

City of York, North York Moors National Park, and North Yorkshire County Council Minerals and Waste Joint Plan Examination

Our ref 50303/04/SSt
Date February 2018
From Lichfields (on behalf of Sirius Minerals Plc)

Subject Examination Matters Statement

1.0 Matter 4: Development Management Policies

Issue: whether the vision, objectives and development management policies strike a sound balance between seeking to provide appropriate development and protecting the environment and sensitive receptors.

157) With respect to the exceptional circumstances for development in the National Park and AONBs in Policy D04 (Development affecting the North York Moors National Park and the AONBs) Part 1) a) is the wording “will” usually include a “national need” and contribution to the “national economy” too restrictive?

- 1.1 The wording of paragraph 116 of the NPPF should be reflected in the MWJP MDT policy. Part 1) a) should therefore read:
- *“the need for the development, including in terms of any national considerations”.*
- 1.2 The Major Development Test (“MDT”), set out in paragraph 116 of the National Planning Policy Framework (“NPPF”), is clear that while any national considerations relevant to an application should be assessed, there is no inherent requirement to demonstrate a national need for the development or the mineral. A wider need albeit adding unspecified national considerations could therefore qualify under the MDT. The test requires that exceptional circumstances exist, and that approving a major minerals development will be in the public interest.
- 1.3 Notwithstanding this, the MDT requirement as set out in paragraph 116 of the NPPF will only be met with very robust justification. The recent experience of Sirius Minerals (the North Yorkshire Polyhalite Project) provides a recent worked example where the planning authority applied the ‘need’ component of the MDT and resolved that permission should be granted
- 1.4 The (successful) demonstration of ‘need’ in the case of the North Yorkshire Polyhalite Project was based around three key elements:
- 1 *Agronomic need*
Drawing from a suite of especially commissioned and peer-reviewed research, the qualities and benefits of polyhalite as a multi-nutrient fertiliser was demonstrated.
 - 2 *Market need*

Further bespoke research demonstrated national and global potassium fertiliser market, and the role of polyhalite.

3 *Economic need*

Extensive economic modelling demonstrated the impacts on the local and national economy, including export value and the impacts on UK trade deficit.

- 1.5 The above points drew from extensive research and reporting, including a study into the agronomic case for polyhalite (prepared by ADAS), which was subject to peer review by the Science Review Panel. The Food and Environment Agency (“FERA”) reported in the role of potash in UK food production, while further evidence was provided on the carbon footprint of polyhalite compared to other potassium fertilisers (prepared by Ricardo AEA). Research provided by CRU provided expert market and commodity value insight into the global market for polyhalite, including transport costs and the scale of global demand for the mineral at different pricing levels. The ‘need’ case also drew from an independent report by Argus FMB Media on the global market considerations in the potash industry.
- 1.6 The recent experience of Sirius Minerals Plc is that the MDT, insofar as it appears in the NPPF, requires an exceptional degree of evidential justification. The MDT does not include an explicit requirement to meet a national need. This is an important factor in the MWJP, considering that the need for polyhalite is a global as well as a national concern. It is clear however that irrespective of the geographic scale of any identified need, the NPPF sets a very high bar.
- 158) Should Policy D04 Part 1) b) and/or c) be more flexible by increasing the scope of economic considerations and taking account of economic sustainability?**
- 1.7 The wording of paragraph 116 of the NPPF should be reflected in the MWJP MDT policy. Part 1) b) should therefore read:
- *“the impact of permitting it, or refusing it, upon the local economy”.*
- 1.8 Similarly, Part 1) c) should read:
- *“the cost of, and scope for, developing elsewhere outside the National Park or AONB, or meeting the need for it in some other way”.*
- 1.9 Regarding draft Policy D04 Part 1) b), the MDT, as set out in the NPPF, does not require the local economic impact to relate only to the ‘designated area’, in this case the National Park (or AONB). To introduce this requirement would not reflect the economic reality of the MWJP area, and the economic role of the National Park within it. The geographic extent of the *York, North Yorkshire and East Riding Local Enterprise Partnership* (“the LEP”) (which includes the MWJP area) demonstrates that the local economy transcends local authority boundaries, and the boundaries of the National Park (and AONB). Impact on the local economy cannot be effectively understood by isolating effects on the National Park only.
- 1.10 Regarding draft Policy D04 Part 1) c), it is not considered necessary to adjust the wording from that which appears in the corresponding part of NPPF paragraph 116. The requirement to consider alternative sites is already effectively set out in the NPPF. As above, the recent experience of Sirius Minerals (the North Yorkshire Polyhalite Project) provides an up-to-date understanding of the demands of the MDT as it is set out in paragraph 116 of the NPPF.
- 1.11 A rigorous four stage process was undertaken to identify the necessary locations of Woodsmith Mine and the other associated infrastructure. This comprised:

1 *Defining the Extent of Polyhalite*

This process utilised geological information, drilling and seismic data, including additional expert analysis, across a wide area of North Yorkshire.

2 *High Level Assessment of Constraints on Minehead Construction and Operation*

Consideration was given to a series of criteria, including the presence of gas, geological faulting, hydrology and hydrogeology, the depth of the resource, and the North Sea.

3 *High Level Assessment of Environmental and Sustainability Criteria*

Consideration was given to environmental constraints, landscape and heritage designations, and other restrictions including urban areas and recreation activities.

4 *Detailed Assessment of Short Listed Sites*

A comprehensive assessment was undertaken of land and specific sites, accounting for mining operational and environmental constraints.

- 1.12 The MDT, as set out in the NPPF, therefore demands a rigorous process of alternative site assessment. The requirements of the NPPF will ensure that any future major developments that are proposed in the National Park (or AONB) are subject to the full extent of the national policy requirements. In the case of further potash mining, regard must now be had to the presence of a new highly productive facility at Woodsmith Mine. While the necessity to fully consider, with robust empirical justification, the scope for locating away from a National Park is recognised, it is not considered necessary or justified to adjust the wording of paragraph 116 of the NPPF to achieve this.

159) Is there any difference in the scope or application of Policy D04 Part 1 d) to that set out in the NPPF paragraph 116 third bullet point?

- 1.13 The wording of paragraph 116 of the NPPF should be reflected in the MWJP MDT policy. Part 1) d) should therefore read:
- *“any detrimental effect on the environment, the landscape and recreational opportunities, and the extent to which that could be moderated”.*

- 1.14 The proposed wording of the draft policy seeks to refine the NPPF wording so that it restricts development only where it does not significantly compromise the reason for the designation. This is not the purpose of the MDT as set out in the NPPF. Paragraph 115 of the NPPF requires that great weight is given to conserving the landscape, scenic beauty, wildlife and cultural heritage in National Parks, stating that National Parks benefit from the highest levels of protection. It is important that the wording of the MWJP does not depart from the policy protections afforded to National Parks and other designated areas required by the NPPF.

160) Should the last sentence of Policy D04 Part 1 read “unavoidable” rather than “avoidable” and what is meant by “appropriate and practicable compensation”?

- 1.15 The last sentence should read ‘unavoidable’.
- 1.16 It is understood that the inclusion of the words ‘appropriate and practical compensation’ is intended as a mechanism to secure payments via s106 of the Town and Country Planning Act 1990. Given the requirements of the MDT, it is recognised that such payments are likely to form part of a wider mitigation package, where major development is proposed in the National Park.

It is nonetheless considered that the additional wording following the requirements at a) - d) is unnecessary.

- 1.17 Demonstrating exceptional circumstances and that a proposal is in the public interest, cannot reasonably be secured elsewhere and is appropriately mitigated comprises the requirements of the MDT, as set out in paragraph 116 of the NPPF. Mitigation may also include compensation for effects, which can be delivered via agreements under S106 of the T&CPA. What the additional wording requests therefore is, in effect, consideration of adverse effects, mitigation and compensation after the MDT has already been satisfied. This is unnecessary, as the correct application of the MDT will already ensure that sufficient mitigation and compensation has been incorporated into a proposal. Indeed, the inclusion of this wording risks diluting the inherent requirements of the MDT and other NPPF policies relevant to National Parks.
- 1.18 As above, the recent experience of Sirius Minerals (the North Yorkshire Polyhalite Project) provides a recent worked example of the application of the MDT as it is set out in paragraph 116 of the NPPF. The measures taken to avoid harm on the National Park, the mitigation, and the degree of compensation provided as part of the North Yorkshire Polyhalite Project was considerable.
- 1.19 The North Yorkshire Polyhalite Project was, from its inception, designed to reduce impact on the sensitive environmental setting of the National Park. It represents an industry-leading sustainable mining development. Notwithstanding this, a comprehensive package of mitigation and compensation was provided, following robust assessment of impacts.
- 1.20 Contributions and compensation includes a landscape and ecology compensation fund, landscape planting project, rail services, rail infrastructure, highway junction upgrades, noise mitigation, archaeological data, geological data, a variety of local and community projects, tourism initiatives, security measures and monitoring. The structure of these contributions varies, although many require annual sums to be paid either for the duration of the construction phase or the entire operational period. The sum of the contributions runs to many millions of pounds.
- 1.21 Further requirements included a variety of highways management measures (including agreement of a complete restriction on export of saleable material by road), establishing a number of community liaising forums, local employment commitments, and participation in local impact studies.
- 1.22 It is recognised that any major proposal coming forward in the National Park must be required to satisfy the requirements of the MDT. It is clear from the experience of Sirius Minerals however that the requirements of the MDT (and other relevant policy on National Parks), as set out in the NPPF, is sufficient to ensure that full regard is given to the avoidance of harm, and to any necessary mitigation and compensation.