East Plan.
25. It would also allow further engagement with other authorities and bodies to ensure that the duty to co-operate has been met before a revised plan is submitted for examination. In addition, it would enable objections to the current plan to be explored further with objectors, with a view to overcoming them in a revised plan.
26. Counsel's advice is clear: the time and resources required to continue with the examination would be better spent revising the Core Strategy to comprehensively reflect the National Planning Policy Framework and the new Local Aggregates Assessment.

Timing Issues

27. An assessment of the implications of the two courses of action open to the County Council are as follows:

Continue		Withdraw	
New LAA finalised	Nov 13	Nov 13	New LAA finalised
		Feb 14	Draft revised Plan agreed by Cabinet
Examination Hearings	Feb 14	Feb/Mar 14	Consultation on revised Plan
Inspectors report – with modifications	Apr 14		
Consultation on modifications	Jun/Jul 14		
		Sept 14	Revised plan agreed by Council
Council agreement of modifications	Nov 14	Oct/Nov 14	Revised plan published for representations
Further hearings (if required)	Feb 15		
		Mar 15	Revised plan submitted for examination
Inspectors final report	Apr 15		
Core Strategy adopted by Council	Jul 15	Jul 15	Examination hearings
		Oct 15	Inspectors report
		Dec 15	Core Strategy adopted by Council

28. The timeline for the 'Continue' option assumes that the Inspector would find the current submitted Core Strategy both legally compliant (i.e. the duty to co-

operate has been met) and sound, which on the basis of the advice we have received is highly doubtful. The timeline for the 'Withdraw' option assumes that no fundamental changes to the plan would be required; if fundamental changes to the strategy proved to be necessary, additional time would be required for further technical work and consultation.

29. Withdrawal of the Core Strategy and submission of a revised plan would require revision of the existing timetable for preparation of the Core Strategy, as contained in the Council's Minerals and Waste Development Scheme. This Scheme sets out the documents the Council proposes to prepare to make up the Oxfordshire Minerals and Waste Local Plan, their subject matter and the timetable for preparing them. A revised Development Scheme reflecting the revised timetable in the above table would need to be approved by Cabinet and published on the Council's website.

Financial Implications

30. The Minerals and Waste Plan is included within the work priorities of the Economy and Environment Directorate and funding provision for this project and the associated costs of the Examination is held in the Minerals & Waste Project earmarked Reserve.
31. Withdrawal of the Minerals and Waste Core Strategy and the preparation of a revised plan could create additional financial and staffing implications because part of the plan-preparation process would need to be repeated. Any additional project costs arising from this work, which cannot be funded through the earmarked Reserve, will be managed through existing budget provision within the Directorate.
32. It should also be noted that continuation with the current Core Strategy would not necessarily be a less costly option. With the high risk of this plan being found unsound if it were to proceed to Examination, there would be a need to completely repeat the Examination process in due course, following the revision of the plan. With Examination costs likely to account for a significant proportion of the total project costs, this could actually prove to be the more expensive option to pursue.

Conclusion

33. If the current Core Strategy is not withdrawn and consequently proceeds to the Examination hearing sessions there is a significant risk that it will be found not to have met the duty to co-operate. Even if the duty was found to have been met, there is a high risk that the document will still be found unsound. This risk could be reduced by a new Local Aggregates Assessment being prepared, but there would still be a significant risk of unsoundness on other aspects of the Core Strategy.
34. Allowing time for a new Assessment to be prepared (without the Core Strategy being withdrawn) would require the Inspector to agree to a further delay to the examination. This would extend the uncertainty over the current

plan proposals, cause further inconvenience to other participants in the examination process and may not be acceptable to the Inspector. Also, there would be a significant risk that the plan would still be found unsound and that significant time and resources had been expended unnecessarily.

35. Withdrawal of the Core Strategy and the preparation of a revised plan would put back the time when there would be a National Planning Policy Framework-compliant adopted minerals and waste plan in place. This would extend the period during which there is no up to date development plan against which planning applications could be considered and these applications would then fall to be determined principally in the context of the National Planning Policy Framework. However, this disadvantage would be outweighed by the considerable risks involved in continuing with the Examination and it is likely that withdrawal of the current Core Strategy would more quickly lead to a new Minerals and Waste Plan for Oxfordshire being adopted.

RECOMMENDATIONS

36. **The Council is RECOMMENDED to:**

- (a) **withdraw the Oxfordshire Minerals and Waste Core Strategy;**
- (b) **prepare a revised Oxfordshire Minerals and Waste Local Plan in accordance with a new Minerals and Waste Development Scheme.**

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