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# **Report to North Yorkshire County Council, City of York Council and North York Moors National Park Authority**

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**an Inspector appointed by the Secretary of State**

**Date: 4 February 2022**

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Planning and Compulsory Purchase Act 2004

(as amended)

Section 20

## **Report on the Examination of the North Yorkshire, City of York and North York Moors National Park Authority Minerals and Waste Joint Local Plan**

The Plan was submitted for examination on 28 November 2017

The examination hearings were held between 27 February 2018 and 25 January 2019

File Ref: PINS/P2745/429/10

## Abbreviations used in this report

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BGS	British Geological Survey
AA	Appropriate Assessment
ha	hectare
HRA	Habitats Regulations Assessment
HWRC	Household Waste Recycling Centre
LAA	Local Aggregate Assessment
LDS	Local Development Scheme
MWJP	North Yorkshire County Council, City of York Council and North York Moors National Park Authority Minerals and Waste Joint Plan
MWPAs	North Yorkshire, City of York and North Moors National Park Minerals and Waste Planning Authorities
MM	Main Modification
MSA	Mineral Safeguarding Area
NPPF	National Planning Policy Framework March 2012
NPPW	National Planning Policy for Waste October 2014
PPG	Planning Practice Guidance
SA	Sustainability Appraisal
SCI	Statement of Community Involvement
tpa	tonnes per annum
WMS	Written Ministerial Statement

## **Non-Technical Summary**

This report concludes that the North Yorkshire County Council, City of York and North York Moors Minerals and Waste Joint Plan provides an appropriate basis for the planning of minerals and waste provision provided that a number of main modifications [MMs] are made to it. North Yorkshire County Council, the City of York Council and the North York Moors National Park Authority [M&WPAs] have specifically requested me to recommend any MMs necessary to enable the Plan to be adopted.

The MMs all relate to matters that were discussed at the examination hearings and were proposed by the M&WPAs. Following the hearings, the M&WPAs prepared a schedule of the proposed MMs and carried out sustainability appraisal and habitats regulation assessment on them. The MMs were subject to public consultation from 21 July 2021 to 15 September 2021. I have recommended their inclusion in the Plan after considering all the representations made in response to consultation on them.

The MMs can be summarised as follows:

- Amending and adding trigger points for review;
- Updating minerals reserve and requirement figures and splitting the figures for the different types of crushed rock;
- Adding policy provisions for non-allocated mineral sites coming forward;
- Clarifying and expanding building stone provision;
- Amending hydrocarbon strategies to reflect various changes to national policy and to provide more precise guidance;
- Clarifying relationship to and interaction with other regulatory authorities;
- Updating capacity and requirement figures for waste;
- Amending policies to ensure they fully reflect national policy and provide sufficient flexibility;
- Adding new development management policies on air quality and planning obligations;
- Strengthening nature conservation provisions in accordance with the Habitats Regulations;
- Clarifying safeguarding provisions and inserting an additional policy;
- Inserting additional allocations and development requirements to some allocations;
- Adding further monitoring provisions for additional policies.

## Introduction

1. This report contains my assessment of the North Yorkshire County Council, City of York and North York Moors National Park Authority Minerals and Waste Joint Plan [MWJP] in terms of Section 20(5) of the Planning & Compulsory Purchase Act 2004 (as amended). It considers first whether the Plan's preparation has complied with the duty to co-operate. It then considers whether the Plan is sound and whether it is compliant with the legal requirements.
2. At the time of submission, the National Planning Policy Framework 2012 [NPPF] was in force and the MWJP was prepared with its provisions in mind. The NPPF made it clear that in order to be sound, a Local Plan should be positively prepared, justified, effective and consistent with national policy. A revised National Planning Policy Framework was published in July 2018. It included a transitional arrangement in paragraph 214 which stated that, for the purpose of examining plans, where those plans were submitted on or before 24 January 2019, the 2012 NPPF would apply. Further revisions were made to the NPPF in February 2019 and July 2021, although they did not impact on this plan. The public consultation took place after these revisions and there was opportunity for comment on them. In short, therefore, for the purpose of examining this Plan, the policies in the 2012 Framework apply. Unless stated otherwise, references in this report are to the 2012 Framework.
3. The starting point for the examination is the assumption that the North Yorkshire County Council, City of York and North York Moors National Park authorities [MWPAs] have submitted what they consider to be a sound plan. The basis for my examination is The North Yorkshire County Council, City of York and North York Moors National Park Authority Minerals and Waste Joint Plan, November 2016, plus the Addendum of Proposed Changes July 2017, both submitted in November 2017. These are the same documents that were published for consultation in November 2016 and July 2017 along with Sustainability Appraisals [SA] on each.

## Main Modifications

4. In accordance with section 20(7C) of the 2004 Act the MWPAs requested that I recommend any main modifications [MMs] necessary to rectify matters that make the Plan unsound and/or not legally compliant and thus incapable of being adopted. My report explains why the recommended MMs, all of which relate to matters that were discussed at the examination hearings, are necessary. The MMs are referenced in bold in the report in the form **MM1**, **MM2**, **MM3** etc, and are set out in full in the Appendix.
5. Following the examination hearings, the MWPAs prepared several schedules of proposed MMs over time, culminating with a finalised schedule in July 2021. They also carried out sustainability appraisal and habitats regulation assessment of the modifications. The finalised MM schedule was subject to public consultation from 21 July 2021 to 15 September 2021. I have taken account of the consultation responses in coming to my conclusions in this report.

## Policies Map

6. The MWPAs must maintain an adopted policies map which illustrates geographically the application of the policies in the adopted development plan. When submitting a local plan for examination, the MWPAs are required to provide a submission policies map showing the changes to the adopted policies map that would result from the proposals in the submitted plan. In this case, the submission policies map comprises the set of plans identified as "Policies Map, October 2016" as set out in CD23.
7. The policies map is not defined in statute as a development plan document and so I do not have the power to recommend modifications to it. However, a number of the published MMs to the Plan's policies require corresponding changes to be made to the policies map. In addition, there are some instances where the geographic illustration of policies on the submission policies map is not justified and changes to the policies map are needed to ensure that the relevant policies are effective.
8. These changes to the policies map were published for consultation alongside the MMs and can be found at document LPA 126, July 2021 (the link to the Authorities' website is <https://www.northyorks.gov.uk/minerals-and-waste-joint-plan-examination>).
9. When the Plan is adopted, in order to comply with the legislation and give effect to the Plan's policies, the MWPAs will need to update the adopted policies map to include all the changes proposed in LPA 126 July 2021 and the further changes published alongside the MMs.

## Assessment of Duty to Co-operate

10. Section 20(5)(c) of the 2004 Act requires me to consider whether the MWPAs complied with the duty imposed on them by section 33A in respect of the Plan's preparation and how the authorities engaged with relevant bodies. This includes cross boundary interactions with organisations outside the Plan area and also co-operation across the two tiers of planning authorities within the Plan area.
11. The *Duty to Co-operate Statements* identify strategic cross boundary issues relating to a range of matters including waste infrastructure and capacity, and cross boundary movements of minerals and waste. Several cross-boundary evidence base documents have been produced with other bodies such as a *Local Aggregate Assessment for the North Yorkshire sub region*, *Marine Aggregates Study for the Yorkshire and Humber area*, and *Quarrying of Magnesian Limestone for Aggregate in the Yorkshire and Humber Regions*.
12. Memoranda of Understanding have been agreed between the waste disposal authorities covering the Plan area, namely the MWJP authorities, Redcar and Cleveland Borough Council and the Yorkshire Dales National Park Authority. With respect to waste exports, a Waste Position Statement has been produced in collaboration with other waste planning authorities in Yorkshire and Humber. Cross-boundary movements of aggregates have also been addressed in a memorandum of understanding with the Yorkshire Dales National Park Authority.

13. Furthermore, North Yorkshire County Council has had significant involvement with the Yorkshire and Humber Aggregate Working Party and Waste Technical Advisory Group and has chaired their meetings. In addition, consultation has taken place with a wide range of organisations and bodies as part of the formal consultation process. The MWPAs have been responsive to discussions and suggestions, which have been taken into account, and have often influenced the content of the Plan.
14. Overall, I am satisfied that where necessary the MWPAs have engaged constructively, actively and on an on-going basis in the preparation of the Plan and that the duty to co-operate has therefore been met.

## Assessment of Soundness

### Main Issues

15. Taking account of all the representations, the written evidence and the discussions that took place at the examination hearings I have identified five main issues upon which the soundness of the Plan depends. Under these headings my report deals with the main matters of soundness rather than responding to points raised by representors.

### **Issue 1 – Whether the Plan seeks to provide a sufficient supply of locally and nationally important minerals in an efficient and sustainable manner and whether the proposed allocations are appropriate.**

16. This part of the report deals with the part of the MWJP relating to *strategic policies for minerals*, and their corresponding allocations.

#### *Aggregates in general*

17. National policy requires planning authorities to provide for a steady and adequate supply of aggregates. The Local Aggregates Assessment [LAA] sets out the scale of provision required to be made in the Plan, appropriately using 10 years average sales as a baseline and adjusting for local factors such as growth in housebuilding and supply constraints elsewhere in the region.

#### *Concreting sand and gravel; building sand*

18. For concreting sand and gravel resources, the LAA suggests that demand will be significant and there will be a continuing requirement for exports into adjacent areas where there are limitations on the availability of similar resources.
19. Based upon key markets and sources of supply of sand and gravel, the MWJP divides the Plan area into two areas, thereby helping to maintain supply in proximity to markets and reduce overall transport distances. Consequently, a northern distribution area mainly supplies the North East region, and a southern distribution area mainly supplies the south and west.
20. Plan Tables 1 and 2 set out numerical requirements for concreting sand and gravel and building sand, Policy M03: *Overall distribution of sand and gravel provision* shows the overall percentage distribution of supply, and the *Minerals*

*Key Diagram* depicts the division. However, despite their inter-relationship, none of these provisions are signposted to the other and this makes them ineffective. Consequently, **MM06** is required to link the policy to the tables and diagram.

21. The LAA identifies an annual requirement for each of the northern and southern concreting sand and gravel distribution areas, and for building sand. This is based on maintaining at least a 7 year landbank for each throughout the Plan period, in accordance with the NPPF. However, the wording in Policy M04: *Landbanks for sand and gravel* is not consistent with the NPPF and consequently **MM05**, **MM08** and **MM20** are needed to insert the words "at least" into the policy, and also into the Justification texts for Policies M04 and M08: *Meeting building sand requirements*.
22. The overall requirement for sand and gravel is set out in Policy M02: *Provision of sand and gravel*, with further detail in Table 1. The current requirement for building sand is set out in Table 2. However, there is no reference in Policy M02 to Tables 1 and 2, rendering it ineffective. Furthermore, the requirements are likely to change over the Plan period, and will be monitored through the annual LAAs, which will identify future needs. Consequently, the Plan must be reviewed periodically. The Policy provides for a mid-term review, although this does not accord with recent legislation which requires five yearly reviews (Reg 10A of The Town and County Planning (Local Planning)(England) Regulations 2012). Therefore, the Policy and Justification text need modifying to link Tables 1 and 2, amend the review period and explain the role of the LAA. This is achieved by **MM04**, **MM05**, and **MM18**.
23. Also, Table 1 requires amendment to take account of changes in allocations and tonnage provision, so as to make it effective. These modifications are set out in **MM17**.
24. Policy M07: *Meeting concreting sand and gravel requirements* demonstrates how need is planned to be met for concreting sand and gravel, and includes the allocation of specific sites, Preferred Areas, and Areas of Search. Policy M08: *Meeting building sand requirements* does similar for building sand, by allocating specific sites. However, whilst the allocations are named, there is no indication of which district they are located in, and there is no reference to Tables 1 and 2 (numerical requirements) or the Policies Map.
25. Furthermore, whilst the specific sites/Preferred Areas are linked in Policy M07 to Appendix 1 of the Plan (setting out allocation details), the Areas of Search are not. Also, unlike the specific sites/Preferred Areas, the policy does not direct that key sensitivities/mitigation measures in Appendix 1 be taken into account for Areas of Search.
26. Moreover, an additional Preferred Area must be included to reflect an area in MJP17 (Land to South of Catterick) that was allocated in the Publication Draft of the Plan but unjustifiably removed in the Addendum of Proposed Changes to Publication Draft (see paragraph 82 below).
27. All the above omissions render Policies M07 and M08 ineffective. Consequently, **MM14** and **MM19** are needed to insert the additional



information into the policies and make the identified links. **MM07** is similarly required to amend the Justification text.

28. There is no provision within the Plan for unallocated sand and gravel sites (apart from extensions) to come forward, and this makes it inflexible and unjustified as situations could arise which warrant additional sites. Therefore, **MM14** and **MM19** rectify this by introducing criteria-based provisions into Policies M07 and M08 against which non-allocated proposals may be tested. **MM16** and **MM21** insert corresponding details into the Justification text.

#### *Crushed rock*

29. There are three types of crushed rock in the Plan area, each with different properties, namely Carboniferous Limestone, Jurassic Limestone and Magnesian Limestone. The LAA identifies an annual requirement for each type based on maintaining at least a 10 year landbank throughout the Plan period, in accordance with the NPPF. However, the wording in the Plan is not consistent with the NPPF and consequently **MM09**, **MM10**, **MM11**, **MM12**, **MM13** and **MM23** are needed to insert the words "at least" into Policies M05: *Provision of crushed rock* and M06: *Landbanks for crushed rock* and their Justification texts.
30. Table 3 sets out the details of crushed rock provision. However, it only deals with Magnesian Limestone and omits the other two types. This is unjustified as the Plan must show how all types are planned to be provided for. Furthermore, the figures in Table 3 need updating to be effective. Therefore, **MM24** is required, which sets out what the overall crushed rock need is and how it is proposed to be met, breaking this down by type and updating the figures. Corresponding amendments to the Justification text are provided by **MM23**.
31. Amended Table 3 shows that the need for Carboniferous Limestone will be completely met through existing permitted reserves, whilst the need for Magnesian Limestone and Jurassic Limestone, besides drawing on reserves, will also require sites to be allocated.
32. The overall requirement for crushed rock and for Magnesian Limestone is set out in Policy M05: *Provision of crushed rock*. However, unjustifiably, there is no reference to the Jurassic lime stone requirement. Furthermore, there is no link to Table 3, and the figures need updating, thereby rendering it ineffective. Also, the requirements are likely to change over the Plan period, and will be monitored through the annual LAAs, which will identify future needs. Consequently, the Plan must be reviewed periodically. The Policy provides for a mid-term review, although this does not accord with recent legislation which requires five yearly reviews (Reg 10A of The Town and County Planning (Local Planning)(England) Regulations 2012). Consequently, the Policy and Justification text need modifying to rectify these matters. This is achieved by **MM09**, **MM10** and **MM25**.
33. Policy M09: *Meeting crushed rock requirements* demonstrates how need is planned to be met for crushed rock and includes the allocation of specific sites. However, whilst the allocations are named, there is no indication of which

district they are located in, and no reference to Table 3 (numerical requirements) or the Policies Map is made, rendering the Policy ineffective.

34. The figures show that there is a modest shortfall in the supply of Jurassic Limestone during the Plan period. Whilst one allocation has been made for Jurassic Limestone (Settrington Quarry), to justify the policy, the omission site at Whitewall Quarry in Ryedale must also be allocated (see paragraph 85 below) for geographical reasons and to ensure security of supply. Consequently, **MM22** is needed to allocate Whitewall Quarry and insert the additional information and identified links into Policy M09. **MM25** is similarly required to amend the Justification text.
35. There is no provision within the Plan for unallocated crushed rock sites (apart from extensions) to come forward, and this makes it inflexible and unjustified as situations could arise which warrant additional sites. Therefore, **MM22** rectifies this by introducing a criteria-based provision into Policy M09 against which non-allocated proposals may be tested. **MM26** inserts corresponding detail into the Justification text.
36. Policy M06 requires new reserves of crushed rock to be sourced from outside the National Park and Areas of Outstanding Natural Beauty. However, this blanket ban is inflexible and therefore unjustified. Therefore, to add flexibility the words "*as far as practical*" must be added to the policy, and similar wording inserted into the Justification text. This is done by **MM11** and **MM13**.

#### *Silica sand*

37. Policy M12: *Continuity of supply of silica sand* supports potential development at Blubberhouses Quarry in order to maintain a minimum 10 year reserve. However, the wording used is not consistent with national policy. Neither is any reference made to the need to maintain a 15 year stock of silica where significant capital investment is required, as is the case for Blubberhouses. Again, this is inconsistent with national policy. Furthermore, Blubberhouses Quarry is not allocated and this is unjustified (see paragraph 84 below), particularly given its development support in the Plan. Consequently, amendments are required to the policy and Justification text as set out in **MM27, MM28**.
38. Blubberhouses Quarry is partly located within internationally important nature conservation designations. Consequently, to ensure that these conservation sites are adequately protected, Policy M12 makes reference to compliance with the Habitats Regulations. However, given the competing importance of the rare silica sand under consideration and the high level of protection that is required for the nature conservation designations, to make the policy effective, reference needs to be made to "Imperative Reasons of Overriding Public Interest" and compensatory measures/overall coherence of the Natura 2000 network. This is achieved by inserting additional Justification text into the Plan as set out in **MM29**.

#### *Building stone*

39. Policy M15: *Continuity of supply of building stone* is a criteria-based policy designed to provide opportunity for proposals to come forward to secure an

adequate supply of building stone. However, there are many types of stone, and the Plan gives no indication of what types are present in the Plan area. Therefore, in order to effectively support a sufficient supply of available stone for various uses, as required by national policy, an indication of the types of stone present in the Plan area is needed. **MM30** does this by inserting a table of stone types and their uses.

40. In order to support the various stages of winning, working and processing of building stone, Policy M15 must make provision for stone products and processing activities that are functionally linked to a quarry to come forward. M15 unjustifiably omits to do so. Furthermore, for stone destined for outside the Plan area, the policy imposes a criterion that requires a proposal to demonstrate that it would meet an important building stone requirement. This is too restrictive and hence is unjustified. Consequently, the provision needs more flexibility by removing the word "important" and simply referring to proposals meeting a particular building stone requirement, such as geological matching. These modifications are achieved by **MM31**.
41. Policy M15 also imposes restrictions on proposals within the National Park and Areas of Outstanding Natural Beauty. For stone destined for outside these areas, the policy is too restrictive and requires more flexibility to be justified. This is rectified by removing the limitation of requiring stone to be destined for "important designated or undesignated" buildings that need repair, and by expanding development opportunities to situations where stone may be sold outside these areas to preserve the overall economic viability of the source quarry. Accordingly, **MM31** amends the policy and **MM33** modifies the Justification text.
42. To support provision of additional reserves, Policy M15 makes a site allocation. However, there is no reference to it being shown on the Policies Map and no indication of what district it is in, thereby making it ineffective. This is rectified by **MM31**.
43. Moreover, the Plan must support stone processing as a rural enterprise in accordance with national policy. However, it does not do this adequately. Therefore, **MM32** and **MM34** are needed to include appropriate provision for this within the Plan.

### *Hydrocarbons*

44. During the course of the examination, there have been changes to national hydrocarbons policy and High Court judicial reviews, which impact on the Plan's provisions. Most recently, the WMS of 4 November 2019 from the Secretary of State for Business, Energy and Industrial Strategy created a presumption against issuing Hydraulic Fracturing Consents, although no similar presumption emerged against granting planning permissions. Nonetheless, all relevant changes must be reflected in the Plan in the interests of clarity and effectiveness and to ensure consistency with national policy. This has resulted in several main modifications.
45. To be effective, the Plan needs to provide some background on the recent national policy changes and how they have impacted on the Plan. Besides mentioning the WMS of September 2015, the Plan must reference the WMSs

of May 2018, May 2019 and November 2019 to add context and clarity. This is done through **MM03, MM36, MM37, MM38** and **MM42**.

46. Similarly, the quashing of paragraph 209a) of the NPPF of February 2019 by the High Court in *Claire Stephenson v Secretary of State for Housing and Communities and Local Government* [2019] EWHC 519 (Admin), together with brief accompanying reasoning, need to be set out. **MM37** inserts the appropriate text.
47. Other matters require amendment in the interests of effectiveness. The Justification text that specifies a need to demonstrate the non-hazardous nature of chemicals used in the process must clarify that such chemicals must be non-hazardous to groundwater. Appropriate additional wording is inserted by **MM39**. Furthermore, in setting out the range of issues to consider in an application, external lighting and flaring has been omitted and must be added. **MM40** does this. Moreover, in explaining the interaction with other regulatory regimes, the function of the Oil and Gas Authority in regulating drilling must be included. As this has been omitted, **MM41** is required to make this addition.
48. Policy M16: *Key spatial principles for hydrocarbon development* at paragraph b)ii) talks about sub-surface proposals and states that lateral drilling beneath a National Park or AONB for the purposes of appraisal or production will be considered to be major development. However, exploratory development could also have significant impacts on these designations and consequently, to be effective, the provision needs to be expanded to include all lateral drilling. **MM43** achieves this.
49. Paragraph d)i) of Policy M16 makes provision for a 3.5km buffer zone around the National Park and AONB, where proposed surface development must be supported by a detailed assessment of potential impacts. This requirement is too restrictive in that it fails to take account of particular locational circumstances that affect visibility both within this zone and outside it. For instance, it could be that development within the buffer would be adequately screened by topography, rendering a detailed assessment excessive, whereas other development outside the buffer might have the opposite impact and require more detailed supporting evidence.
50. Therefore, as written, the provision is unjustified and **MM44** is needed to add flexibility. This is achieved by clarifying that the 3.5km buffer is a visual sensitivity zone where the need for detailed assessment takes into account the particular locational circumstances of the proposed site relative to the designated area. A corresponding amendment to the Justification text is made by **MM49**.
51. The Justification text to Policy M16 sets out the reasons for requiring the highest status of protection in the National Park and AONBs. However, when listing the qualities to be protected, remoteness and dark night skies have been omitted and must be added. For effectiveness **MM45** inserts the relevant text.
52. Also, where hydraulic fracturing is proposed in association with conventional hydrocarbons, there may be circumstances which merit a departure from the

more restrictive approach set out in Policy M16b). The Plan does not provide for exceptions being made in these cases, and this is unjustified. Consequently, **MM46** is needed to add flexibility.

53. Where straddling applications are made to two planning authorities for horizontal drilling emanating from outside the National Park but extending under it, the development is likely to fall under the Environmental Impact Assessment regulations and be classed under the Plan as major development. Given the sensitivity of this area and the potential for impacts on the Park's Special Protection Areas and Special Conservation Areas, for effectiveness more contextual explanation is required to guide developers. This is achieved by **MM48**.
54. Turning to the definition of hydraulic fracturing, there are different definitions that the MWPA's must consider. The statutory definition<sup>1</sup> refers to "associated hydraulic fracturing", which only applies to hydraulic fracturing using high volumes of fluid as set out in the Act, whereas the Planning Practice Guidance<sup>2</sup> uses a wider meaning without volumetric bars. The statutory definition is written in the context of well consents and the environmental permitting regime, as opposed to the PPG which is specifically directed at land-based planning. Accordingly, the Plan relies on the PPG advice.
55. The WMS of 17 May 2018 states that mineral planning authorities are expected to recognise the statutory definition of hydraulic fracturing, whilst having due regard to the PPG. In its 5 July 2018 report<sup>3</sup> the Housing Communities and Local Government Select Committee said that there was a conflict between the two definitions. The Committee also commented that the advice in the WMS that plan-makers and decision-takers were expected to recognise the statutory definition gave rise to a lack of clarity and to uncertainty.
56. The matter was considered by Mr Justice Holgate in the High Court<sup>4</sup> who indicated that planning authorities do not have to adhere to either definition and the WMS only requires them to have due regard to those definitions when drawing up their plans. Consequently, as the MWPA's have complied with this requirement, there is nothing unlawful or unsound about the approach they have taken in the Plan.
57. Nonetheless, to be consistent with national policy, the Plan must make reference to the fact that the statutory definition has been recognised. Similarly, it needs to be clear about its use of the PPG definition.

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<sup>1</sup> Section 50 of the Infrastructure Act 2015, which inserts section 4B into the Petroleum Act 1998

<sup>2</sup> PPG Minerals, Annex A, Paragraph 129 Reference ID: 27-129-20140306

<sup>3</sup> Report on the Housing Communities and Local Government Select Committee inquiry on whether the guidance on fracking and the existing planning regime are fit for purpose.

<sup>4</sup> *Andrews v Secretary of State for Business, Energy and Industrial Strategy* [2018] 3775 (Admin)

Consequently, the Plan requires clarification in this regard and **MM46** is needed to address these matters.

58. Turning to the production of coal mine methane, Policy M16c) provides support for this in accordance with national policy. Extraction currently takes place at Kellingley Colliery and within the Selby Coalfield to generate electricity, but there is little guidance in the Plan on the types of location that might be appropriate for future applications and this makes it ineffective. Consequently, **MM50** is required to deal with this.
59. Moving on to Policy M17: *Other spatial and locational criteria applying to hydrocarbon development*, Part 1 sets out provisions relating to accessibility and transport, requiring gas to be transported by underground pipeline, and hydraulic fracturing development to be located close to an available, adequate water supply. This is too restrictive and requires modification to be justified. Therefore, **MM51** is needed to add the words "*where practicable*" to make it more flexible.
60. Part 2 i) deals with cumulative impact but does not mention climate change or the possible need for mitigation and adaptation measures. This is unjustified. Accordingly, **MM51** inserts text addressing these issues.
61. Part 3 concerns the economy and seeks to avoid or minimise high volumes of heavy vehicle movements during local school holidays. However, there is inadequate justification for treating this narrow time period differently, and a more generic provision is needed relating to consideration of seasonal variations and peaks in traffic movements. Therefore, for justification reasons **MM52** is required.
62. Part 4 i) seeks to protect local communities by establishing a 500m buffer zone around residential buildings and other sensitive receptors. This is contrary to the PPG which only supports buffer zones in appropriate specific instances based on site specific circumstances. Furthermore, the WMS of May 2018 re-iterates the requirement that applications be assessed on a site by site basis, and states that plans should not set restrictions or thresholds across their plan area that limit shale gas development without proper justification. The area covered by the buffer zones would extend over a substantial part of the Petroleum Exploration and Development Licence areas, thereby setting restrictions that would limit shale gas development.
63. The question therefore arises as to whether the MWPA's can robustly justify the buffer zones so as to soundly depart from national policy, and whether the restrictions set are properly justified.
64. Shale gas is a nascent industry in England and much remains unknown about its potential impacts. The case of *Claire Stephenson v Secretary of State for Housing and Communities and Local Government* [2019] EWHC 519 (Admin) highlights some of these uncertainties. For example, the differing scientific evidence on matters such as methane gas emissions to air, including the potential for fugitive emissions, renders uncertain the potential effects on air quality and health in the vicinity of nearby residences.



65. Moreover, the WMS of 4 November 2019 from the Secretary of State for Business, Energy and Industrial Strategy indicates that Government and regulators should regularly review whether the regulatory and legal framework for shale gas activities remains fit for purpose in the light of further evidence from shale gas operations. It continues by referencing a seismic event in August 2019 caused by hydraulic fracturing at a Cuadrilla operated site on the Fylde in Lancashire, which impacted local communities and was "*clearly unacceptable*". The WMS also noted that "*An event of this significance was considered highly unlikely in the detailed plan that Cuadrilla provided to the regulator before their activities began*". As a result, the Oil and Gas Authority suspended site operations.
66. Recently, the Government received a series of expert reports which were commissioned to better understand and learn from other induced seismicity observed in 2018. In drawing from the reports' conclusions, the WMS said that "*....the limitations of current scientific evidence mean it is difficult to predict the probability and maximum magnitude of any seismic events, either in the Fylde or in other locations.*" Consequently, the Government indicated it was taking a precautionary approach, and on the basis of current scientific evidence, it introduced a presumption against issuing any further Hydraulic Fracturing Consents. Whilst this presumption applies to the consenting regime rather than to planning applications, the above issues are also relevant to planning and therefore the WMS is a material consideration for the MWPAs.
67. Returning to the PPG and the May 2018 WMS, it is clear that the potential impacts of shale gas development on nearby local communities are uncertain. Consequently, in principle, the MWPAs have a robust and proper justification for imposing a 500m separation distance between sensitive receptors and shale gas developments despite its limiting effect on the industry.
68. However, there could be instances where shale gas development would be acceptable within the buffer zone and, whilst the policy provides for such eventualities in exceptional circumstances, this is too restrictive and is therefore unjustified. Consequently, **MM53** is needed to broaden the scope for development to circumstances where supporting information robustly demonstrates how unacceptable impacts can be avoided. Also, to be effective, the wording of the policy needs amending to prevent ambiguity and to clarify the type of impacts targeted. This is also addressed by **MM53**.
69. To be effective, the Justification text relating to Policy M17, 4)i) also requires amendment to better explain the reasons for the 500m separation distance and to reflect the Policy changes including concerns relating to induced seismicity. Similarly, guidance needs to be added, which gives direction on where the 500m will be measured from. **MM55** deals with this.
70. Furthermore, to control the impacts of waste gas emissions, the policy should provide for its management, including by way of its capture and use where practicable. As this has not been addressed, for effectiveness, **MM54** is required, which inserts such a provision as Part 4 iv). A corresponding amendment is required to the Justification text as set out in **MM57**.
71. Also, to be effective, it is necessary to ensure that the risks of seismic events are adequately covered. Whilst the Plan mentions seismicity, it does not reflect

the concerns set out in the WMS of November 2019. Neither does it reference the potentially greater risk from development in the vicinity of former underground workings or the vulnerability of important historical buildings. **MM56** adds appropriate text to address these matters.

72. Policy M18: *Other specific criteria applying to hydrocarbon development* in Part 1 i) deals with waste water. However, it makes no mention of the need to demonstrate that adequate capacity exists for managing returned water from the development, and this is unjustified. Therefore, **MM58** is needed to provide clarification.
73. In dealing with the various regulatory aspects of decommissioning and restoration following hydrocarbon development, the Plan must be clear about the MWPAs' roles and how they interact with other regulatory bodies. To be effective, more explanation is required, particularly to clarify that the planning regime only deals with restoration of the site surface, leaving subsurface matters to other regulatory regimes. This is accordingly addressed by **MM59**, **MM60** and **MM61**.

#### *Coal*

74. Policy M20: *Deep coal and disposal of colliery spoil* permits deep coal mining subject to certain criteria. Given that coal is a fossil fuel, to be justified its impact on climate change must be considered when proposals come forward. As the policy omits this, **MM62** is required to add this criterion.
75. Similarly, for Policy M21: *Shallow coal*, to be justified, a climate change criterion much be added along with robust criteria on the protection of National Parks, AONBs, nature conservation designations and Green Belt, as well as proximity to the highway network. As this is omitted, **MM63** is needed.

#### *Potash, Polyhalite and Salt*

76. Policy M22: *Potash, polyhalite and salt supply* is a criteria-based policy dealing with proposals both within and outside the National Park. However, one criterion relating to protection of the National Park requires there to be no detracting from the Park's special qualities. This is unjustifiably restrictive, thereby requiring a change of wording to no "unacceptable harm". **MM64** addresses this. Also, to be effective, **MM64** adds wording to emphasise the need for major development to comply with the Plan's relevant development management policy.
77. The North Yorkshire Polyhalite Project is huge with potential benefits extending beyond the Plan area. Consequently, in the interests of clarity and to ensure the effectiveness of the policy, the Justification text needs to explain the context of the project. As there is no such explanation in the Plan, **MM65** is required to insert the relevant details.

#### *Minerals allocations*

78. The minerals allocations, as set out in Appendix 1 to the Plan, are sound subject to the following modifications.



79. For health and safety reasons, the Ministry of Defence has requested that it be consulted if structures over certain heights are proposed on some allocations. Similarly, they need to be consulted on allocations where open water bodies, wetland habitat or refuse/landfill sites are proposed within bird-strike safeguarding zones. Consequently, to justify the relevant allocations, these requirements need to be included within the guidelines set out for each of the affected sites and areas of search.
80. The following modifications address these issues: **MM108** for MJP06 (Langwith Hall Farm); **MM109** for MJP07 (Oaklands); **MM110** for MJP33 (Settrington Quarry); **MM111** for MJP11 (Gebdykes Quarry); **MM112** for MJP21 (Land at Killerby); **MM114** for MJP17 (Land to South of Catterick); **MM116** for MJP14 (Land in vicinity of Ripon Quarry); **MM117** for MJP10 (Potgate Quarry); **MM123** for MJP08 (Settrington Quarry); **MM126** for MJP30 (West Heslerton Quarry); **MM127** for MJP63 (Brows Quarry); **MM129** for MJP45 (Land to North of Hemingbrough); **MM130** for MJP55 (Land adjacent to former Escrick Brickworks); **MM131** for MJP28 (Barnsdale Bar Quarry); **MM132** for MJP29 (Went Edge Quarry); **MM133** for MJP23 (Jackdaw Crag); **MM134** for MJP22 (Hensall Quarry); **MM135** for MJP54 (Mill Bank Quarry); **MM136** for MJP09 (Barlby Road); **MM137** for MJP24 (Darrington Processing Plant Site and Haul Road); **MM138** for MJP27 (Darrington Quarry – Recycling); **MM139** for MJP26 (Barnsdale Bar – recycling); **MM147** for MJP52 (Field to North of Duttons Farm); **MM151** for Areas of Search A; and **MM152** for Area of Search C.
81. Both sites MJP17 (Land to South of Catterick) and MJP21 (Land at Killerby) were reduced in size by the Addendum of Proposed Changes to Publication Draft (CD09) from what was in the submitted Publication version of the Plan (CD17). This was because of concerns raised by Historic England over potential impacts on the setting of certain heritage assets. However, those concerns relate to matters that should be considered as part of the planning balance at the application stage, and do not justify the changes brought about by the Addendum at the plan making stage.
82. Consequently, the areas covered by the sites must revert to what they were in the Publication version of the Plan. However, more guidance is required in the key sensitivities of Appendix 1 to ensure that full account is taken of the relevant heritage assets. Also, in the interests of effectiveness, the restored area in MJP17 is now allocated as a Preferred Area rather than a site allocation to reflect the importance of the historic environment and the need for further assessment to determine whether there are parts of the area that should be excluded from development. These changes are brought about by **MM112**, **MM113**, **MM114** and **MM115**.
83. With respect to site allocation MJP14 (Land in vicinity of Ripon Quarry), a factual error must be corrected, and additional information inserted on ecological sensitivities and development requirements for the allocation to be effective. **MM116** addresses these issues.
84. As commented upon in paragraph 37 above, development of the omission site MJP15 (Blubberhouses Quarry) is given support in the Plan, yet it is not allocated and therefore modifications are required to include it as an allocation. Corresponding amendments are also needed to Appendix 1 to provide developer guidance in the interests of effectiveness. These must set

out relevant details of the site, including key sensitivities such as traffic impacts incorporating those associated with the potential realignment of the A59, as well as ecological and historic heritage impacts. In order to protect European sites and protected species, the need for an Appropriate Assessment must be clear. The reasons for allocation must explain the national scarcity of this resource for glassmaking and indicate that there are no overriding constraints and no significant issues raised by statutory consultees. This is dealt with by **MM118**.

85. To be effective, the allocation of omission site MJP12 at Whitewall Quarry in Ryedale (see paragraph 34 above) needs corresponding details to be added to Appendix 1, including key sensitivities and development requirements. The reasons for allocation must also be summarized. Whilst the reasons for non-allocation were the lack of overall need and the potential for adverse traffic impacts on communities, it has been demonstrated that there is local need which the site could meet, thereby reducing more long-distance lorry journeys and overall traffic emissions. Whilst some local traffic impact is likely, this is not sufficient to omit the site and can be dealt with at application stage. Similarly, any local air quality issues can be considered at application stage. Furthermore, the site is an extension to an existing operating quarry and without the allocation there would be significant economic impacts associated with closure of the quarry. In summary, there are no overriding constraints which would prevent allocation in principle and there is a demonstrable need for the mineral. Accordingly, the site should be allocated. **MM124** adds the site as an allocation and provides comprehensive planning guidance and directions, which need to be adhered to before granting planning permission. There were two errors in the publicized MM schedule in that the permitted lifespan of the existing quarry is to 2031, not 2023, and the two-way daily lorry movements are 4 not 25. These errors have been corrected.

### *Conclusion*

86. Subject to the identified modifications, the Plan seeks to provide a sufficient supply of locally and nationally important minerals in an efficient and sustainable manner and the proposed allocations are appropriate. Therefore, the Plan is sound in this respect.

### **Issue 2 – Whether the Plan seeks to manage waste sustainably and provide sufficient and appropriate waste management capacity in appropriate locations.**

87. This part of the report deals with the part of the MWJP relating to *strategic policies for waste*, and their corresponding allocations.
88. In accordance with national policy, the Plan overall supports the movement of waste up the waste management hierarchy, respects the proximity principle, and seeks net self-sufficiency in capacity. Whilst the evidence suggests a reasonably high degree of self-sufficiency in the Plan area, there is inevitably some cross-border movement. This occurs particularly with hazardous and Low Level Radioactive waste, which need specialist facilities that usually serve a wider than local area.

89. Whilst the Plan provides some information on cross-border movements, this is inadequate, and more is required to understand the position on imports and exports and to justify the policies. In this regard, where just one year's data is recorded, the Plan needs to give figures for several previous years. Therefore, **MM66** is needed to insert the additional information into the Justification text.
90. Furthermore, Policy W02: *Strategic role of the Plan area in the management of waste* makes provision for facilities proposed to accommodate imported waste. However, the Policy does not make it clear that, in general, it seeks to cover specialist waste, such as hazardous waste, thereby making it ineffective. Consequently, **MM67** is required to address this.
91. Waste capacity requirements over the Plan period are appropriately forecast from a range of assumptions about the scale of future arisings, and likely future waste management practices such as the extent of recycling and landfill. By comparing these requirements against existing operational waste management capacity and other information such as facility lifespans, potential capacity gaps have been identified.
92. Table 6 of the Plan sets out actual and projected operating waste management capacity within the Plan area. However, recently released waste capacity data provides updated information and, therefore, to be effective the new figures need to be substituted into the table. This is done by **MM68**.
93. Consequently, taking account of the updated figures, Table 8 on main projected capacity gaps and surpluses also needs amending to make it effective. **MM69** achieves this.
94. Policy W03: *Meeting waste management capacity requirements – Local Authority Collected Waste* shows how the Plan seeks to meet the capacity requirements for this waste type, including through the allocation of sites. However, not all proposed allocations are listed, those that are do not state what district they are in, and there is no reference to the Policies Map, rendering the Policy ineffective. This is rectified by **MM70**.
95. Policy W04: *Meeting waste management capacity requirements – Commercial and Industrial waste (including hazardous C&I waste)* shows how the Plan seeks to meet the capacity requirements for this waste type, including through the allocation of sites. However, the listed allocations do not state what district they are in and there is no reference to the Policies Map, rendering the Policy ineffective. Moreover, the omission site, Hillcrest recycling (see paragraph 103 below), could help meet capacity requirements and must be allocated to justify the Policy. **MM71** addresses these issues.
96. There are sites within the Plan area that have been granted planning permission to handle Commercial and Industrial waste but have not yet been implemented. Consequently, the situation needs to be monitored to ensure that sufficient capacity comes on stream. As this is not referred to in the Plan, to make it effective, **MM72** is needed to add a monitoring provision to the Justification text.
97. To reflect the changes to capacity gaps/surpluses for Construction, Demolition and Excavation waste within Table 8, the capacity gap figures within the

Justification text also need amending for consistency and effectiveness. **MM73** and **MM74** do this.

98. Policy W05: *Meeting waste management capacity requirements – Construction, Demolition and Excavation waste (including hazardous CD&E waste)* shows how the Plan seeks to meet the capacity requirements for this waste type, including through the allocation of sites. However, the listed allocations do not state what district they are in and there is no reference to the Policies Map, rendering the Policy ineffective. Also, to justify the policy, a new allocation for recycling at Whitewall Quarry must be added to help meet capacity requirements for construction, demolition and excavation waste (see paragraph 106 below). Therefore, **MM75** is needed.
99. Policy W08: *Managing waste water and sewage sludge* is not intended to include waste water from hydrocarbon facilities, yet the policy does not specifically exclude it. Therefore, to be effective this must be addressed as set out in **MM76**. Furthermore, the provision for siting waste water treatment capacity is intended to include hazardous waste, yet does not do so, rendering it ineffective. Consequently, **MM77** is required to rectify this matter.

#### *Waste management allocations*

100. The waste management allocations, as set out in Appendix 1 to the Plan, are sound subject to the following modifications to the development guidelines and the inclusion of additional allocations.
101. For health and safety reasons, the Ministry of Defence has requested that it be consulted if structures over certain heights are proposed on some allocations. Similarly, they need to be consulted on allocations where open water bodies, wetland habitat or refuse/landfill sites are proposed within bird-strike safeguarding zones. Consequently, to justify the affected allocations, these requirements need to be included within the guidelines set out for each of the relevant sites and areas of search.
102. The following modifications address these issues: **MM106** for WJP13 (Halton East); **MM107** for WJP17 (Skibeden); **MM119** for WJP08 (Allerton Park); **MM120** for WJP24 (Potgate); **MM122** for WJP18 (Tancred); **MM128** for WJP15 (Seamer Carr); **MM140** for WJP10 (Went Edge Quarry); **MM141** for WJP16 (Common Lane); **MM142** for WJP06 (Land adjacent to former Escrick Brickworks); **MM143** for WJP22 (Land on former Pollington Airfield); **MM143** for WJP03 (Southmoor Energy Centre, former Kellingley Colliery); **MM145** for WJP25 (Former Arbre Power Station); **MM146** for WJP19 (Fairfield Road); **MM148** for WJP02 (Former North Selby Mine Site); **MM149** for WJP05 (Field to North of Duttons Farm); **MM150** for WJP11 (Harewood Whin).
103. Moreover, the omission site, WJP01 Hillcrest recycling in Richmondshire, must be allocated for general recycling, transfer and treatment of commercial and industrial waste to justify the Plan's commercial and industrial waste management provisions (see paragraph 95 above). Besides helping to meet capacity requirements in this part of the Plan area, it would also contribute infrastructure to move waste up the waste management hierarchy.

104. The reason for non-allocation was because the site assessment indicated that allocation would result in the loss of an end-of-life vehicles facility. However, the evidence indicates that no end-of-life vehicles operations have taken place for some time due to lack of viability. Furthermore, the site is not safeguarded for this purpose. No constraints have been identified which would prevent allocation, and no significant issues have been raised by consultees.
105. To be effective, the policy allocation requires a corresponding addition to Appendix 1 to set out the relevant details, including site sensitivities, development requirements and reasons for allocation. This is done by **MM121**.
106. Moreover, to justify the Plan's construction, demolition and excavation waste provisions and to further promote recycling, the omission site MJP13, Whitewall Quarry recycling in Ryedale, must be allocated (see paragraph 98 above). Whilst it was discounted for reasons of potential local traffic impact, this can be dealt with at application stage. There are no overriding constraints which would prevent allocation and no significant issues have been identified by statutory consultees. Recycling is already an established activity at the existing site, and the allocation would contribute to infrastructure for moving waste up the waste management hierarchy and help achieve self-sufficiency.
107. To be effective, the policy allocation requires a corresponding addition to Appendix 1 to set out the relevant details, including site sensitivities, development requirements and reasons for allocation. This is done by **MM125**.

### Conclusion

108. Subject to the identified modifications, the Plan seeks to manage waste sustainably and provide sufficient and appropriate waste management capacity in appropriate locations. It is therefore sound in this respect.

### **Issue 3 – Whether the Plan seeks to provide appropriate direction for transport and infrastructure development and safeguarding.**

109. This part of the report deals with the part of the MWJP relating to *Minerals and waste supporting infrastructure policies* and *Minerals and waste safeguarding policies*. Apart from what is addressed below, these sections of the Plan are sound.
110. Within Policy I02: *Locations for ancillary minerals infrastructure*, the siting of ancillary minerals infrastructure within the North York Moors National Park is overly restrictive, limiting it to certain named sites. This is unjustified and needs amendment to make the policy more flexible. Therefore, **MM79** is required to broaden potential locations to all existing operational surface sites, other industrial land and also to places where there is overriding justification.
111. The Justification text refers to support for infrastructure associated with minerals workings and deals with potential permitted development. However, it gives no direction on how a developer should respond to development that requires a planning application, rendering it ineffective. Therefore, additional text dealing with this matter is inserted by **MM78**.



112. Policy S01: *Safeguarding mineral resources* and Policy S02: *Developments proposed within Minerals Safeguarding Areas* cover both surface minerals and deep minerals resources (potash and polyhalite). However, these two aspects need separating into distinct policies for clarity and effectiveness. This is done by **MM80** and **MM81**, which delete the deep minerals provisions from Policies S01 and S02, and **MM83**, which creates a new Policy S03: *Safeguarded Deep Minerals Resource areas*. A corresponding amendment is made to the Justification text by **MM82**.
113. Also, the surface provisions, to be consistent with national policy, must make clear that it is safeguarding from "non-minerals" development that is required. As this is omitted, **MM80** is needed. Furthermore, to be effective and to reflect the Minerals Safeguarding Practice Guidance of April 2019, the text must make reference to the need for a Minerals Resource Assessment, which is currently missing. **MM82** achieves this. Moreover, the list of developments exempted from the restrictions within Policy S02 needs to be better signposted to the relevant paragraph in the justification text to be effective. This is covered by **MM81**.
114. To be effective, Policy S03 has been more specifically drafted than the deleted texts in Policies S01 and S02 (deep minerals), as set out in **MM83**. This modification replaces vaguer text in Policy S02, and clearly sets out in Policy S03 Part 1 that Potash resources connected to Woodsmith Mine and identified on the Policies Map will be safeguarded from a list of non-minerals developments. Within that list, the reference to sensitive processes is clarified.
115. Flexibility is ensured by adding a paragraph permitting non-minerals development where it can be demonstrated that a significant risk of sterilisation would not occur, or where the need for the non-minerals development demonstrably outweighs the need to safeguard the mineral.
116. Unlike the deleted text of Policy S02, Policy S03 Part 2 clearly provides protection for potash and polyhalite from sterilization by other forms of underground mineral extraction, including underground gas resources. Furthermore, it contains a more flexible balancing provision, not only allowing the extraction of other minerals where no harm to the potash/polyhalite can be demonstrated, but also where the benefits of the other mineral demonstrably outweigh the need to safeguard.
117. In the interests of effectiveness, a Potash minerals map is inserted into the Plan by **MM85** which, amongst other things, shows the extent of the potash/polyhalite resource and the safeguarded area. With respect to the Policies Map, as the safeguarded area has been amended, the map will need consequential changes to ensure the soundness of the Plan.
118. **MM84** restructures and modifies the Justification text to the safeguarding policies to reflect the policy changes and amendment to the potash/polyhalite safeguarded area on the Policies Map. Additional detail has also been inserted to provide background, guidance and flexibility to justify the policies. This includes a section on the potential conflict with hydrocarbon extraction and how the minerals authorities will interact with other regulators (Environment Agency, Health and Safety Executive, Oil and Gas Authority and Mines Inspector) to resolve sub-surface issues. Moreover, as only part of the

potash/polyhalite is safeguarded (mainly for economic and viability reasons), the modification introduces a commitment to keep the safeguarded area under review to ensure adequate resources for the Woodsmith Mine.

119. Renumbered Policy S04: *Waste management facility safeguarding* (formerly Policy S03) seeks to protect the waste management sites identified on the Policies Map and shown in Appendix 2 of the Plan. However, the policy makes no reference to Appendix 2 and this is ineffective. Moreover, as the aim of the policy is to prevent proposed development from having a restricting impact on the use of the site as a waste facility (subject to exceptions), to be effective it should clearly say so. This necessitates the replacement of the ambiguous reference to "frustrate" with "unduly restrict". Also, to justify the policy and make it more flexible, an additional criterion must be added to the excepted circumstances, namely, where the waste site is not viable or capable of being made viable. Moreover, whilst reference is made to exempted development in an exemption list, that list is not properly signposted, rendering the policy ineffective. Amendments to rectify these matters within the Policy are made by **MM86**, and corresponding flexibility is added to the Justification text by **MM87**.
120. Furthermore, flexibility is needed to justify the policy so that proposed encroaching development is not prevented where suitable mitigation is provided or where there are other overriding benefits. As this is not clearly set out, **MM88** is required to the Justification text to provide appropriate guidance.
121. Renumbered Policy S05: *Transport infrastructure safeguarding* (formerly S04) seeks to protect the railheads, rail links and wharves identified on the Policies Map and shown in Appendix 2 of the Plan. However, the policy makes no reference to Appendix 2 and this is ineffective. Moreover, as the aim of the policy is to prevent proposed development from having a restricting impact on the use of the infrastructure for minerals and waste transport purposes (subject to exceptions), to be effective it should clearly say so. This necessitates the replacement of the ambiguous reference to "frustrate" with "unduly restrict". Also, to justify the policy and make it more flexible, an additional criterion must be added to the excepted circumstances, namely, where the infrastructure is not viable or capable of being made viable. Moreover, whilst reference is made to exempted development in an exemption list, that list is not properly signposted, rendering the policy ineffective. Amendments to rectify these matters within the Policy are made by **MM89**, and corresponding flexibility is added to the Justification text by **MM90**.
122. Renumbered Policy S06: *Minerals ancillary infrastructure safeguarding* (formerly S05) seeks to protect the minerals infrastructure identified on the Policies Map and shown in Appendix 2 of the Plan. However, the policy makes no reference to Appendix 2 and this is ineffective. Moreover, as the aim of the policy is to prevent proposed development from having a restricting impact on the use of the infrastructure for minerals purposes (subject to exceptions), to be effective it should clearly say so. This necessitates the replacement of the ambiguous reference to "frustrate" with "unduly restrict". Also, to justify the policy and make it more flexible, an additional criterion must be added to the excepted circumstances, namely, where the minerals site is not viable or capable of being made viable. Moreover, whilst reference is made to exempted

development in an exemption list, that list is not properly signposted, rendering the policy ineffective. Amendments to rectify these matters within the Policy are made by **MM91**, and corresponding flexibility is added to the Justification text by **MM92**.

### *Conclusion*

123. Subject to the identified modifications, the Plan seeks to provide appropriate direction for transport and infrastructure development and safeguarding. It is therefore sound in this respect.

### **Issue 4 – Whether the development management policies strike a sound balance between seeking to provide appropriate development and protecting the environment and sensitive receptors.**

124. This part of the report deals with the part of the MWJP relating to *Development management policies*. Apart from what is addressed below, this section of the Plan is sound.

125. Policy D02: *Local amenity and cumulative impacts* does not explicitly provide protection for local communities and residents, making it ineffective. Therefore, **MM93** is required to address this. Also, to be effective, an addition is needed to the Justification text to explain how the MWPA's interact with other agencies such as the Environment Agency and to explain the requirement for environmental statements. This is achieved by **MM94**.

126. Policy D04: *Development affecting the North York Moors National Park and the AONBs* is overly restrictive and unjustified. Also, to be effective, clarity is needed to show that viability relates to cost and scope, and other wording needs amendment to properly reflect the intention behind the policy and to correct an error. Consequently, **MM95** is necessary to provide this flexibility and clarity.

127. Furthermore, for reasons of effectiveness, the Justification text requires amendment to indicate that the national importance of a mineral is a factor to consider in a needs assessment. Again, to be effective, additional text is required to explain how cumulative impacts and effects on the reasons for designation, such as remoteness and tranquillity, will be dealt with. All this is addressed by **MM96**.

128. Policy D05: *Minerals and waste development in the Green Belt* does not reflect national policy. Consequently, restructuring and rewording is required for consistency with national policy. This is achieved by **MM97**. A corresponding change is also required to the Justification text as dealt with in **MM98**.

129. Policy D07: *Biodiversity and geodiversity* does not fully reflect national policy in that it does not completely distinguish the hierarchy of international, national and locally designated sites to ensure that protection is commensurate with status. Moreover, it does not set out what type of site is locally important, resulting in ineffectiveness. Neither does it require development to enhance biodiversity or provide compensatory measures as required by national policy. The level of protection, the types of habitats covered, and other sundry directions, including on compensatory gains outside



the Plan area, are also required in the interests of effectiveness. To be justified, the Policy must also address cumulative effects, which it fails to do. Consequently, all these matters need addressing and this is done by **MM99**.

130. Furthermore, the Justification text requires more direction on cross boundary offsetting measures to be effective. This is done by **MM100**.
131. With respect to design, the preamble to Policy D11: *Sustainable design, construction and operation of development* refers to BREEAM and the Code for Sustainable Homes standards. This is inconsistent with national policy and therefore **MM101** is needed to remove this reference and replace it with text relating to the Building Regulations.
132. Policy D11 requires a climate change assessment for certain minerals and waste development. However, it does not specifically include hydrocarbon development and this is unjustified. Also, to be justified, it needs to be more flexible. Both these matters are addressed by **MM102**.
133. Policy D12: *Protection of agricultural land and soils* is too restrictive by disallowing development that causes any disturbance or damage to high environmental value soils. Therefore, it is unjustified. Consequently, **MM103** is needed to specify more precisely the types of soil and peat that are covered and to clarify that it is irreversible damage that is not permitted.
134. The Development Management chapter does not include a policy on air quality. This is unjustified, as some minerals and waste development could adversely impact on air quality and this needs to be properly controlled. Consequently, a new policy is required, Policy D14: *Air Quality*, which introduces protective measures. Corresponding Justification text is also needed to set out the reasons for the policy and how it will be implemented. These additions are achieved by **MM104**.
135. The chapter has a section on planning obligations and performance agreements, some of the provisions of which read as policy. However, there is no actual policy and this is unjustified. Consequently, a new policy is needed, Policy D15: *Planning Obligations*, which sets out when developer contributions will be sought and how the level of contributions will be determined. A corresponding preamble to the policy is also required to provide context. These matters are dealt with by **MM105**.

### *Conclusion*

136. Subject to the identified modifications, the development management policies strike a sound balance between seeking to provide appropriate development and protecting the environment and sensitive receptors. The plan is therefore sound in this regard.

### **Issue 5 – Whether there are any other matters that make the Plan unsound.**

137. Whilst the monitoring and review provisions are generally sound, there are certain additions and amendments that are required as follows.

138. As a consequence of the new Plan policies referenced above, to be effective, corresponding monitoring provisions need inserting into Appendix 3. This is done by **MM153** for Policy S03, **MM154** for Policy D14, and **MM155** for Policy D15.
139. Also, the review provisions need amending to accord with recent legislation, which requires five yearly reviews (Reg 10A of The Town and County Planning (Local Planning)(England) Regulations 2012). **MM02** deals with this.
140. Moreover, to be effective, the shale gas trigger for review needs to expand on the uncertainty of impacts, leading to a precautionary approach being taken. Similarly, in the list of matters which may trigger a review, impacts from greenhouse gas emissions and on climate change should be included, as well as significant challenges to the capacity and capability of waste water treatment facilities. This is all achieved by **MM03**.
141. Finally, for effectiveness, the *Waste Key Diagram* needs to correct an omission by adding a safeguarded waste site which was erroneously missed out. **MM01** does this.
142. Subject to these modifications, there are no other matters that make the Plan unsound.

## Assessment of Legal Compliance

143. My examination of the legal compliance of the Plan is summarised below.
144. The MWJP has been prepared in accordance with the MWPA's Local Development Schemes.
145. Consultation on the MWJP and the MMs was carried out in compliance with the MWPA's Statements of Community Involvement.
146. Sustainability Appraisal of the MWJP, the Addendum of Proposed Changes to the Publication Draft, and the MMs has been carried out and is adequate.
147. The Habitats Regulations Assessment Screening Report of October 2016 and Addendum to the Habitats Regulations Assessment of November 2017 set out why an Appropriate Assessment [AA] was not necessary. A post hearing Updated Habitat Regulations Assessment was undertaken in November 2019, followed in November 2020 by an AA of the additional sites added to the plan allocations. A further AA was carried out in July 2021 on the Blubberhouses site. In response, additional text was inserted in **MM29** and **MM118** to make clear what tests were to be applied, and that the mitigation measures referenced in the July 2021 AA were requirements of any future development at Blubberhouses.
148. The MWJP includes policies designed to secure that the development and use of land in the local planning authority's area contribute to the mitigation of, and adaptation to, climate change.
149. The MWJP complies with all relevant legal requirements, including those in the 2004 Act (as amended) and the 2012 Regulations.

150. I have had due regard to the aims expressed in S149(1) of the Equality Act 2010.

## **Overall Conclusion and Recommendation**

151. The MWJP has a number of deficiencies in respect of soundness for the reasons set out above, which mean that I recommend non-adoption of it as submitted, in accordance with Section 20(7A) of the 2004 Act. These deficiencies have been explored in the main issues set out above.

152. The MWPA's have requested that I recommend MMs to make the Plan sound and/or legally compliant and capable of adoption. I conclude that with the recommended MMs set out in the Appendix the MWJP satisfies the requirements of Section 20(5) of the 2004 Act and meets the criteria for soundness in the National Planning Policy Framework.

*Elizabeth C Ord*

Inspector

This report is accompanied by an Appendix containing the Main Modifications.