

BOURNEMOUTH, DORSET AND POOLE
Examination of the Minerals Sites Plan 2018
SESSION 2

Preamble

I am Simon Nicholas COLLCUTT *MA(Hons) DEA DPhil FSA*, a professional assessor, instructed since September 2015 by the local group, Frome Residents Against Mineral Extraction (“FRAME”), to report upon all historic environment and cultural heritage issues (the fabric and setting of built features, archaeological features, historic landscapes & gardens, etc.) arising in the context of the MSP, specifically in relation to the Cluster 4 (Moreton Area) Sites: AS-19 Woodsford Extension, AS-25 Station Road and AS-26 Hurst Farm.

I would respectfully draw the Inspector’s attention to two main sets of documents: “Proposed Minerals Allocations AS19, AS25 & AS26, Moreton Area, Dorset, Historic Environment Appraisal”, October 2015 [MSPEXT - 07]; and the three related submissions, one for each of the Cluster 4 Sites, “Mineral Sites Plan Pre-Submission Draft – FRAME – Cultural Heritage”, January 2018 [PSD - MSP369 to 371].

(B) Legal Issues; Question 8

The last two sentences in paragraph 7.46 of the MS define sites to be identified in the MSP as preferred Sites (in contrast to non-identified sites) and require that, to be so identified, the Sites must be likely to be considered acceptable in Planning terms. Put another way, it must be likely that each Site will be deliverable.

The above provisions in the MS set up a clear presumption that enough should be known about a Site to allow the full range of policies, both in the MS and in national policy (as well as in relevant provisions in statute), to be brought to bear, including those governing the historic environment, such that it could reasonably be concluded that a future application would be likely to be acceptable.

The MSP does not comply with the requirements of the MS. There are two legs to the present submission.

First, it is argued that not enough is known about the currently identified Sites to allow relevant cultural heritage policies to be brought to bear with sufficient certainty. This proposition has been set out in detail concerning the Cluster 4 Sites in [MSPEXT - 07] and [PSD - MSP369 to 371]. The proposition is proven by the treatment of cultural heritage

negative impacts in the Site Assessments, which are often categorised (in the versions attached to the current SA) as “? uncertain”, or as “A>D” (in the stand-alone versions), with comments (in both versions) to the effect that, ‘when sufficient assessment has been undertaken, impacts will be better understood’, or that ‘only when this assessment has been undertaken would the impact be understood’. In passing, it may be noted that the Cluster One reports for certain Sites contain statements (in the event, incorrect) to the effect that the cultural heritage sites that will be affected had already been identified and their significance assessed (at Stage 1 of the MSP process), thus warning that their own brief was prescribed; Cluster One state, in terms, that their work is insufficient to assess the impact of the proposed quarrying on the setting of cultural heritage assets. The matters of insufficient assessment and unacceptable uncertainty will be taken further in the present author’s Statements on individual Cluster 4 Sites.

Second, it is asserted that it has never been the intention of the MPA to meet the MS criterion of ‘likely acceptability’. The MPA has consistently stated (cf. Section 7 in [MSPEXT - 07], in particular paragraph 7.2) that it has carried out an appropriate level of assessment in order to be reasonably satisfied at each stage of the process that there are no constraints that would make it impossible ultimately to develop a given Site. Even if it is suggested that ‘likely acceptability’ is exactly the same thing as ‘current absence of demonstrable impediment’ – and the present author would certainly challenge any such equation as being unworthy of a positively prepared Plan – the Site assessments contain provisions to the effect that ‘the significance of non-designated assets should be ascertained in order to assess (*inter alia*) whether these should be protected during mineral working’ or that, ‘if impacts cannot be mitigated satisfactorily, the Site will not be developed’. Such provisions imply that it cannot reasonably be claimed that viable mineral working (or, at least, working to the proposer-submitted site yields) is in all cases likely. Indeed, it is clear that the MPA have used a different test to reach their overall recommendation in the SA, to the effect that ‘it appears reasonable on the basis of evidence available that the impacts identified in this sustainability appraisal are capable of satisfactory mitigation’ (SA, p. 179), again, a suggestion not worthy of a positively prepared Plan, especially since the suggestion is expressly contrary to many of the actual Site Assessments appended to the SA.

The present author is not a legal professional. However, it is respectfully submitted that the failure of the MSP to satisfy the ‘likely acceptability’ criterion in the statutory MS, in respect of cultural heritage matters, raises reasonable doubts as to the legal compliance of the former.

(B) Legal Issues; Question 13

In respect of cultural heritage matters, the SA lacks a proportionate degree of:

- (a) consideration of the heritage significance of assets (contrary to paragraphs 126 and 129 of the NPPF, paragraph: 009 Reference ID: 18a-009-20140306 of PPG, Stage 1: paragraph 1.2 of HE AN3 ¹);

¹ Historic England 2015. Advice Note 3 - The Historic Environment and Site Allocations in Local Plans. A summary of this document is included in the Context One reports for the MPA (e.g. [MSDCC – 40]). It will be noted that Context One explicitly state that AN3 Step 1 (identifying which heritage assets are affected by the potential site allocation) had been completed before their instruction and that their work was aimed

- (b) consideration of significant effects beyond an arbitrary (and too restrictive) area of search (contrary to paragraph: 013 Reference ID: 18a-013-20140306 of PPG, Stage 1: paragraph 1.2 of HE AN3);
- (c) consideration of effects upon designated assets (contrary to paragraphs 132-3 of the NPPF ², paragraph: 002 Reference ID: 18a-002-20140306 of PPG);
- (d) consideration of most non-designated built assets (contrary to the spirit of paragraph: 006 Reference ID: 18a-006-20140306 of PPG, paragraph 16.44 of the MS, Stage 1: paragraph 1.1 of HE AN3);
- (e) consideration of all relevant up-to-date evidence (contrary to paragraph 169 of the NPPF, paragraph: 005 Reference ID: 18a-005-20140306 of PPG, Stage 1: paragraphs 1.1 and 1.2 of HE AN3);
- (f) consideration of effects upon (including harm to) the setting of assets (contrary to paragraph 129 of the NPPF, paragraph: 002 Reference ID: 18a-002-20140306 of PPG, paragraph: 004 Reference ID: 18a-004-20140306 of PPG, paragraph: 013 Reference ID: 18a-013-20140306 of PPG, Site Selection Criteria C9, C10 and C11 of Appendix 1 of the MS, Stage 1: paragraph 1.2 of HE AN3);
- (g) consideration of historic landscapes and gardens (contrary to Site Selection Criterion C9 of Appendix 1 of the MS);
- (h) consideration of cumulative impacts (cf. the present author's Statements regarding Questions 32 and 50; also contrary to paragraph: 013 Reference ID: 18a-013-20140306 of PPG, paragraph: 010 Reference ID: 27-010-20140306 of the PPG, paragraph: 017 Reference ID: 27-017-20140306 of PPG, paragraph 5.13 of the MS, paragraphs 6 and 17 of Appendix 1 of the MS);
- (i) consideration of material proposed by its own consultants (Context One) and statutory consultees, as well as material submitted by 'external' parties (contrary to paragraph 155 of the NPPF, Stage 1: paragraphs 1.1 and 1.2 of HE AN3);
- (j) consideration of enhancement of the historic environment (contrary to the expectations of paragraph 156 of the NPPF, paragraph: 006 Reference ID: 18a-006-20140306 of PPG);

In addition, the fact that strategic minerals policies in the MS are subject to paragraph 14 (and footnote 9) of the NPPF ³, such that the policy presumption in favour of sustainable development does not apply in cases affecting designated heritage assets, is noted in the SA but is not applied in any way in the actual assessment (contrary to section 39(2) of the Planning and Compulsory Purchase Act 2004, policy SS1 of the MS, Site Selection Criteria C9, C10 and C11 of Appendix 1 of the MS).

The detailed criticism of the failings of the SA in the submissions of the present author with respect to the Cluster 4 Sites in [MSPEXT - 07] and [PSD - MSP369 to 371] seem likely to be representative of the SA overall.

principally at AN3 Step 2 (understanding what contribution the Site (in its current form) makes to the significance of the heritage asset(s)), with only brief consideration of elements of later Steps where possible; thus, the Context One work did not normally include simple or cumulative impact assessment (Step 3).

² Whilst the 2012 version of the NPPF is that which is generally relevant in this case, paragraph 32 of the 2018 version reflects the current understanding of the law and is therefore also applicable in this instance.

³ Again, this reflects the current understanding of the law and is repeated in paragraph 11(b)(i) of the 2018 version of the NPPF.

The present author is not a legal professional. However, it is respectfully submitted that, since the SA is so demonstrably inadequate in respect of cultural heritage matters, it is inadequate overall, a conclusion which raises reasonable doubts as to the legal compliance of the MSP process to date in respect (*inter alia*) of the Environmental Assessment of Plans and Programmes Regulations 2004.

Dr. S. N. Collcutt for FRAME (04/09/2018)