

Your Ref:
Our Ref: ASH.JD.CAG0531



Minerals & Waste Draft Plan Consultation
Speedwell House
Freepost
Oxfordshire County Council
Attn: Lois Partridge

31 October 2011

Dear Sirs

Response to Consultation on the Draft Oxfordshire Minerals and Waste Planning Strategy

We are instructed by Communities Against Gravel Extraction ('CAGE') and enclose herewith our clients' formal response to the consultation draft of the County Council's Minerals and Waste Planning Strategy. Our clients have been assisted in preparing the enclosed submission by appropriate external expertise and we do not seek in this letter to summarise the points made therein. Rather, we set out below four respects in which the draft proposals are either legally or procedurally flawed. These failings make the draft Strategy 'unsound' and they are such as to require the current exercise to be halted. We should add that the external expertise referred to above includes advice from Mr Robert Lewis of Radcliffe Chambers and in particular on the terms of this letter.

The enclosed response concentrates on the inclusion in the draft Strategy of a proposed new site for sand and gravel extraction at Cholsey. It explains why, in planning terms, the inclusion of that site is wrong. However, the failings detailed below relate to the wider plan-making exercise and in our view it would be wrong to continue with the current process since the draft Strategy is likely to be rejected when scrutinised by the Examiner. Its unsoundness arises from the following failings, each of which we expound upon below: (i) the deficient nature of the consultation exercise undertaken by the Council; (ii) the failure of the Council to carry out an adequate environmental assessment; (iii) the failure to consider sites other than those put forward by mineral operators, agents or landowners; and (iv) bias, or the appearance of bias, in the process arising from the involvement of a member closely associated with a local anti-minerals protest group.

(i) Inadequate consultation

The guidance on 'soundness' issued by the Planning Inspectorate makes it clear that a key aspect of whether a plan is sound is whether the consultation process has allowed for *'effective engagement of all interested*

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parties' (para. 2.9). That cannot be said of the current exercise. Following the publication of the revised PPS12 in 2008, the Council abandoned the consultation exercise that it had started the previous year and in February/March 2010 embarked upon fresh consultation. At that stage Cholsey was identified as a potential sand and gravel site. The consultation exercise is described in the draft Strategy in the following words:

- 2.29 *Options for where mineral working might take place were developed over the past year through consultation with a range of stakeholders, including parish and district councils, mineral operators, environmental groups, the Environment Agency, Natural England, the Highways Agency and other interested parties. Initially, seventeen areas of sand and gravel, two areas of soft sand and five areas of crushed rock were identified as potential areas for new working. Seven of the sand and gravel areas were discounted due to the thin and intermittent nature of the resources present in them.*
- 2.30 *Stakeholders were consulted on draft strategy options in March and April 2010 at workshops and feedback was sought from statutory and technical consultees. The feedback informed a revision of these options and stakeholders were consulted on the revised options in July 2010.*

What the draft Strategy fails to state is that in October 2010 the Council's Cabinet resolved that extraction should be confined to the existing areas of working at Lower Windrush Valley, Eynsham/Cassington/Yarnton, Radley, Sutton Courtenay and Caversham. Cholsey dropped out of the picture. As a result, many of the organisations whose views are represented by CAGE took no further part in the exercise. It should be noted that it was only by chance in February this year that a Cholsey resident spotted the elevation of the Cholsey site in the Cabinet Minutes, and drew this to the attention of the Parish Council. No formal notification had been received by either Cholsey Parish Council or Wallingford Town Council. There was no formal opportunity therefore to influence the Council's proposals until the start of the current consultation exercise on 5 September 2011.

It has taken the County Council some four and a half years, from February 2007 to September 2011, to devise its current proposals. We do not complain about that; the exercise is a complex one. However, it cannot be reasonable to expect consultees, many of whom will be seriously affected by the proposals if adopted, to respond in a properly considered manner in the absence of any earlier formal notification in such a short period of time. The consultation exercise invites comment on no fewer than 19 separate documents. It may be possible within that timeframe for consultees to raise issues of a purely local nature, such as the impact that sand and gravel working would have on public rights of way or the visual impact it would have on the local countryside, but it is quite impossible for them properly to address the key strategic issues which lie behind the proposed allocation and to address the question whether some other site or sites might be preferable when compared to the one new site that was selected, Cholsey.

Consultees cannot be expected to repeat the entire exercise carried out by the Council in preparing the draft Strategy. They have neither the time nor the resources. In particular, only the Council is able to consider potential sites county-wide. Our clients, for example, are obviously unable to assess the suitability of potential, but unidentified, sites located elsewhere in the county. We therefore accept that it is unlikely that bodies such as CAGE will be able to propose wholly new sites, ones that have not been considered by the Council (although the same is not necessarily true of other bodies such as the district councils). However, what they can expect is that the Council engages in meaningful consultation that allows the merits of the alternative sites that have been identified to be considered by consultees. That consideration takes time and assistance from the Council in explaining why the alternatives were rejected.

In the case of our clients the approach described above has not been followed. Having been made aware in October last year that Cholsey was no longer under threat, it was found, almost by accident earlier this year, that Cholsey was apparently back in the frame. The consultation period was preceded by the summer holiday months and CAGE (which had to be put together in haste and without any initial resources) could only convene meaningful public meetings early in October, over half way through the consultation period. This unsatisfactory background hardly satisfies the principle stated in PPS12 (and repeated in the Council's own Statement of Community Involvement) that there will be a "*Front-loading of involvement; there should be opportunities for early community involvement and a sense of ownership of local policy decisions*".

We believe that this failing is such as to make the draft Strategy unsound.

(ii) Inadequate environmental assessment

While it is stated in the consultation documents that the exercise provides the opportunity for consultees to respond to the '*overall approach*' proposed for minerals and waste planning, and that '*specific sites will be identified in a subsequent document*', that is disingenuous. Only one new site for mineral extraction is identified, namely the site at Cholsey. The precise boundaries of that site may not have been delineated in the draft Strategy, but its location is identified on the plans with a high degree of precision and to all intents and purposes this amounts to a site allocation, not merely the broad identification of a strategic area. It is therefore incumbent on the Council to carry out a proper environmental assessment of the impacts that working will have on the area of Cholsey and Wallingford, and to compare those effects with the impacts that would be caused by, and to, alternative sites.

The purpose of introducing strategic environmental assessment was to address the point that it made little sense to require individual projects to be assessed if they are part and parcel of a wider plan, particularly where there exists a requirement that they be in accordance with that plan. If that

plan was itself adopted without being subjected to environmental scrutiny. In a situation where only one site is identified in a plan, and where, in consequence, the subsequent allocation of that site and that site alone would be in conformity with the plan, it cannot be lawful (as implied will be the case at para. 4.3.3 of the SA/SEA report prepared for the Council by URS Scott Wilson) to defer environmental assessment until the allocation stage. Unless it is done now, not only is there an obvious risk that the Cholsey site will be included in the plan, even though working there may have significantly greater adverse environmental effects than working at another site or sites, but at the allocation stage it will not be possible to assess the Cholsey site against alternatives because no such alternatives have been included in the strategic guidance.

The Scoping Report issued in May 2011 for the Minerals and Waste Development Framework states at para. 2.5.3 that a key requirement of the SEA process is an environmental report which describes, *inter alia*, the likely significant effects of implementation of the plan and alternative options that were considered while producing the plan. We have read the URS Scott Wilson report and cannot find in it any assessment of the environmental impacts likely to be created by working at Cholsey, nor how these might compare to the impacts of working at other potential sites. Indeed, there is not even any mention of what the alternative sites were.

The part of the URS/Scott Wilson report which concerns itself with Policy M3 and the identification of sites is highly misleading. It states as follows:

“Policy M3 sets out the spatial strategy for mineral working. It is recognised that whilst concentrating extraction predominantly in areas where working is currently taking place or has taken place recently has economic advantages and presents opportunities for co-ordinated large-scale restoration projects which would in the longer term lead to beneficial effects for local communities, landscapes and wildlife; the long-term nature of mineral works means that communities and environments within/close to the identified areas will continue to experience the cumulative adverse effects of mineral working for the foreseeable future. Measures to mitigate against negative effects should be required at site selection and planning application stages.

Appropriately, the policy will not lead to an overall increase of working activity in West Oxfordshire, or in any one particular area, and so no significant additional adverse cumulative effects are expected on top of those already experienced, which is particularly important in areas where there has already been extensive working.”

The use of the word ‘predominantly’ in the first of these paragraphs is the only indication that not all the identified sites are sites of existing working. The impacts of new working at Cholsey have been overlooked, to be considered at site allocation stage, and the impacts of working at the alternative sites that were considered but rejected are not even mentioned. It appears that they were never considered to be relevant. The statement in

the second paragraph that the policy will not lead to an increase in working activity in West Oxfordshire, while strictly correct, is hardly a fair summary of the effect of the draft Strategy because it will lead to an increase in working in South Oxfordshire. The comment that it will not increase working “*in any one particular area*” is simply wrong.

(iii) The failure to consider sites other than those advanced by operators or landowners

The approach taken to initial site identification is explained in the report that was presented to the Council’s Cabinet on 16 February 2011 at Annex 2. A three-stage process was followed: Stage 1 was the identification of a ‘long list’ of sites, Stage 2 the assessment of deliverability, and Stage 3 planning criteria assessment. It is stated that while the Minerals Sites Proposals and Policies Issues and Options paper published in 2007 included not only those sites put forward by operators, agents and landowners as a result of the ‘call for sites’, it also included sites that had been identified by officers. However, it explained that the latter “*have not been considered further*” for the single reason that ‘delivery’ was uncertain and there were sufficient resources within nominated sites. However, that decision was taken at Stage 1 of the exercise although Stage 2 was ‘Assessment of delivery’. It appears that all the officer-identified sites were discarded on deliverability grounds even before deliverability was assessed.

We do, of course, appreciate that deliverability is a relevant consideration, but to reject an entire class of potential sites on this ground alone runs the obvious risk that sites are overlooked that may well have been deliverable if the matter had been investigated and where working would be less environmentally damaging than the sites nominated by those with a vested interest.

The draft Strategy makes it clear that already operational sites will be sufficient to ensure an adequate supply of sand and gravel until approximately 2020. It is only from that date that it is envisaged that the new site at Cholsey need come on stream. This gives a more than adequate period within which sites identified by officers can be investigated by operators and, if thought appropriate, acquired by them. This is the way in which housing and other allocations are made when district councils are formulating their LDFs and, indeed, any other procedure runs the risk of distorting the market because landowners may be denied the benefit of any uplift in value that identification in a plan may entail.

Furthermore Government advice in Mineral Planning Statement 1: Planning and Minerals (MPS1) makes clear that the provision does not have to be made from specific sites but from preferred areas and/or areas of search. More specifically the MPS1 practice guide clarifies at paragraph 42 that: “*In most cases sufficient specific sites and/or preferred areas should be identified, so that on adoption of a LDD, there is adequate provision to cover the LDD, if sufficient acceptable sites are known at that stage. Where*

this is not possible Areas of Search can also be identified to cover any remaining part of the LDD period. The annual monitoring of LDDs provides an opportunity for MPAs and the industry to develop specific sites and/or identify preferred areas as required from the areas of search previously identified.”

If there were a current or imminent shortfall in supply we would understand the Council feeling obliged to concentrate only on immediately ‘deliverable’ sites, but that is far from being the case in Oxfordshire. Officer-nominated sites should have been considered alongside industry-nominated ones as candidates for potential strategic site selection, preferred areas and areas of search.

PPS 12 states:

“4.38 The ability to demonstrate that the plan is the most appropriate when considered against reasonable alternatives delivers confidence in the strategy. It requires the local planning authority to seek out and evaluate reasonable alternatives promoted by themselves and others to ensure that they bring forward those alternatives which they consider the LPA should evaluate as part of the plan-making process.” (our underlining)

The sites identified by the officers cannot be classified *en masse* as being ‘unreasonable’.

The Inspectorate’s Guidance on ‘soundness’ includes as one of the criteria: *“Can it be shown that the LPA’s chosen approach is the most appropriate given the reasonable alternatives?”*. In our view the Council’s approach was not the ‘most appropriate’.

(iv) The appearance of bias

The development of the draft Strategy has been overseen by the Council’s Minerals and Waste Local Plan Working Group and the decision to agree the consultation draft was taken by the Council’s Cabinet. One of the members of both those bodies is Councillor Lorraine Lindsay-Gale, now the Cabinet Member for Growth and Infrastructure. Although she assumed her Cabinet post after the Cabinet decision of 16 February 2011 at which the Strategy was first agreed, the Cabinet has discussed the Strategy on subsequent occasions (24 May and 19 July 2011), on both of which occasions Ms Lindsay-Gale was present and spoke. We presume that it will be her role as Member for Growth and Infrastructure to present the results of the consultation exercise to the Cabinet in due course.

Ms Lindsay-Gale has been a prominent member of the campaign group Parishes Against Gravel Extraction (‘PAGE’). Her photograph appears, for example, on PAGE’s website welcoming Baroness Andrews, the Chair of English Heritage, who viewed the PAGE area’s landscape on 2 June 2011. She also lives in one of the Parishes affected.

The PAGE website contains the following statement:

“The PAGE Campaign will continue to pursue our two aims of reducing the production targets for sand and gravel, and to defend ALL our areas against future minerals exploitation” (our underlining).

In a letter published in the Oxford Mail on 1 April 2010 commenting on the threat of gravel extraction, Ms Lindsay-Gale wrote:

“As an Oxfordshire county councillor representing seven threatened parishes, and the Heritage Champion for the county, I will be doing all I can to support my local communities in their fight to protect their historic environment from destruction.” (our underlining)

On the Register of Members’ Interests on the County Council’s website Ms Lindsay-Gale does not refer to her involvement with PAGE, recording “none” against the category: membership of “*bodies influencing Public Opinion or Policy (including political party or trade union)*”. She is not recorded in the minutes of the Cabinet meetings held on 24 May and 19 July 2011 as having declared an interest.

The potential site areas that were rejected for inclusion in the draft Strategy included SG-03: Benson, SG-09:Drayton St Leonard, SG-13:Shillingford, and SG-59:Stadhampton, all being within the PAGE area. We note that the reasons for rejection of these sites included their archaeological and historic interest and this was the only reason for rejection of SG-09:Benson. We observe in passing that Ms Lindsay-Gale is an archaeologist.

PPS12 contains the following:

‘4.19 The UK government has signed up to the UNECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (the Aarhus Convention). Article 7 states:

“Each Party shall make appropriate practical and/or other provisions for the public to participate during the preparation of plans and programmes relating to the environment, within a transparent and fair framework, having provided the necessary information to the public.”

Ms Lindsay-Gale’s involvement in the development of the draft Strategy would appear to involve breaches of the Council’s adopted General Principles Governing Member Conduct and its Members’ Planning Code of Practice. It has prevented the site selection exercise being conducted in a “transparent and fair framework” as required by Art. 7 of the Convention.

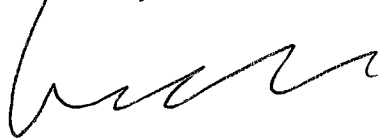
A decision which is tainted by either bias, or even the appearance of bias sufficient to raise a real possibility that it was not taken impartially, is unlawful and our clients are separately raising their concerns with the

Council's Monitoring Officer. However, for present purposes we maintain that these issues compromise the soundness of the draft Strategy.

Conclusions

For the reasons we give above, whether considered individually or together, it is our view that the draft Strategy is unsound and that it will be so found by the Examiner. We therefore invite the Council to halt the current process, re-visit the Strategy and undertake a fresh round of public consultation in due course. Should you not do so, we will ask the Examiner to find the Strategy unsound. Whether additional steps should be taken if you do not halt the current exercise is a matter that our clients would also have to consider. We very much hope that the need for that consideration does not arise.

Yours faithfully



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