

Respondents: Shlomo and Josh Downen

Main Matter 5 – Development Management Policies

Issue: Whether the development management policies strike an appropriate balance between seeking to provide sustainable development and protecting people and the environment and are they justified, effective and consistent with national policy?

Policy DM1 – General Site Criteria

1. Is all employment land suitable for waste management development? If not, should the policy explain that some employment sites may be unsuitable or require mitigation measures, such as activities to be undertaken within the confines of a building?

It could be said that despite the Policy DM1 ('General Site Criteria') matrix listing various employment sites as 'likely to be suitable' for various types of waste development by being given a 'solid blue circle', this is tempered by the statement that support for use of such sites is "subject to there being no unacceptable environmental impacts".

However, this is inadequate because the current draft wording is not sufficiently explicit to make clear that some employment sites may be unsuitable or may require mitigation measures, such as activities to be undertaken within the confines of a building, and that not all reasons why a site might not be suitable can be described as 'environmental'.

The term "likely to be suitable" should therefore be amended to read "potentially suitable, depending on the type and scale of the facility and the locational constraints".

Examples of such locational constraints should be provided, making it clear that locational constraints are set out in the locational criteria listed as part of the National Planning Policy for Waste (NPPW) and in the Nottingham and Nottinghamshire Waste Local Plan Policies DM2-12.

Appendix B of the NPPW highlights the need "to bear in mind the envisaged waste management facility in terms of type and scale" and to consider the site's impacts with respect to (a) protection of water quality and resources and flood risk management, (b) air quality, (c) landscape and visual impacts, (d) nature conservation, (e) conserving the historic environment, (f) traffic and access, (g) air emissions, including dust, (h) odours, (i) vermin and birds, (j) noise, light and vibration, (k) litter, and (l) potential land use conflict.

While some of these issues could be covered by cross-reference to Policies DM2-12 these policies do not appear to cover the issue of 'potential land use conflict', and so it would be useful to also include a reference to national policy as well as local policy.

The NPPW criterion for land use conflict states: “Likely proposed development in the vicinity of the location under consideration should be taken into account in considering site suitability and the envisaged waste management facility”.

Alternatively (or additionally), the wording of Policy DM10 could be modified to more closely resemble what is stated in paragraph 8.22 of CD1 which is that:

“Consideration will also be given to whether proposals are likely to result in an unacceptable cumulative impact (see Policy DM10 - Cumulative Impacts of Development) in combination with other existing or proposed development and when proposals are expanding an existing facility or extending its life”.

It appears from paragraph 8.22 that Policy DM10 was *intended* to cover the NPPW criterion L on potential land use conflict, but the actual policy makes no explicit mention of likely proposed development.

The supporting text for the justification of Policy DM2 – Health, Wellbeing and Amenity at paragraph 8.31 states: “...Depending on local circumstances, there may also be a need to consider whether there are likely to be cumulative impacts resulting from a proposed waste management facility in combination with other existing or proposed non-waste related development”. However, in addition to only being found in the supporting text, this wording does not fully reflect the NPPW criterion.

It is also important that it made clear that just because a site is an employment site this does not mean that all of the listed types of development would necessarily be ‘likely’ to be acceptable at a given location, and that the acceptability of a specific proposal will require consideration of the NPPW locational criteria and the scheme’s compliance with policies DM2-12.

The Sustainability Appraisal (CD2) states that Policy DM1 “directs different types of facilities to the most appropriate general locations”. However, as matters currently stand, in some cases Policy DM1 might direct proposals to an inappropriate location.

The Sustainability Appraisal acknowledges, with respect to Policy DM1, how a waste management proposal supported by Policy DM1 could have a negative impact on SA Objectives 5, 8 and 9. Whilst the Sustainability Appraisal claims that “any potential negative impacts can be mitigated by the application of other policies in the Plan” that is not necessarily the case.

Employment land can often be designated with the intention that the land be used for business parks and light industry, including in instances where that land could very well be unsuitable for purposes such as waste incinerators that raise issues in terms of visual impact, noise, odour, and HGV movements that would not have been anticipated for such a location when the site was originally designated for employment use.

The current Nottinghamshire and Nottingham Waste Core Strategy Policy WCS7 ('General Site Criteria') is almost identical to the proposed DM1, and the interpretation of extant Policy WCS7 and its equivalent "other policies in the Plan" has resulted in proposals being directed to locations that we believe are inappropriate.

For example, a proposal for a plastic chemical processing facility and energy recovery facility at the Shireoaks business park (Nottinghamshire County Council Planning Reference ES/4644) involves a site that has been historically designated as employment land. The proposed development site is located at the "former recycling site" on Shireoaks Road in Worksop, and the applicant refers to how the site has been deemed suitable for employment use without taking proper account that following historic unimplemented permissions the surrounding area has become much more residential in nature than when it was designated as an employment site.

The Shireoaks Road site also suffers from a number of traffic issues that, whilst they might not arise from employment developments associated with commercial uses such as offices, have the potential to give rise to a higher number of HGV movements than anticipated when the site was originally designated. Such considerations have given rise to highway safety concerns such as those set out in Nottinghamshire County Council's Highway Report for this proposal dated 7th June 2024.

Whilst an Examination in Public of a Waste Local Plan is clearly not the place to debate the demerits of any specific planning application, this example does provide a useful 'case in point' with respect to the importance of making explicit reference within the Waste Local Plan to the notion that not all employment land is automatically likely to be suitable for all types of waste development.

Policy DM2 - 2. Should the justification text be more explicit regarding the role of the environmental permitting regime and its relationship with the planning regime with particular regard to emission controls?

With regard to the role of the environmental permitting regime and its relationship with the planning regime, with particular regard to emission controls, the justification text within the Waste Local Plan should make explicit that the Environment Agency's permitting process does not take into account factors such as: direct and indirect climate impacts, climate and other impacts of a proposal relative to other ways that the waste could be managed, the impacts, including adverse climate and amenity impacts, arising from traffic travelling to and from the installation and any other impacts from off-site vehicle movements (e.g. nitrogen deposition that could have an adverse impact on nearby habitats), operating hours, visual impact, whether or not the chosen site is an appropriate location for the proposed activity, and a host of amenity issues such as noise, dust, odour, pest control, alongside any cumulative effects of pollution on health, living conditions and the natural environment, and the

potential sensitivity of the site or the wider area to adverse impacts that could arise from the development, as these are the local authority's responsibility to regulate.

Evidence to support this can be found in the following examples where the EA has explained their role:

- a. As per the Portland Powerfuel Briefing 12 from the Environment Agency, which states: "Please note that our permitting process does not take into account factors such as off-site vehicle movements, operating hours, visual impact and whether this is an appropriate location for the activity, as these are the local authority's responsibility to regulate".
- b. As per the EA's letter to Dorset Council dated 2 November 2020, which states: "Planning has a role to play in managing amenity issues such as noise, dust, odour, pest control issues, etc., and your Environmental Health Department can advise you on this. Please note that an environmental permit cannot always prevent, eliminate or eradicate all such issues".
- c. As per the EA briefing on 'The role of Environment Agency and the Scottish Environmental Protection Agency in waste incinerators', which states: "In the majority of cases we are unlikely to object at planning application stage, subject to the inclusion of conditions on any permission granted, to secure mitigation measures to protect people and the environment. The National Planning Policy Framework (NPPF) is clear that the planning system should not duplicate the controls of other regulatory regimes, so we will only recommend the inclusion of planning conditions for things we can't control through the permit. That does not mean to say that the residual impacts of matters controlled through the permit cannot be material planning considerations. Such impacts are relevant to whether the proposal represents an acceptable use of the land and they can legitimately have a bearing on any planning decision".

Furthermore, we cite the following from sources other than the EA:

- d. The NPPF explains that: "Planning policies and decisions should also ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment, as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development..."
- e. As explained in *Harrison v SSCLG* [2009] EWHC 3382 (Admin): "The thrust of the decision in *Hopkins* ... is that the planning decision maker was entitled to reach his own conclusions as to the impact of the proposed development on amenity and whether the site under consideration was the appropriate location for the proposed development. The fact that the impact might be capable of being regulated under a pollution control regime did not necessarily mean that

the only possible option available to an Inspector was to leave everything to that regime. If the planning decision maker considered that there might be adverse consequences because of the effects of the proposed development on amenity and/or issues as to the appropriateness of locating the development on the site in question, he was entitled to have regard to such matters as material considerations in making his decision on the planning merits of the proposed development”.