



WIRRAL BOROUGH COUNCIL

EXAMINATION OF THE WIRRAL LOCAL PLAN 2021-2037

**Matter 6:
Minerals, waste, pollution
and geology**

EXAMINATION HEARING STATEMENT

April 2023

Question 1: Has the approach in the Local Plan in respect of geology been established through appropriate engagement with other authorities and bodies, including the Merseyside Environmental Advisory Service?

- 1 The approach in respect of geology has been established through the preparation of the Wirral Minerals Report 2021 [EE4].
- 2 Section 8 of [EE4] page 22 sets out the consultation that was undertaken and paragraph 8.2 shows that a detailed response was received from the Merseyside Environmental Advisory Service (MEAS). The other bodies consulted included:
 - British Marine Aggregate Producers Association
 - Mineral Products Association
 - British Aggregates Association
 - Carr Lane Brickworks, Moreton
 - Island Gas Ltd (Igas Ltd)
 - North West Aggregate Working Party
 - D Morgan plc
 - Mersey Wharf
 - Peel Ports Group Ltd
- 3 The Draft Minerals Report [WBC022], which also contained a series of draft proposed policies, was published for public consultation as part of the Local Plan Issues and Options Consultation in January 2020 and amended in light of the comments received under Regulation 18 (SD5, page 258, Appendix 4, responses to consultation Question 8.19 refers). The respondents included Cheshire West and Chester Council.

Question 2: What work is ongoing in respect of the Joint Waste Plan for Merseyside and Halton (2013)? How should any future change be accounted for via the Local Plan?

- 4 Waste management and treatment capacity, including allocated sites, has been monitored throughout the Plan period with data provided in annual monitoring reports, which are published on the Council's website. A significant amount of new capacity has been granted planning permission since adoption of the Waste Local Plan, the majority of which has been on unallocated sites through the application of relevant Waste Local Plan policies.
- 5 Preparation for a review of the Waste Local Plan began in 2020 and included a literature review and capacity analysis in 2021 to inform the Wirral Local Plan evidence base. Due to capacity/resource issues, the review has not progressed further to date.
- 6 Merseyside Environmental Advisory Service (MEAS), who were responsible for preparing the Waste Local Plan, continues to work with each of the Liverpool City Region authorities on matters related to the Waste Local Plan. The review of the Waste Local Plan has been reported to the Liverpool City Region Chief Planning Officers Group, and it is agreed that this work is a priority.
- 7 The early preparatory work referred to in paragraph 2 above, is being used to inform the scope of the review which will include evidence, policy scope, timescales and resourcing. The review is likely to be a partial review based on the evidence available but will include the review of allocated sites and the monitoring of waste arisings and waste management requirements, along with a review of the effectiveness of policies including Waste Local Plan Policy WM1 (Guide to Site Prioritisation).
<https://www.wirral.gov.uk/planning-and-building/local-plans-and-planning-policy/local-plans/joint-waste-local-plan-merseyside>
- 8 Account will also need to be taken of significant legislative changes that have recently taken place including Environment Act 2021; the proposed review of the Joint Municipal Waste Management Strategy, the scope of which has yet to be determined; and any progress on development plans in Merseyside.
- 9 A work plan and timetable for the Waste Local Plan (WLP) review will be completed by April 2023. MEAS is currently in recruitment to build the necessary technical capacity to undertake the review in consultation with City Region local planning authorities. Regardless of whether recruitment is successful or not, the review of the WLP will be prioritised in the next financial year.

- 10 Any changes required as a consequence of the WLP review, will be picked up through the normal review procedures for the Wirral Local Plan. The Joint Waste Plan for Merseyside and Halton runs to 2027 and remains the statutory plan until replaced.

Question 3: Are policies WD 14 ‘pollution and risk’, 15.1 ‘Contamination and Ground Stability’, WD 15.2 ‘Migration of Landfill Gas’, and WD 18 ‘Health Impact Assessment’ justified and consistent with NPPF?

Is Policy WD 14 justified and consistent with NPPF?

- 11 Policy WD 14 Pollution and Risk is wide ranging and addresses the avoidance of pollution to soil, air or water from the operation of development including the disposal of effluent, contamination of bathing and coastal waters, as well as ground water and watercourses. Its intent is to focus on whether a use is an acceptable use of land rather than controlling processes in line with paragraph 188 of the NPPF.
- 12 The policy is justified in that without such a policy it is considered that there may be an unacceptable risk to human health and the environment from development. As stated in the emerging Local Plan page 262, paragraph 6.80:
- “in line with national policy, it is intended to complement statutory processes to minimise the effects of development on public health and the local and natural environment”*
- 13 Policy WD 14 is consistent with NPPF section 15 in that paragraph 174 states:
- “Planning policies and decisions should contribute to and enhance the natural and local environment by:*
- e) preventing new and existing development from contributing to, being put at unacceptable risk from, or being adversely affected by, unacceptable levels of soil, air, water or noise pollution or land instability. Development should, wherever possible, help to improve local environmental conditions such as air and water quality...”*
- 14 NPPF paragraph 185 also states:
- “Planning policies and decisions should also ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment.”*

Is Policy WD 15.1 justified and consistent with NPPF?

15 Policy WD 15.1 Contamination and Ground Stability seeks an assessment of conditions to ensure that suitable remediation can be achieved prior to development being approved.

16 It is justified in that without such a policy it is considered that there may be an unacceptable risk to human health and the environment from development and provide criteria to determine planning applications that may be received on sites that have contaminated or unstable ground conditions. As stated in paragraph 6.86 and 6.87, page 264 of the emerging Local Plan:

“A number of potentially contaminated sites are located in the Borough, a legacy of its industrial heritage. These sites include previous chemical processes and land reclamation. Remediation enables the reuse of previously developed land, thereby making a major contribution to urban regeneration.....”

Policy WD 15.1 seeks to promote the sustainable and beneficial use of remediated land to ensure due care is taken of any likely environmental risks both now and in the future”

17 WD 15.1 is consistent with NPPF paragraph 174(f) in which it states:

“Planning policies and decisions should contribute to and enhance the natural and local environment by:

(f) remediating and mitigating despoiled, degraded, derelict, contaminated and unstable land, where appropriate.”

18 As well as paragraph 183 which states:

“Planning policies and decisions should ensure that:

(a) a site is suitable for its proposed use taking account of ground conditions and any risks arising from land instability and contamination. This includes risks arising from natural hazards or former activities such as mining, and any proposals for mitigation including land remediation (as well as potential impacts on the natural environment arising from that remediation);

(b) after remediation, as a minimum, land should not be capable of being determined as contaminated land under Part IIA of the Environmental Protection Act 1990; and

(c) adequate site investigation information, prepared by a competent person, is available to inform these assessments.”

Is Policy WD 15.2 justified and consistent with NPPF?

19 Policy WD 15.2 Migration of Landfill Gas seeks to ensure that development does not occur where landfill gas could impact on human health.

20 It is justified in that without such a policy it is considered that there may be an unacceptable risk to human health and the environment from development and provides criteria to determine planning applications that may be received on sites that are liable to be affected by the migration of landfill gas.

21 Policy WD 15.2 is consistent with NPPF paragraph 174:

“Planning policies and decisions should contribute to and enhance the natural and local environment by:

e) preventing new and existing development from contributing to, being put at unacceptable risk from, or being adversely affected by, unacceptable levels of soil, air, water or noise pollution or land instability. Development should, wherever possible, help to improve local environmental conditions such as air and water quality...”

Is Policy WD 18 justified and consistent with NPPF?

22 Policy WD 18 Health Impact Assessment identifies the criteria under which a health impact assessment is required.

23 It is justified in that without such a policy, there may be a risk to human health from development where the health impacts have not been identified. As noted in the emerging Local Plan at page 267 paragraph 6.97:

“...there is a need to identify certain developments for a Health Impact Assessment. This is to ensure that proposals likely to have significant health implications have addressed those impacts appropriately and decision making gives the health and wellbeing of residents proper consideration and appropriate weight”

24 Policy WD 18 is consistent with NPPF Section 8 Promoting Healthy and safe Communities and PPG which states:

“A health impact assessment is a useful tool to use where there are expected to be significant impacts...Information gathered from this engagement will assist local planning authorities in considering whether the identified impact(s) could be addressed through planning conditions or obligations” (NPPG, Paragraph: 005 Reference ID:53-005-20190722).

Question 4: Is the Local Plan's approach to oil and gas, policies WM 4.1 to 4.4 consistent with the NPPF and vision / objectives of the Local Plan?

- 25 Policy WM 4 Oil and Gas Development has been included to respond to a Petroleum Exploration and Development License, issued by the Oil and Gas Authority, which is reproduced in the Wirral Minerals Report 2021 [EE4] at page 27, Appendix B.
- 26 Local Plan Policies WM 4.1 to 4.4 background to the approach is set out at page 272, paragraphs 6.124 to 6.126 and page 274 paragraph 6.127.
- 27 NPPF paragraph 215(a) states that minerals planning authorities should:
- “when planning for on-shore oil and gas development, clearly distinguish between, and plan positively for, the three phases of development (exploration, appraisal and production), whilst ensuring appropriate monitoring and site restoration is provided for;”*
- 28 National Planning Practice Guidance for Minerals also states that:
- “where mineral planning authorities are in a Petroleum Licence Area, they are expected to include criteria-based policies for each of the exploration, appraisal and production phases of hydrocarbon extraction, which should set clear guidance and criteria for the location and assessment of hydrocarbon extraction within the Licence Area”* (Paragraph: 106 Reference ID: 27-106-20140306 refers).
- 29 The policy is consistent with the NPPF and its clauses address these matters by providing for the three phases of development and setting necessary criteria. Policy WM 4.1 covers safety and risk as a primary concern and introductory clause, and the following clauses WM 4.2-4.4 then apply.
- 30 Finally, given that the policy deals with matters regarding the exploitation of fossil fuels, the policy could be said to be contrary to the Local Plan Vision 2037 (page 38-39) in:
- “B.....the changes that have taken place since 2021 have helped drive rapid local greenhouse gas reductions in line with international agreements and national law”...*
- And Strategic Objective 1” and reach a net zero carbon locally no later than 2021 “.*
- 31 However, without the policy the Plan would be contrary to national policy and guidance outlined above.

Question 5: Are policies Policy WD 16.1, 16.2 and WD 17 regarding new or existing hazardous installations and substances and safeguarding around aerodromes justified and effective?

32 NPPF paragraph 97 states that:

“Planning policies and decisions should promote public safety...”

33 NPPF paragraph 45 also states that:

“Local planning authorities should consult the appropriate bodies when considering applications for the siting of, or changes to, major hazard sites, installations or pipelines, or for development around them.”

34 NPPG sets out further guidance on planning controls relating to the storage of hazardous substances in England and how to handle development proposals around hazardous establishments and states that:

“Local planning authorities should ensure that their land-use or other relevant policies take account of public consultation requirements in preventing major accidents and limiting the consequences of such accidents for human health and the environment. They also need to take account of the increase in the number of dwellings (or population at risk) in the consultation zones from the time the hazardous substance consent was granted.” PPG, Paragraph: 069 Reference ID: 39-069-20161209).

“When considering development proposals around hazardous installations the local planning authority is expected to seek technical advice on the risks presented by major accident hazards affecting people in the surrounding area and the environment... This allows those making planning decisions to give due weight to those risks, when balanced against other relevant planning considerations...” (PPG, paragraph: 002 Reference ID: 39-002-20161209).

35 While the local planning authority must have regard to the advice of the appropriate body, the decision on whether to grant permission still rests with the local planning authority as noted in PPG (Paragraph: 071 Reference ID: 39-071-20161209).

36 The Borough contains several sites that handle or process hazardous substances, which include industrial processes, storage, refinery and port facilities and the Council handles a small number of applications for hazardous substances consent each year.

Is Policy WD 16.1 justified and effective?

- 37 Policy WD 16.1 Hazardous Installations – New Development (page 265) provides for the control of new hazardous development and sets out the issues that will be taken into account when assessing the level of off-site risk that would be involved if the development was to be permitted.
- 38 Policy WD 16.1 is effective, in so far as it gives effect to national policy and guidance and is based on established practices for the control of new hazardous development.

Is Policy WD 16.2 justified and effective?

- 39 Policy WD 16.2 Development Near Notifiable Hazards (page 265) provides for the control of new development in the vicinity of an existing hazardous installation. Like Policy WD 16.1 above, it sets out the issues that will need to be considered before development will be permitted within the consultation zone of a hazardous installation.
- 40 Policy WD 16.2 is effective, in so far as it gives effect to national policy and guidance and is based on established practices for the control of development in the vicinity of existing hazardous development.
- 41 Any new proposals involving hazardous substances or processes will still need to be determined in line with Policy WD 16.1 and any proposals for new development within the consultation zone notified by the Health and Safety Executive will still need to be subject to Policy WD 16.2.

Is Policy WD 17 justified and effective?

- 42 Policy WD 17 Safeguarded areas around aerodromes, is on page 267 of the emerging Local Plan. The NPPF, Annex 2, Glossary, page 71, refers to airport safeguarding zones, to which specific safeguarding provisions apply.
- 43 The Town and Country Planning (safeguarded aerodromes, technical sites and military explosives storage areas) Direction 2002 requires the Council to consult the relevant Aerodrome Safeguarding Authority on planning applications that could potentially affect the safety of aircraft operations.
- 44 There are three facilities which could affect the control of development in Wirral, which will need to be safeguarded to protect the operational integrity or safety of an airport or aircraft operations, radar and navigation system.
- 45 The Council has previously addressed the issue of safeguarded areas for aerodromes, with respect to the Policies Map, in their response to the Inspectors Initial Questions ([WBC003], page 10, reply to Question 24).
- 46 The Council, therefore, proposes to make the following modifications to the emerging Local Plan:

Change the title of Policy WD17 (SD1, page 267) to read:

“Safeguarded Areas Around Aerodromes and Beacons”

- 47 The Council also proposes to make the following modifications to the emerging Local Plan Policies Map:
- Add a new boundary to the Policies Map to show the safeguarded area for Liverpool Airport (Blue Zone), to be marked under reference WD17.1
 - Add a new boundary to the Policies Map to show the safeguarded area for Hawarden Airport, to be marked under reference WD17.2
 - Add a new boundary to the Policies Map to show the safeguarded area for the Wallasey DVOR Navigation Beacon, at Moreton, to be marked under reference WD17.3
- 48 With these proposed modifications in place, Policy WD17 will be effective, in ensuring that the need for any appropriate safeguards are taken into account before development is permitted.
- 49 The relevant thresholds for notification and consultation are already set out in paragraph 6.94 of the emerging Local Plan (page 267) and the need to take account of any future revisions is set out in paragraph 6.95.

Question 6: Has suitable account been taken of oil and gas infrastructure and implications for development, including any necessary consents or buffers?

- 50 Yes, and the appropriate consents and buffers will be applied under Policy WD 16.1 Hazardous Installations and Substances - New Development (page 265) and Policy WD 16.2 Development Near Notifiable Hazards (page 266).
- 51 Policy WM 4 Oil and Gas Development (page 273) has also been included to respond to the Petroleum Exploration and Development License, issued by the Oil and Gas Authority, which is reproduced in [EE4], page 27, Appendix B (please also see the Council’s response to Question 4 above).

Question 7: Is Policy WS 5.6, ‘protecting geodiversity’ justified with reference to the particular circumstances in the Wirral? Have all assets been accurately identified and reflected on the policies map?

- 52 Policy WS 5.6 Protecting Geodiversity (page 89) requires the provision of a geological impact assessment and provides for the continued protection and

enhancement of these sites and their earth science interest and access to the public. Policy WD 3 H (page 247) also provides for the protection of other sites that may be recognised as being of geological importance during the Plan period.

- 53 There are 15 Local Geological Sites in Wirral, which are identified and periodically reviewed by the Cheshire Regionally Important Geological and Geomorphological Sites Group (RIGS). Further information on each of these sites, including the review process, is provided on the Council's website [ECC13]. Their existence justifies the policy, without which they may not be protected during the course of managing development.
- 54 The sites currently notified by the Cheshire RIGS Group are listed in Appendix 17 of the emerging Local Plan (page 366) and are all shown on the Policies Map.

Question 8: Are policies WM 1 'proposals for minerals development', WM 2.1 'Aggregate supply', WM 2.2 'Substitute, Secondary and Recycled Aggregates' justified and consistent with NPPF section 17?

Is Policy WM 1 justified and consistent with NPPF section 17?

- 55 Policy WM 1 Proposals for Minerals Development is justified, in that criteria are needed to determine planning applications that may be received for mineral-related development within the Plan period and national policy states that planning policies should provide for the extraction of mineral resources of local and national importance (NPPF, paragraph 210(a) refers).
- 56 Policy WM1 is consistent with NPPF section 17, in that NPPF paragraph 210(f) states that planning policies should:
- "set out criteria or requirements to ensure that permitted and proposed operations do not have unacceptable adverse impacts..."*
- 57 The Council does not consider that any further change is necessary to Policy WM 1 clause 8, in response to representations 1277283 (LPSD-1384) or 1237546 (LPSD-100), as the existing wording already makes it clear that the impact on biodiversity assets and important ecological features will be taken into account and these issues will be dealt with in detail under Policy WD3 (page 247).

Is Policy WM 2.1 justified and consistent with NPPF section 17?

- 58 Policy WM 2.1 Aggregate Supply is justified, in that criteria are needed to determine planning applications that may be received for aggregate-related mineral development within the Plan period and the contribution towards

sub-regional production and the need to maintain landbanks will need to be material considerations. The supporting text on page 270 notes at paragraph 6.114 that more likely in the case of Wirral this will be for recycling of aggregates.

- 59 Policy WM 2.1 is consistent with NPPF section 17, in that NPPF paragraph 211(a) states that in considering proposals for mineral extraction, minerals planning authorities should:

“as far as is practical, provide for the maintenance of landbanks of non-energy minerals from outside National Parks, the Broads, Areas of Outstanding Natural Beauty and World Heritage Sites, scheduled monuments and conservation areas;” and

- 60 NPPF paragraph 213 states that minerals planning authorities should plan for a steady and adequate supply of aggregates by preparing an annual Local Aggregate Assessment, either individually or jointly (clause (a)); make provision for the land-won and other elements of their Local Aggregate Assessment in their mineral plans (clause (c)); and take account of any published National and Sub National Guidelines on future provision which should be used as a guideline when planning for future demand for and supply of aggregates (clause (d)).

Is Policy WM 2.2 justified and consistent with NPPF section 17?

- 61 Policy WM 2.2 Substitute, Secondary and Recycled Aggregates (page 270) is justified, in that minerals are scarce resources and it is important to provide for the use of alternatives to natural resources, where these are economically and environmentally acceptable. As the supporting text at paragraph 6.115 notes the policy is in line with sustainable development as it seeks to conserve valuable aggregate resources and reduce the quantity of material requiring disposal.

- 62 In Wirral’s case, as the Borough does not currently have any workable or viable reserves, proposals involving aggregates are most likely to involve substitute, secondary or recycled materials.

- 63 Policy WM 2.2 is consistent with NPPF section 17, in that NPPF paragraph 210(b) states that planning policies should:

“so far as practicable, take account of the contribution that substitute or secondary and recycled materials and minerals waste would make to the supply of materials, before considering extraction of primary materials...”

Question 9: Are all geology allocations justified? Are all now reflected on the policies map, including navigation beacons?

Are all geology allocations justified?

- 64 The seven-step approach to mineral safeguarding set out in Mineral Safeguarding in England: Good Practice Advice 2011 (<https://www.coventry.gov.uk/downloads/file/19155/mineral-safeguarding-advice-bgs>, page 2, paragraph 1.3.3) was undertaken as part of the preparation of the Wirral Minerals Report 2021 [EE4], (the Council's response to Matter 6, Question 1 above refers). This has included identifying the best geological and mineral resource information, deciding on which mineral resources to safeguard and undertaking necessary industry consultation.
- 65 As a result of further representations from the operator of the last remaining workable brick clay reserve [1247777, LPSD 1260] and the modifications now proposed by the Council below, Policy WM 3 Safeguarding mineral reserves and infrastructure now focuses on safeguarding the Borough's remaining facilities for the landing and handling mineral resources (please also see the Council's response to Question 10, below). No further proposals or needs for safeguarding have been identified by the mineral or construction industry.

Are all geology allocations now reflected on the policies map?

- 66 Yes. The relevant sites are listed in Policy WM3 Safeguarding mineral reserves and infrastructure (page 272) and shown on the Policies Map.
- 67 The operator of the site identified for landing marine-won sand and gravel (Policy WM3 B (MSA-SA4.1) supports the safeguarding of mineral reserves and associated infrastructure and supports the proposed wording of Policy WM 3 [1323872, LPSD-774 refers] and no objections to the boundaries shown have been received from any of the other landowners or operators.

Is Policy WM 3 'safeguarding mineral reserves and infrastructure' proportionate and adequate?

- 68 NPPF paragraph 210(e) states that planning policies should:
- “safeguard existing, planned and potential sites for: the bulk transport, handling and processing of minerals; the manufacture of concrete and concrete products; and the handling, processing and distribution of substitute, recycled and secondary aggregate material;”*
- 69 Policy WM 3 is proportionate, in that Wirral does not have any remaining workable or viable reserves but still has a need for minerals and local facilities are still required to handle them. Because of the importance and nature of these operations, the number of sites on which they would be suitable are few and the need to safeguard their continued operation on an appropriate site remains.

70 Policy WM 3 D is adequate, in that it recognises the importance of protecting minerals processing capacity while providing appropriate flexibility, if a suitable alternative site can be identified (Policy WM 3 D 1) or if the type of facility involved is no longer required by the minerals or construction industry (Policy WM 3 D 2).

71 As a result of the representations received on Policy WM3 A, referred to in the response to Question 9.a. above, the Council proposes to make the following modifications to the submitted Local Plan:

Paragraph 6.101 Wirral currently has no ~~few and limited~~ workable or viable mineral reserves. Notwithstanding, National Planning Policy Framework (NPPF) requires mineral planning authorities to incorporate planning policies to provide for mineral extraction and to ensure that permitted and proposed operations do not have unacceptable impacts.

Paragraph 6.106 The Wirral Minerals Report 2020 confirmed, following consultation with the mineral industry, that Wirral has no existing/workable resources for land-won crushed rock, sand and gravel, brick clay or industrial minerals. It does have potential for landing marine won sand and gravel through wharves, although there has been no recent activity. ~~There are also small amounts of winnable brick clay.~~

Paragraph 6.118 The remaining workable site for clay extraction at Moreton Brickworks, Carr Lane, Moreton, has now ceased operating and there is no reasonable prospect of mineral extraction restarting because the remaining clay is no longer of any economic value. ~~which has consent to operate until 2042, is now used only intermittently and land for potential expansion is already owned by the operator. The site is identified as a Mineral Safeguarded Area (MSA) on the Local Plan Policies Map. As such it is important to safeguard any future working from inappropriate built development. Applications for non-mineral development in the MSA, which is likely to comprise any built development, given the size of the MSA, will be required to include a Minerals Assessment setting out how it complies with Policy WM 3.~~

Policy WM 3

Safeguarding mineral reserves and infrastructure

~~A. The mineral reserve for clay extraction in North Wirral will be safeguarded as shown on the Policies Map (MSA-SA8.1). Non-minerals development will only be permitted within the safeguarded area where it can be demonstrated that the mineral cannot be extracted prior to development or is no longer of any economic value or potential use.~~

72 Consequent changes to the numbering of the remainder of Policy WM 3 will be required.

Question 10: Is Policy WM 5 'Restoration' sufficient to ensure appropriate restoration of minerals sites, including in respect of timing?

- 73 Policy WM 5 Restoration is sufficient to ensure appropriate restoration of minerals sites, including in respect of timing. Policy WM5 A (page 274) requires 'an appropriate after use' to be secured 'at the earliest opportunity', in line with NPPF paragraph 210(h).
- 74 Paragraph 6.128 (page 274) indicates that restoration and aftercare should result in 'a final landform consistent with the landscape character of the surrounding area', hence seeks an appropriate restoration.
- 75 Policy WM5 B 4 (page 274) requires details of the timescales for the removal of obsolete development and completion of the restoration scheme; and Policy WM 5 B 5, requires details of the aftercare arrangements that are to be put in place, to ensure the maintenance and management of the site once restoration is complete.
- 76 Paragraph 6.129 (page 275) indicates that the level of detail required will depend on the circumstances of each specific site.