



The Planning Inspectorate

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# Report to Kent County Council

**By Nick Palmer BA (Hons) BPI MRTPI**  
an Inspector appointed by the Secretary of State

Date: 23 April 2020

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Planning and Compulsory Purchase Act 2004

(as amended)

Section 20

## **Report on the Examination of the Kent Minerals and Waste Local Plan Early Partial Review and Kent Mineral Sites Plan**

The Plan was submitted for examination on 3 May 2019

The examination hearings were held between 8 and 15 October 2019

File Ref: PINS/W2275/429/9 and PINS/W2275/429/10

## Abbreviations used in this report

AA	Appropriate Assessment
AONB	Area of Outstanding Natural Beauty
APC	Air Pollution Control
BHCC	Brighton and Hove City Council
C&I	Commercial and Industrial
CRRNH	Capacity Requirement for the Management of Residual Non-Hazardous Waste
EA	Environment Agency
EPR	Early Partial Review
ESCC	East Sussex County Council
HRA	Habitats Regulations Assessment
KJMWMS	Kent Joint Municipal Waste Management Strategy
KMWLP	Kent Minerals and Waste Local Plan
LAA	Local Aggregates Assessment
LACW	Local Authority Collected Waste
MM	Main Modification
MSA	Mineral Safeguarding Area
MSP	Mineral Sites Plan
NDA	Nuclear Decommissioning Authority
NE	Natural England
PLA	Port of London authority
RDF	Refuse Derived Fuel
RWS	Resources and Waste Strategy
SA	Sustainability Appraisal
SEAWP	South East England Aggregates Working Party
SEWPAG	South East Waste Planning Advisory Group
SoCG	Statement of Common ground
SPD	Supplementary Planning Document
tpa	tonnes per annum
WFD	Waste Framework Directive
WSCC	West Sussex County Council

## **Non-Technical Summary**

This report concludes that the Kent Minerals and Waste Local Plan Early Partial Review (EPR) and Kent Mineral Sites Plan (MSP) provide an appropriate basis for the planning of minerals and waste development in Kent, provided that a number of main modifications [MMs] are made to them. Kent County Council ("the Council") has specifically requested that I recommend any MMs necessary to enable the Plans to be adopted.

The MMs all concern matters that were discussed at the examination hearings. Following the hearings, the Council prepared schedules of the proposed modifications and carried out sustainability appraisal of them. The MMs were subject to public consultation over an eight-week period. 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:

- Modification to Policy CSM2 to reflect current mineral reserves and monitoring requirements and to remove the expectation regarding allocation of sites for clay and chalk extraction;
- Modifications to Policy DM7 and its supporting text to provide further explanation of mineral safeguarding requirements;
- Modification to Policy CSW5 regarding the strategic waste allocation at Norwood Quarry and Landfill Site, Sheppey to ensure its effectiveness;
- Inclusion of a reference to the definition of recycling in the glossary to support Policy CSW7;
- Requirements for minerals development on the allocated sites to secure net gain for biodiversity;
- Requirements to examine the proposals at Stonecastle Farm and Moat Farm against national Green Belt policy;
- Requirements for development on all allocated sites to fully consider heritage impacts, in accordance with national policy;
- Measures to secure full assessment of potential impacts on water resources at Moat Farm, and necessary mitigation;
- Strengthened requirements for access at Moat Farm;
- Strengthened requirements for biodiversity, public rights of way and landscape considerations at Chapel Farm; and
- Addition of a timing requirement at Chapel Farm to minimise risk of cumulative impacts with a nearby site.

## Introduction

1. This report contains my assessment of the Kent Minerals and Waste Local Plan EPR and MSP in terms of Section 20(5) of the Planning & Compulsory Purchase Act 2004 (as amended) ("the 2004 Act"). It considers first whether the preparation of the Plans has complied with the duty to co-operate. It then considers whether the Plans are sound and whether they are compliant with the legal requirements. The National Planning Policy Framework 2019 (the Framework), in paragraph 35, makes it clear that in order to be sound, a Local Plan should be positively prepared, justified, effective and consistent with national policy.
2. The starting point for the examination is the assumption that the minerals and waste planning authority has submitted what it considers to be sound plans. The EPR of the Kent Minerals and Waste Local Plan (KMWLP) and the MSP, which were both submitted in May 2019 are the basis for my examination. They are the same documents as were published for consultation in January 2019.
3. The KMWLP was adopted in 2016. The EPR makes the following changes to the KMWLP, in summary:
  - it is not now proposed to produce a Waste Sites Plan, following a re-assessment of need for waste facilities over the plan period;
  - two policies which deal with safeguarding of minerals resources and minerals and waste infrastructure are to be amended to ensure their effectiveness; and
  - a policy change in respect of the Strategic Site Allocation at Norwood Quarry to ensure that the site can be suitably restored should it no longer be used for tipping of flue ash.
4. The MSP allocates two sites for sharp sand and gravel extraction and one site for soft sand extraction.

## Main Modifications

5. In accordance with section 20(7C) of the 2004 Act the Council requested that I recommend any MMs necessary to rectify matters that make the Plans unsound 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 **EPR/MM1**, etc for the EPR and **MSP/MM1**, etc for the MSP. These are set out in full in Appendices 1 and 2.
6. Following the examination hearings, the Council prepared schedules of proposed MMs and carried out sustainability appraisal (SA) of them. The MM schedules and SAs were subject to public consultation for eight weeks. I have taken account of the consultation responses in coming to my conclusions in this report. The MMs do not affect the Habitats Regulations Assessment (HRA) previously carried out.

## **Policies Map**

7. The Council 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 Council is required to provide a submission policies map showing the changes to the adopted policies map that would result from the proposals in the submitted local plan. In this case, the submission policies map comprises the set of plans identified as 'Safeguarded Wharves and Rail Transportation Depots' and 'Mineral Safeguarding Areas' in section 9 of the KMWLP. The policies map is not defined in statute as a development plan document and so I do not have the power to recommend MMs to it.

## **Assessment of Duty to Co-operate**

8. Section 20(5)(c) of the 2004 Act requires that I consider whether the Council complied with any duty imposed on it by section 33A in respect of the preparation of the Plans.
9. The duty applies to strategic matters which are defined as sustainable development or use of land that has or would have a significant impact on at least two planning areas or on a county matter in a two-tier area. The requirement is for local authorities to engage constructively, actively and on an on-going basis with prescribed bodies in order to maximise the effectiveness of plan preparation.
10. The processes of engagement in respect of both the EPR and the MSP began in 2016 and continued up to submission of the Plans. The Council has engaged with District and Borough Councils in Kent, with adjoining authorities and other authorities which either send or receive waste to or from Kent in preparing the EPR. This included a targeted consultation exercise with respect to hazardous waste disposal and residual waste management capacity. There has been active engagement on waste matters through the South East Waste Planning Advisory Group (SEWPAG). This has informed the EPR process through a greater understanding of cross-boundary movements of waste in the south-east and the need for hazardous waste facilities. Concerns have been expressed at the intention to not allocate a site for asbestos disposal, but the Council has demonstrated that there is no need to allocate a site for this purpose. Irrespective of whether there may be an outstanding point of objection on this matter, the Council has demonstrated that it has engaged actively and constructively in preparing the EPR.
11. Statements of common ground (SoCG) have been progressed with Kent District and Borough Councils throughout the period up to submission which principally concern safeguarding of minerals and of mineral and waste facilities. This demonstrates active, constructive and on-going engagement in the EPR. Some of those SoCGs were not completed until after submission but this does not mean that the duty to co-operate has not been met.
12. With respect to the MSP, there has been active engagement on minerals through the South East England Aggregates Working Party (SEEAWP). There has been engagement with minerals planning authorities in the south-east regarding the supply of soft sand given the constraint imposed by the South

Downs National Park designation which lies outside Kent. A SoCG has been agreed between the Council and West Sussex County Council (WSSC), East Sussex County Council (ESCC), Brighton and Hove City Council (BHCC) and the South Downs National Park Authority on this matter. I consider this further in paragraph 55 of this report.

13. On both plans there has been active and direct engagement with the Environment Agency (EA), Historic England, Natural England (NE), Highways England and the Marine Management Organisation. This has strongly influenced the determination of the proposed site allocations in the MSP.
14. Engagement with NE has resulted in an addendum to the HRA in respect of the EPR and the MSP. A SoCG between the Council and NE was signed after submission but the process of constructive dialogue during preparation is demonstrated. The Council has also engaged with the other bodies prescribed in the Town and Country Planning (Local Planning) (England) Regulations 2012 (the 2012 Regulations).
15. I am satisfied that where necessary the Council has engaged constructively, actively and on an on-going basis in the preparation of the Plans and that the duty to co-operate has therefore been met in respect of the EPR and the MSP.

## **Assessment of Soundness**

### **Main Issues**

16. Taking account of all the representations, the written evidence and the discussions that took place at the examination hearings, I have identified four main issues upon which the soundness of the EPR and MSP depend. This report deals with these main issues. It does not respond to every point or issue raised by representors. Nor does it refer to every policy or policy criterion in the Plan.

### **Issue 1 – Whether or not the waste policies as amended by the Early Partial Review would be positively prepared, justified and otherwise sound**

#### *Background*

17. The KMWLP was adopted in July 2016. A number of its policies state that sites for waste development will be identified in the Waste Sites Plan. Policy CSW8 makes provision for sites for recovery facilities, Policy CSW12 provides for allocation of a site for landfilling of asbestos waste and Policy CSW14 provides for a site for disposal of dredgings. Policies CSW6 and CSW7 make provision for sites to be allocated for recovery and green and kitchen waste development. The Council has reviewed the need for the waste facilities identified in the above policies and no longer proposes to produce a Waste Sites Plan.

#### *Recovery Provision*

18. Part of the strategy for waste management capacity as set out in the KMWLP is to maintain net self-sufficiency whereby sufficient facilities are provided in Kent to manage the equivalent quantity of waste as is produced in Kent with

some provision for a reducing amount of London's waste. This recognises that in reality waste crosses County boundaries in accordance with the operation of the market. This approach is continued in the EPR.

19. Article 16 of the Waste Framework Directive (WFD)<sup>1</sup> states that the network of waste recovery and disposal installations shall be designed to enable the European Community as a whole to become self-sufficient and to enable member states to move towards that aim individually. Net self-sufficiency of individual authorities is an agreed strategy between the SEWPAG authorities as set out in their Memorandum of Understanding. This recognises that it may not be possible for each authority to provide for all of its waste management needs and that there will inevitably be cross-boundary movements of waste. The approach is consistent with the aims of the WFD in this respect.
20. The Capacity Requirement for the Management of Residual Non-Hazardous Waste<sup>2</sup> (CRRNH) has assessed the need for provision for residual non-hazardous waste arising in Kent, including Local Authority Collected Waste (LACW) and Commercial & Industrial (C&I) waste, as well as some waste originating from London. The calculation of need takes into account revised recycling rates which are based on government guidance and the actual rates achieved. The forecast requirement is based on continuing reductions in landfill.
21. The CRRNH considers the capacities of existing consented facilities and the extent to which they would satisfy identified need. A permitted facility at Barge Way has not been built. Irrespective of whether there is any uncertainty as to whether that facility will be provided, the strategy for waste management capacity does not depend on its provision. Waste arisings are forecast for intervals of 5 years up to the end of the Plan period in 2030/31. The proposed diversion of LACW and C&I waste from landfill is greater than that in the KMWLP. The proportions of those waste streams that are to be subject to other recovery instead of recycling/composting are greater in the EPR than in the KMWLP, taking into account the re-assessed recycling rates.
22. Since adoption of the KMWLP, a significant new waste recovery facility has been built at Kemsley and is being commissioned. This provides capacity of 525,000 tonnes per annum (tpa). Policy CSW7 of the KMWLP identifies a recovery requirement of 562,500 tpa but this requirement has been re-assessed in the CRRNH having regard to the revised recycling rates and revised figures for diversion of waste from landfill.
23. Table 9 of the CRRNH shows that there is no gap in capacity for other recovery treatment of residual non-hazardous waste throughout the Plan period and demonstrates that the Kemsley facility together with the existing Allington facility will provide a surplus of other recovery capacity. On this basis there is no need to allocate sites. However, Policies CSW6 and CSW7 provide flexibility in that they are permissive policies that would allow for other recovery facilities to be developed should they be required.

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<sup>1</sup> Directive 2008/98

<sup>2</sup> Part of the Kent Waste Needs Assessment 2018 (KCC/SP38)

24. The manufacture of Refuse Derived Fuel (RDF) is an intermediate process prior to its incineration. At present RDF is exported to mainland Europe for incineration but uncertainties have been identified by waste operators as to the extent to which this will continue in the future. If the export market for RDF were to change in the future, then this could require additional incineration capacity in this country. The Council has taken into account RDF that is manufactured in Kent in its assessment of C&I waste need.

### *Recycling/Composting*

25. Recycling targets have been scaled back to reflect targets set in the Government's Resources and Waste Strategy<sup>3</sup> (RWS) and to be more realistic having regard to actual recycling rates achieved.
26. Policy CSW4 of the KMWLP requires as a minimum the targets for recycling and composting identified in the Kent Joint Municipal Waste Management Strategy (KJMWMS) to be achieved. The policy does not specify the actual targets but acknowledges that the KJMWMS may be subject to amendment and that targets may change. The targets set out in Policy CSW4 in the EPR are consistent with the KJMWMS of 2018 and the targets in the Government's RWS. Progression to the RWS targets has been amended to more realistically reflect those that have been achieved. The Council has demonstrated that increases in recycling rates will be achieved through a variety of initiatives including food waste recycling.
27. Policy CSW7 identifies a need for an additional 64,000 tpa capacity in 2024 for green and kitchen wastes. There is a surplus of capacity for recycling facilities<sup>4</sup> throughout the Plan period but the KMWLP identifies a need for additional composting facilities. The calculation of green and kitchen waste treatment capacity in Policy CSW7 was based on targets from the former Regional Spatial Strategy, the South East Plan. There is no justification, however, for separate consideration of these wastes, and it is appropriate to consider these as part of the overall recycling and composting requirement.
28. There is no shortfall, and indeed there is a surplus, of recycling and composting facilities considered together throughout the Plan period. Policy CSW7 is permissive in respect of proposals that may come forward.
29. The supporting text to Policy CSW7 should be clear that composting forms part of recycling as defined in the Glossary to the KMWLP. This change is necessary to ensure the policy is effective. **EPR/MM6** adds a footnote which clarifies this and is necessary for soundness.

### *Hazardous Waste*

30. The KMWLP, in Policy CSW5 identifies an extension to Norwood Quarry on the Isle of Sheppey as a landfill site for hazardous flue dust ash residues from facilities in Kent. Air pollution control (APC) residues are landfilled on the

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<sup>3</sup> Our Waste, Our Resources: A Strategy for England, Defra, December 2018

<sup>4</sup> Tables 2, 3 and 10, Kent Waste Needs Assessment 2018 Non Hazardous Waste Recycling/Composting Capacity Requirement (KCC/SP37)



basis of a derogation under the Landfill Directive. The Strategy for hazardous waste management in England (March 2010) sets out high level principles for management of hazardous waste. One of these is that the practice of relying on higher Landfill Directive waste acceptance criteria to enable some hazardous waste to continue to be landfilled must end.

31. In recognition of this, the Plan policy needs to be flexible to facilitate changes to the existing arrangement if required as a result of changing government policy. If landfilling of APC residues were to cease, then it would be necessary to ensure restoration of Norwood Quarry can be achieved and to consider other types of landfill in order to achieve this. Policy CSW5 of the EPR provides for this and also allows for flue dust ash residues to be imported from outside Kent, in recognition that the facility is of more than local importance.
32. Because Policy CSW5 of the EPR would allow by inference for other waste to be deposited in the circumstances described in amended criterion (1), in order to avoid any potential ambiguity and to ensure effectiveness it is necessary to amend the first paragraph of the policy to refer to this provision. **EPR/MM5** makes this change.

#### *Asbestos Waste*

33. The Council's assessment of hazardous waste needs identifies that Pinden Quarry has sufficient capacity to accommodate asbestos waste arising in Kent over the remainder of the Plan period, and to accommodate asbestos waste from outside the County. On this basis the allocation of a site for landfilling of asbestos waste as provided in Policy CSW12 of the KMWLP is not justified. Policy CSW12 of the EPR is necessary to remove this provision. This policy is consistent with national policy without modification.

#### *Disposal of Dredgings*

34. Policy CSW14 of the KMWLP provides for the allocation of a site for disposal of dredgings, that is material dredged from estuaries to ensure they are navigable, and which cannot be re-used. The Port of London Authority (PLA) and the Medway Ports Authority are responsible for such dredging and the PLA has stated that there is a lack of certainty as to whether a site will need to be provided within the Plan period. Policy CSW9 allows for development of non-inert landfill sites. For these reasons the deletion, in the EPR, of the part of Policy CSW14 that states that a site for disposal of dredgings is to be allocated is justified.
35. The policies in the KMWLP are permissive and allow for development for waste treatment without the need to allocate specific sites. On this basis the Council does not intend to prepare a Waste Sites Plan and I am satisfied this approach is sound, taking into account the foregoing. The Local Development Scheme will need to be amended accordingly.

#### *Radioactive Waste*

36. The Nuclear Decommissioning Authority (NDA) and Magnox have made representations concerning Policy CSW17. That policy does not form part of the EPR and is not for my consideration. The Council advised however that it

will liaise with the NDA and consider this matter as part of a future review of the Plan. I note that a SoCG in this respect has been prepared.

### **Conclusion on Issue 1**

37. The strategy for provision of waste facilities in the EPR seeks to meet the area's objectively assessed needs. It is informed by agreements with other authorities and is positively prepared. The supporting text to Policy CSW7 and Policy CSW5 are not sound but would be sound if the recommended MMs are made. Otherwise, the waste policies as amended by the EPR are positively prepared, justified and otherwise sound.

### **Issue 2 – Whether or not the amended safeguarding requirements for minerals and waste in the Early Partial Review are sound**

38. The EPR proposes amendments to Policies DM7 and DM8 of the KMWLP which concern safeguarding of mineral resources and minerals management, transportation, production and waste management facilities. The amendments make clear that sites that are allocated in local plans for other development are only exempt from safeguarding requirements where mineral safeguarding was previously considered as part of local plan examination.

#### *Policy DM7 – Safeguarding Mineral Resources*

39. Policy DM7 of the KMWLP requires any non-mineral development that is incompatible with minerals safeguarding to demonstrate that one of seven criteria are met. The seventh criterion is that the development would be on a site allocated in the adopted development plan. It is to be expected that local plans will consider the need to safeguard mineral resources in allocating land for non-mineral uses, as stated in paragraph 5.5.14 of the KMWLP. However, the existing policy criterion does not require this. As such, there is the possibility that non-minerals development could sterilise mineral resources if safeguarding has not been considered in the local plan process. The EPR proposes additional text to criterion 7 of the policy to ensure this requirement is clear.
40. Safeguarding of mineral resources is a requirement of national policy. The Framework states that planning policies should safeguard mineral resources and that "*known locations of specific mineral resources of local and national importance are not sterilised by non-mineral development where this should be avoided (whilst not creating a presumption that the resources defined will be worked)*". Mineral Safeguarding Areas (MSA) are shown on the Policies maps. Urban areas are excluded from the MSAs as the mineral resource is already sterilised by non-mineral development with very little prospect of future working.
41. The Council's Supplementary Planning Document (SPD) on safeguarding explains how the policy is to be applied to development proposals and in preparation of local plans. The Council explained that the SPD is to be updated following publication of my report.
42. The supporting text in the EPR states that proposals in MSAs will usually need to be accompanied by a Minerals Assessment. In order to be effective, the

text should provide further explanation that development that has not previously been subject to minerals assessment as part of the local plan process should provide such assessment as part of the application process. **EPR/MM7** makes this change which is necessary to ensure soundness.

43. In order for the policy to be effective and sound, it is necessary to explain that there may be circumstances where mineral extraction would not be practicable. It is necessary to provide further explanation as to how mineral safeguarding should be considered in local plan preparation and that the Safeguarding SPD will provide guidance. Clarification as to how safeguarding will be considered in respect of non-allocated sites is also necessary, including consideration of need for non-mineral development. **EPR/MM7** and **EPR/MM8** are necessary to provide clarification and ensure effectiveness.
44. District and Borough Councils have expressed concerns about the application of the policy to sites that are allocated in local plans that were adopted before the KMWLP in which minerals safeguarding was not considered. Otherwise, there is a good level of agreement between the authorities regarding safeguarding requirements. The policy would require a minerals assessment where one has not previously been carried out and this is in accordance with national policy. The criteria of Policy DM7 in the EPR would allow for balanced and flexible decisions to be made.
45. Mineral safeguarding was considered in the Maidstone Borough Local Plan (2017). The Inspector concluded that non-mineral development on allocations within the Limestone Hythe Formation (Kentish Ragstone) and the Sandstone-Sandgate Formation would not result in a material inconsistency with national policy since these minerals are not likely to be needed. As submitted, policy DM7 of the EPR and its supporting text would conflict with that plan and would not be justified. **EPR/MM7** is necessary to amend the supporting text to Policy DM7 to make changes in this respect. Because the SPD will also provide detailed guidance, it is necessary for the policy to refer to this document in order to ensure it is effective. **EPR/MM8** is necessary to make this change.

*Policy DM8 – Safeguarding Minerals Management, Transportation, Production & Waste Management Facilities*

46. Policy CSM7 of the KMWLP safeguards other mineral plant infrastructure and Policy CSW16 safeguards existing waste management facilities. Policy DM8 of the KMWLP sets out the criteria against which development that is incompatible with this infrastructure and those facilities will be assessed. Criterion (2) of that policy allows for development that is incompatible with safeguarded minerals management, transportation, production and waste management facilities on sites that have been allocated in local plans.
47. Safeguarding of sites for minerals processing, production and transportation is required by the Framework. The National Planning Policy for Waste requires consideration of the impact of non-waste related development on existing waste management facilities and sites allocated for those facilities.
48. The EPR makes a change to Policy DM8 of the KMWLP to remove the possibility that safeguarding of minerals and waste infrastructure and facilities could potentially be overridden if this was not considered during local plan

preparation and adoption. The criteria of Policy DM8 of the EPR allow for various factors to be taken into account by authorities in making decisions on developments other than minerals and waste development. The criteria would allow for balanced and flexible decisions to be made. The policy is consistent with national policy, effective and sound without modification.

## **Conclusion on Issue 2**

49. The policies for safeguarding mineral resources and minerals and waste infrastructure in the EPR as submitted are not sound for the reasons given. The MMs as described and set out in the appendices are necessary to make those policies sound.

## **Issue 3 – Whether or not the Mineral Sites Plan and Early Partial Review would provide adequately for aggregates in accordance with national policy**

### *Objectively assessed need*

50. Policy CSM2 of the KMWLP states that mineral working will be granted planning permission at sites identified in the MSP. The submitted MSP allocates two sites for extraction of sharp sand and gravel (Stonecastle Farm and Moat Farm) and one site for soft sand (Chapel Farm).
51. The Local Aggregates Assessment (LAA) considers that use of the last 10 years sales data, as required by national policy is the most reliable metric for considering demand over the Plan period. Modelling based on local demand was previously considered in examination of the KMWLP, but this was found to be unreliable and to be significantly lower than the 10-year sales average. SEEAWP endorses the use of the 10-year sales average without any supplementary local demand modelling. I agree that the use of 10 years sales data is the most reliable method of forecasting demand. No alternative approach using local modelling has been demonstrated to be reliable.

### *Sharp Sand and Gravel*

52. The KMWLP states in paragraph 5.2.20 that diminishing land-won sharp sand and gravel supplies will increasingly be substituted over the plan period by supplies from production of alternative materials including secondary and recycled aggregates, marine-dredged aggregates and imported aggregates. Because the sharp sand and gravel resource has been greatly depleted by extensive historical working, the planned provision of at least 10.08mt made in Policy CSM2 for this material is less than the identified requirement of 13.26mt. Paragraph 3.5 of the MSP states that, since the KMWLP was adopted, the permitted reserves of sand and gravel have increased, and the 10-year sales average has decreased. This leads to a revised calculation of sharp sand and gravel requirements in Figure 1 of the MSP. However, paragraph 3.5 of the MSP gives an inaccurate figure of 10.8mt in respect of the KMWLP provision and is not effective. **MSP/MM1** is necessary to correct this.
53. The revised calculation of the sharp sand and gravel requirement is for 5.75mt up to the end of the Plan period and including a 7-year landbank as required

by the Framework. The two sites proposed to be allocated would provide 2.5mt, leaving a deficit of 3.25mt over the Plan period. This does not differ significantly from the deficit of 3.18mt envisaged in the KMWLP. On this basis, the provision for site allocations to be made in the MSP would be reasonably closely aligned with the provision identified in Policy CSM2.

54. The deficit is to be addressed by provision for secondary and recycled aggregates and importation of marine-dredged aggregates as well as land-won aggregates from elsewhere. Supplies of secondary and recycled aggregates are provided for by Policies CSM7 and CSM8 of the KMWLP. Minerals infrastructure is safeguarded by Policies CSM6, CSM7, CSM12 and DM8 of the KMWLP and the EPR.

### *Soft Sand*

55. In the south-east the supply of soft sand is constrained by the South Downs National Park designation. The Framework requires, as far as is practical, the maintenance of landbanks of non-energy minerals from outside National Parks. The SoCG with WSCC, ESCC, BHCC and the South Downs National Park Authority sets out how the authorities will plan, jointly and individually for the steady and adequate supply of soft sand. There is also a Soft Sand Position Statement that Mineral Planning Authorities in the south-east are party to. Paragraph 3.18 of the MSP, which states that the surplus of soft sand will contribute to wider regional need is consistent with the joint working that is taking place.
56. The allocated site at Chapel Farm provides for a surplus of soft sand relative to the identified requirement in Policy CSM2 of the KMWLP, which includes a 7-year landbank as required by the Framework. The surplus has increased from 0.7mt to 1.122mt following an adjustment to average sales figures to reflect a reduction in sales in 2018.
57. ESCC and BHCC are wholly reliant on imports of soft sand while WSCC has limited reserves. Soft sand is exported to those Counties and this is accounted for in the 10-year sales average. The Council recognises that monitoring of soft sand use in the south-east is an ongoing matter which may require a future review of the Plan.
58. The Housing Delivery Test 2018 measurements show that the average housing delivery in Kent authorities over the previous 3 years was 109% of the requirements for Kent or 98% of the requirements for Kent and Medway. While this indicates that house building was close to, or above delivery requirements, the 3-year average for soft sand sales of 0.506mt is below the 10-year average of 0.568mt which forms the LAA rate. This provides reassurance that the soft sand requirement in the MSP would allow for an increased rate of house building than has recently taken place.

### *Alternatives*

59. The Plan envisages greater use of alternatives to indigenous land-won aggregates. The LAA shows that there is existing capacity to significantly increase production of secondary and recycled aggregates in the county.

60. Marine-dredged sand and gravel is imported via Kent wharves and the Council anticipates that the use of this material could be increased to address the shortfall in land-won resources. There are extensive reserves of this material, which is similar in quality to land-won aggregates. It is generally more expensive to produce, but this does not make it uneconomic.
61. The LAA states that wharf capacity is 7.3mtpa with 42% of that capacity being used. It does not follow that the remaining identified capacity will be available for importation of marine-dredged aggregates, as capacity will depend on factors such as the availability of stocking space. The wharves also serve a much wider area than Kent. However, there is clear evidence of spare capacity at Kent's wharves and although the precise amount of that spare capacity is uncertain there is scope for greater importation of marine dredged aggregates.
62. The Plan provides flexibility in order to meet the predicted shortfall in supply of land-won sharp sand and gravel. Policy CSM5 of the KMWLP and Policy DM7 of the EPR safeguard mineral resources and opportunities for development of 'windfall' reserves are provided by Policy CSM4 of the KMWLP. The Plan provides for the continued supply of alternative materials alongside indigenous land-won aggregates throughout the Plan period. This provision ensures a steady and adequate supply of aggregates in accordance with the Framework.

#### *Other minerals*

63. The KMWLP states, in Policy CSM2, that sites will be identified in the MSP for supplies of brickearth and clay for brick and tile manufacture, and chalk for agriculture and engineering purposes. The MSP does not allocate any site for production of these minerals. The latest Annual Monitoring Report identifies that there is a stock of total permitted reserves of brickearth of almost 25 years. The provision is slightly below the requirements of Policy CSM2 and national policy for reserves of at least 25 years. However, the provision is sufficient to support existing brick and tile manufacturers and there is no need for the MSP to allocate a site for brickearth or clay for brick and tile manufacture. This does not however alter the ongoing need to ensure sufficient reserves of this material are available.
64. Chalk is abundant in Kent but there are no plants dependant on this material in the County. The indicative landbank for chalk for agricultural and engineering purposes is estimated to be 17.6 years as of 2018. This provides an adequate landbank over the Plan period, but it will be necessary to monitor demand for this material.
65. The EPR and MSP as submitted make no explicit change to Policy CSM2 in these respects. However, in order for the Plan as a whole to be justified and effective it is necessary to make amendments to Policy CSM2 of the KMWLP and the supporting text to that policy to remove references to the allocation of sites and to provide for applications for new sites to be dealt with in accordance with the policies of the KMWLP. It is also necessary for soundness to ensure that demand is monitored in relation to the stock of existing permissions. **EPR/MM1** and **EPR/MM2** make changes to the supporting text to Policy CSM2 of the KMWLP to explain that there is a need to ensure

sufficient reserves of brickearth are available and that reserves of chalk and rates of demand will be monitored. **EPR/MM3** is necessary to make amendments to Policy CSM2 part 2 regarding brickearth and clay. **EPR/MM4** is necessary to make amendments to Policy CSM2 part 4 regarding chalk for agriculture and engineering purposes. These MMs are necessary for soundness.

### **Conclusion on Issue 3**

66. For the reasons given above, the MSP would provide adequately for aggregates in accordance with national policy. MMs are necessary to the EPR to ensure clarity and effectiveness in respect of Policy CSM2 of the KMWLP. These changes are necessary for soundness.

### **Issue 4 – Whether or not the Site Allocations in the Mineral Sites Plan would be consistent with national policy, effective and otherwise sound**

#### *Extensions to Stonecastle Farm Quarry, Hadlow/Whetsted*

67. The extension is in an area where mineral working would have potential to affect groundwater. A hydrological and hydrogeological appraisal has been undertaken. Both the EA and South East Water are satisfied that mineral extraction can take place provided that this is managed in a way that does not adversely affect groundwater, including in terms of pollution. Wet working is to be used to avoid adverse effects on groundwater.
68. The development management criteria in the MSP require provision of a buffer between extraction and nearby watercourses, demonstration that there would be no adverse impact on hydrology or hydrogeology and other management measures. These include consideration of the two abstraction licences in the vicinity and restoration requirements.
69. The EA has no objection in terms of flood risk although a Flood Risk Assessment would be required with any planning application. The EA similarly has no objection on grounds of potential contamination of ground water or in terms of water supply, subject to the inclusion of development management criteria. Such criteria are included. These are effective and consistent with national policy in terms of managing flood risk and protecting water resources.
70. It is proposed to restore the site to reedbeds and lakes. Although over 27 ha of agricultural land would be lost, this is of grade 3b, which is not best and most versatile land in accordance with the definition in the Framework. As such, use of this land would not be inconsistent with the Framework.
71. The highway authority has no objection in terms of highway safety, but transport criteria are necessary to ensure that the existing quarry access is used and that the volume of traffic is limited by working the quarries in the area sequentially.
72. The site is within the Metropolitan Green Belt. The Framework states that mineral extraction is a form of development that is not inappropriate in Green Belt provided that its openness is preserved, and development does not conflict with the purposes of including land in it. In order to be consistent with

national policy, the development management criteria should include a requirement to examine the proposals against national Green Belt policy. **MSP/MM2** adds a criterion to cover this.

73. The biodiversity criteria do not refer to the need to secure net gains for biodiversity, as required by national policy. **MSP/MM3** adds this requirement to the first criterion and is necessary for soundness.
74. The second criterion under 'Heritage' should be amended to require the impact of proposals upon Listed Buildings and their settings to be considered to ensure consistency with national policy and effectiveness. **MSP/MM4** makes this change and is necessary for soundness.

*Moat Farm, Capel, Tonbridge*

75. The introductory information relating to the Moat Farm allocation states that the site is within Tonbridge and Malling Borough Council's area, but the site is within the area of Tunbridge Wells Borough Council, the boundary running along the Hammer Dyke. This aspect of the site allocation is not effective. **MSP/MM5** is necessary to correct this information.
76. The site is within the Metropolitan Green Belt. The Framework states that mineral extraction is a form of development that is not inappropriate in Green Belt provided that its openness is preserved, and development does not conflict with the purposes of including land in it. In order to be consistent with national policy, the development management criteria should include a requirement to examine the proposals against national Green Belt policy. **MSP/MM6** adds a criterion to cover this.
77. As the Moat Farm site would use the same access as Stonecastle Farm, the requirement that all quarry traffic is to use the existing access onto Whetsted Road and to only turn left when exiting the site should be applied. This is to ensure that Heavy Goods Vehicles travel directly to and from the strategic road network and not via minor roads which lead through Five Oak Green, which could potentially affect highway safety and amenity. **MSP/MM7** is necessary to add this to the second transport criterion to ensure effectiveness and consistency with national policy.
78. The development management criteria do not include a requirement for a flood risk assessment. This is required in accordance with national policy as the site is within an active floodplain. **MSP/MM8** is necessary to add a criterion in this respect.
79. The site overlies a gravel aquifer and is close to a source protection zone for a public water abstraction borehole. It is necessary to employ wet working in order to avoid any adverse effect on water resources. There are no requirements in this regard within the development management criteria, and **MSP/MM9** is necessary to address this matter and to ensure consistency with national policy and effectiveness.
80. Monitoring of groundwater quality in relation to the adjacent former landfill is subject to control under the Environmental Permitting regime. The Council,



the EA and South East Water have taken this into account in the site allocation process. It is necessary to require local water quality monitoring in association with the allocated site in accordance with a scheme to be agreed with the EA and South East Water to ensure protection of water resources.

**MSP/MM10** provides this requirement and is necessary for effectiveness and consistency with national policy.

81. In order to alleviate flood risk it is necessary to provide a 16 metre buffer between areas of extraction and nearby watercourses. The first criterion under 'Water Resources' is not effective in that it does not make it clear that this requirement applies to areas that have previously been subject to extraction as well as future areas of extraction. **MSP/MM11** is necessary to amend the criterion in this respect.
82. The biodiversity criteria do not refer to the need to secure net gains for biodiversity, as required by national policy. **MSP/MM12** adds this requirement to the first criterion and is necessary for soundness.
83. The heritage criterion makes no reference to the need to assess effects on nearby listed buildings and their settings, as required by national policy. In order to ensure the development management criteria are effective and consistent with national policy **MSP/MM13** is necessary to add a criterion in this respect.

*Chapel Farm, Lenham (Western Site)*

84. It is proposed to restore the site to agriculture using existing soils. The proposed restoration as stated under the Chapel Farm allocation is not entirely clear in that it states that this would be to a "lower level of agriculture". The lower level refers to the finished topography of the site. The SA states that the land is of grade 2 quality which is best and most versatile. It is necessary to ensure that agricultural land quality is maintained, in accordance with national policy, and additional text is necessary to explain this. To ensure the requirements are effective **MSP/MM14** is necessary.
85. The second biodiversity criterion requires consideration of impacts upon nearby Sites of Special Scientific Interest and adjacent Local Wildlife sites. The SA records that priority habitats are adjacent to the site, which have potential for ground nesting birds, great crested newts, reptiles and bats. It will be necessary for the developer to undertake a detailed ecological appraisal which sets out mitigation measures in accordance with national policy. **MSP/MM15** adds a criterion in this respect and is necessary for soundness.
86. The biodiversity criteria do not refer to the need to secure net gains for biodiversity, as required by national policy. **MSP/MM16** is necessary to add a criterion in this respect.

87. The first biodiversity criterion requires maintenance of a 15-metre buffer around an Ancient Woodland which adjoins the site access. It is also necessary to ensure adequate protection for adjacent protected trees. **MSP/MM17** amends that criterion in this respect.
88. The Kent Downs Area of Outstanding Natural Beauty (AONB) is to the north of the A20 and the development would be visible from parts of the AONB. The site should therefore be considered as forming part of the setting of the AONB. The Council has provided cross-sections which demonstrate that the quarry could be visually screened in views from the AONB by provision of bunding and planting. The landscape criterion requires mitigation of visual impacts and demonstration that the setting of the AONB will not be adversely impacted. This does not impose any need to mitigate landscape impacts or to ensure that views into, and out of the AONB are not harmed. In order to ensure the effectiveness of the policy, **MSP/MM18** is necessary. It is not, however, necessary for the policy to prescribe the type of mitigation required, as this would be a matter to be assessed in connection with a planning application.
89. The heritage criterion identifies nearby listed buildings in respect of which consideration of impacts is required. The site is also in an area of archaeological interest. Changes are required to ensure effectiveness and consistency with national policy in terms of consideration of the settings of listed buildings and any necessary mitigation and an archaeological assessment. **MSP/MM19** and **MSP/MM20** make these changes.
90. Public rights of way run through the site and will require diversion and screening measures in order for the policy to be effective. **MSP/MM21** adds a criterion in this respect.
91. The operator currently extracts mineral from a nearby site at Burleigh Farm, Charing. Traffic from the proposed site would use the same road as the existing quarry. To ensure that there is no detrimental effect on highway safety and amenity it is necessary to require the proposed site to be worked sequentially to the existing site. **MSP/MM22** is necessary for effectiveness in this regard.
92. The Council has explained that the site could be worked sequentially to Burleigh Farm well within the Plan period, having regard to the likely period of working at that site. Indeed, the Chapel Farm site would be needed later in the Plan period to provide for a steady and adequate supply of soft sand.

#### **Conclusion on Issue 4**

93. For the reasons given above, the Site Allocations in the MSP as submitted are not sound in terms of consistency with national policy and effectiveness. The MMs as set out would make those allocations sound.

## **Assessment of Legal Compliance**

94. My examination of the legal compliance of the EPR and MSP is summarised below.
95. The EPR and the MSP have been prepared in accordance with the Council's Local Development Scheme.
96. Consultation on the EPR and the MSP and the MMs was carried out in compliance with the Council's Statement of Community Involvement.
97. Sustainability Appraisals have been carried for the EPR and the MSP including the MMs, which are adequate.
98. The Appropriate Assessment (AA) of the EPR and MSP (November 2018) and the Addendum to the HRA Screening Report and AA for the EPR and the MSP (May 2019) set out why further AA is not necessary. This is because likely significant effects on Natura 2000 sites have been screened out.
99. The KMWLP includes policies designed to secure that the development and use of land in the mineral and waste planning authority's area contribute to the mitigation of, and adaptation to, climate change. In particular, Policy DM1 requires sustainable design and Policy DM10 requires that development does not exacerbate flood risk. The development management criteria in the MSP include requirements in terms of enhancing biodiversity and mitigating flood risk.
100. The EPR and MSP comply with all other relevant legal requirements, including in the 2004 Act (as amended) and the 2012 Regulations.
101. I have had due regard to the aims expressed in S149(1) of the Equality Act 2010. This has included my consideration of the development management criteria in the MSP which seek to safeguard living conditions for all groups.

## **Overall Conclusion and Recommendation**

102. The Plans have a number of deficiencies in respect of soundness for the reasons set out above, which mean that I recommend non-adoption of them as submitted, in accordance with Section 20(7A) of the 2004 Act. These deficiencies have been explored in the main issues set out above.
103. The Council has requested that I recommend MMs to make the Plans sound and capable of adoption. I conclude that with the recommended main modifications set out in the Appendices the Early Partial Review of the Kent Minerals and Waste Local Plan 2013-30 and the Kent Minerals and Waste Local Plan Mineral Sites Plan satisfy the requirements of Section 20(5) of the 2004 Act and meet the criteria for soundness in the National Planning Policy Framework.

*Nick Palmer*

Inspector

This report is accompanied by the following Appendices containing the Main Modifications:

Appendix 1: Main Modifications to Early Partial Review

Appendix 2: Main Modifications to Mineral Sites Plan