



Interim Report to Oxfordshire County Council

by Brian Cook BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Date

Planning and Compulsory Purchase Act 2004

(as amended)

Section 20

Interim Report on the Examination of the Oxfordshire Minerals and Waste Local Plan Part 1 – Core Strategy

The Plan was submitted for examination on 30 December 2015

The examination hearings were held between 20 and 30 September 2016

File Ref: PINS/U3100/429/7

Abbreviations used in this report

C+I	Commercial and industrial
CDE	Construction, demolition and excavation
DCLG	Department for Communities and Local Government
DtC	Duty to Co-operate
LAA	Local Aggregate Assessment
mtpa	Million tonnes per annum
MWDS	Minerals and Waste Development Scheme
MSW	Municipal solid waste
NPPF	National Planning Policy Framework
NPPW	National Planning Policy for Waste
SA	Sustainability Appraisal
SCI	Statement of Community Involvement
SEEAWP	South East of England Aggregate Working Party
SEWPAG	South East Waste Planning Advisory Group
SEA	Strategic environmental assessment
SCP	Suzi Coyne Planning

Introduction

1. For reasons that are explained in more detail below the Council agreed during the first hearing session that the strategic environmental assessment (SEA) and sustainability appraisal (SA) process carried out was not legally compliant. It undertook therefore to revisit this and correct the defects identified. This approach is consistent with the conclusions of a number of court judgements, most of which have been referred to in various of the examination documents.
2. It was further agreed that without knowing the provision for minerals and waste development that needed to be made, a proper consideration of reasonable alternatives and the selection of a strategy for the delivery of the vision and objectives of the Plan could not be carried out. As both provision figures were in contention I undertook to set out my conclusions on what each should be in an interim report so that progress can be made in the examination. However, these findings must be without prejudice to the conclusions of my final report which will be based on all the evidence including any further representations that may be made in response to the Council’s consultation on the main modifications.
3. I also undertook to conclude on the matters raised in respect of the Duty to Co-operate (DtC) since any failure to comply with this requirement would be fatal to the Plan. In concluding on the SA (which incorporates the SEA) I have set out some guidelines for the further work that the Council needs to carry out.
4. For completeness, I have also concluded within this interim report on a number of other matters that fall within the scope of the assessment of legal compliance. In this interim report figures in [] are references to other paragraphs within it.

Assessment of Duty to Co-operate

5. 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 Plan’s preparation. The DtC requires a local planning authority in maximising the effectiveness with which it undertakes its local planning function to engage constructively, actively and on an on-going basis in any process by which the local plan is prepared. The Planning Practice Guidance (PPG) is very clear that the DtC is not a duty to agree¹.
6. Mineral planning authorities are members of the appropriate Aggregate Working Party. These have a specific role in local plan preparation as set out in paragraph 145, bullets 2 and 3 of the National Planning Policy Framework (NPPF) with further detail being given in the PPG². In particular, mineral planning authorities are required to participate in the operation of an Aggregate Working Party and take its advice into account when preparing a Local Aggregate Assessment (LAA) which is a vital component of the Plan.

¹ ID: 9-001-20140306

² ID: 27-071-201140306 to ID: 27-076-20140306

The Council is a member of the South East of England Aggregate Working Party (SEEAWP).

7. Similar formal arrangements used to be in place for waste planning with each region having a Technical Advisory Body. Following a change to national policy in this respect, that for the South East has now evolved into the South East Waste Planning Advisory Group (SEWPAG), the membership and role of which is set out by the Council (Document 3.2, paragraphs 5.1 and 5.2).
8. Mineral and waste planning authorities therefore have a long history of co-operation with others in their region and with other such regional groupings. SEEAWP and SEWPAG have traditionally been particularly active given the strong planning relationship with Greater London.
9. The requirement to comply with the DtC continues to the point at which the Plan is submitted for examination. Document 3.2 sets out how the Council considers it has done so and this is dated December 2015 and thus coincides with the submission of the Plan. It is significant that none of the bodies prescribed for the purposes of section 33A have argued that the Council has failed to comply with the DtC.
10. Two points have however been taken by those making representations on the pre-submission Plan. OXAGE very fairly now acknowledges that the material provided in Document 3.2 has resolved its concern in this respect (Document M1/2, paragraph 4.1). That raised on behalf of clients by Suzi Coyne Planning (SCP) is, in short, a concern that in developing the waste strategy, the unmet needs of the city of Oxford have not been considered at all by the Council or those authorities that adjoin the city and which will almost certainly need to provide the waste management facilities required to deal with the waste arising in what is a highly constrained area (Document M1/3, section 5).
11. During the hearing sessions the Council tabled two further documents in this regard (H1a and H1b). These comprise, in part, notes of officer and elected member meetings over a two year period from 2013 on a wide range of development plan and other matters relating to the planning landscape within Oxfordshire. It is clear from those notes that the evolving strategic housing market area assessment and its implications were a consistent agenda item. The Oxfordshire Growth Board, which includes members from all Oxfordshire authorities, also received reports on both the emerging Plan and others. The meeting in September 2014 specifically considered the issue of Green Belt and the implications for minerals and waste planning. This would also have been a live issue in the delivery of housing across the County, including any unmet need arising from the city.
12. It therefore seems to me very unlikely that the district councils surrounding the city of Oxford would not have appreciated the implications for them of the waste strategy that was emerging. It would therefore be incorrect in my judgement to read the Council’s response that none of the district councils raised this as an issue (Document 11.2.13, page 36) as meaning that they had not turned their minds to it at all. Rather, I consider it to mean that having read the papers and heard the discussion they did not deem it necessary or appropriate to raise an objection on the grounds of the strategy implications. Whether or not they should have done is not a matter for this issue.

13. I therefore conclude that the implications of the waste strategy of the Plan would, at minimum, have been implicit in the papers before the meetings referred to and could have been discussed and challenged as necessary. That seems to me to be what is required for the Council to discharge its obligations under the DtC.
14. Overall I am therefore satisfied that where necessary the Council has engaged constructively, actively and on an on-going basis in the preparation of the Plan and that the DtC has therefore been met.

Assessment of Legal Compliance

Background

15. In its opening statement (Document H4) the Council explained how work began on the Plan in 2006. Consultation on the minerals and waste strategies to be followed took place in 2011 but were developed before that. The Plan was approved for submission at almost the same time as the NPPF was published. For reasons set out in the opening statement and in more detail in the report to Council on 9 July 2013 (Document 3.1a, Appendix 2) that Plan was then withdrawn.
16. Consultation then took place in February 2014 on a further Plan (Document 9.16) which the Council says was an evolution of the withdrawn 2012 Plan (Document 9.15). It proposed a single plan approach in line with NPPF paragraph 153 but did not include site specific allocations. However, the submitted Plan (Document 1.1) reverted to a two-plan approach. This Plan, Plan 1, contains both strategic and development management policies while Plan 2 will identify specific sites for both minerals and waste development to meet the provision set out in the text of submitted Plan 1 but not in the policies. The latest Minerals and Waste Development Scheme (MWDS) adopted in January 2016 (Document EX1a, see paragraph 17 for the link) envisages this being adopted in April 2019.
17. Several issues of legal compliance have been raised through the representations as a consequence of this sequence of events.

The two Plan approach

18. NPPF paragraph 153 says that each local planning authority should produce a local plan for its area (emphasis added). However, it also says that any additional development plan documents should only be used where clearly justified. Section 37(3) of the 2004 Act as amended defines a development plan document as a local development document which is specified as a development plan document in the local development scheme. The MWDS referred to above does name both Plans 1 and 2 as local development documents.
19. The NPPF is a material consideration to which great weight should be attributed in planning decisions. It expresses a clear preference for the local planning authority, in this case the mineral and waste planning authority, to prepare a single plan for the area of jurisdiction which, in this case, is the County. However, that policy preference has not been given expression in

statute. There is therefore no legal compliance issue raised by the Council’s decision to pursue a two Plan approach.

20. As a matter of policy compliance the Council is nevertheless required to give clear justification for the approach. This is set out in paragraphs 1.5 and 1.6 of the Plan and in more detail in Document M2/1. The implications of that are considered below where appropriate and will be in more detail in the report on the soundness of the Plan. They are not relevant however to legal compliance.

Compliance with the Statement of Community Involvement (SCI)

21. The SCI in place when all material work was being undertaken on the preparation of the Plan is that adopted in November 2006 (Document 8.3). In summary, its purpose is to set out the Council’s policy and the standards it will seek to achieve to ensure that there is meaningful and effective consultation with and involvement of stakeholders and other members of the community in, among other things, the ‘...preparation, alteration and review of the minerals and waste (local) development documents...’.
22. The case made principally by OXAGE is that the Council has failed to adhere to the SCI in the preparation of the 2014 LAA (Document 6.1). Since this is the LAA that underpins the amount of minerals for which the Plan needs to make provision, this is a serious failing in the view of OXAGE.
23. The Council has set out its position in this regard (Document M2/1, section 2). An argument can be made that the Council has not breached the letter of the SCI. However, that argument relies to a considerable degree on the imprecision of the language used within it and specifically its failure to identify who ‘key’ stakeholders are or how that term is to be interpreted.
24. The overriding message conveyed by the language of the SCI is nevertheless that the Council will go beyond its statutory requirements (Document 8.3, paragraph 4.3 for example). The same paragraph states that ‘...we will seek to involve all individuals, groups, organisations and bodies that we think have an interest in the minerals and waste development documents being prepared or who have expressed an interest in being involved or consulted’ (emphasis added).
25. First, there is no guidance within the SCI as to how the Council will determine which individuals, etc it thinks will have an interest. It is unclear therefore how the expectation raised will be delivered.
26. Second, OXAGE has expressed a clear interest and was involved in earlier LAAs.
27. Third, the LAA is a technical document the outcome of which is not influenced by policy options for the Plan it informs although it is influenced by national and other adopted and emerging local policy. Although not itself a local development document it is clearly critical to the preparation of one. There is no case to be made therefore that stakeholders and other members of the community should not be involved in its production under the terms of this SCI. In fairness, that is not the case made by the Council.

28. The question then becomes how wide should that involvement be? I can appreciate why the Council considers that involvement in its preparation should be restricted to those groups with particular information and expertise. However, OXAGE argues, in effect, that this skews the outcome and that the views of the local community could have been of assistance at that stage.
29. The effect, if any, on the LAA had OXAGE and others been involved in its preparation can be a matter of speculation only at this stage. However, the inconsistent application of the SCI in respect of successive LAAs has clearly caused frustration for some community groups such as OXAGE, if not a legitimate expectation that they would always be involved in the preparation of a LAA.
30. My conclusion therefore is that the spirit of the SCI, if not the letter as interpreted by the Council, has been broken with respect to the preparation of the 2014 LAA. Nevertheless, the outcome has been consulted upon at pre-submission stage and has been fully aired through written representation at that stage and at all subsequent stages of the examination. It was also the subject of a full day hearing session, the outcome of which is reported on in this document. I do not consider therefore that any material prejudice has been caused to any party or that any failure in this regard should be fatal to the Plan. Indeed, that conclusion was suggested to me by a number of participants including OXAGE.

SEA/SA

31. NPPF paragraph 182 sets out the tests of soundness to be applied when examining a local plan. The ‘positively prepared’ test says that the plan should be based on a strategy that seeks to meet the objectively assessed development and infrastructure requirements including those unmet requirements from neighbouring authorities where reasonable to do so and consistent with achieving sustainable development. There is nothing to suggest that this does not apply to minerals and waste local plans.
32. The sequence is therefore clear. A local planning authority will develop its vision and objectives. A spatial strategy for the delivery of the objectively assessed need in accordance with the vision and objectives should then be selected. The ‘justified’ test says that the plan should be the most appropriate strategy when considered against the reasonable alternatives, based on proportionate evidence. Included within that assessment will be whether the objectively assessed need can be delivered within those parameters.
33. Having considered the various representations made and judgements referred to, the Council accepted during the hearing sessions that the SEA/SA carried out was deficient. I concur with that assessment and this part of the interim report concentrates therefore on the main flaws that are evident and what needs to be done by way of correction.
34. The gist of the Council’s initial case that the SEA/SA met the legal tests was that while the essential elements of both the minerals and the waste spatial strategies were settled some considerable time ago during the preparation of the ultimately withdrawn 2012 Plan, nothing had changed to cause a different strategy to emerge. To that end, the Council produced two Topic Papers

explaining the development over time of the minerals (Document 11.2.1) and waste (Document 11.2.6) strategies, an SA report addendum (Document 11.2.10) and a second SA report addendum (Document M1/1, Appendix 1). Both addenda provide further summaries and clarifications of the way the strategies emerged. They do not provide further assessment and are not therefore ‘corrections’ of any previous deficiencies in the *Cogent Land*³ sense.

35. The SA report that accompanies the submitted Plan comprises the non-technical summary and five documents bound in a single volume (Documents 2.1 to 2.3d). The Council has been both prudent and correct to build upon the evidence collected for the SEA/SA of the withdrawn 2012 Plan in preparing that now submitted. However, in doing so, the SEA/SA relies upon and references all previous SEA/SA conclusions. These are set out in section 5 of Document 2.2 in summary form with web site links to the full documents. These are listed in section 9 of the documents list on the examination web site and number at least 18. On any reasonable analysis it is necessary to conduct a paper chase of the type criticised in *Heard*⁴ to understand how the strategies now being pursued might have emerged as the most appropriate from the reasonable alternatives.
36. In order to address the principles established by *Cogent Land* and *Heard* the Council will need to prepare what, technically, will be a further addendum to the SEA/SA to accompany the main modifications that will be required for soundness. Nevertheless, it should be a comprehensive document that considers the modified Plan as a whole. It should explain the reasonable alternatives that have been considered, the suggested alternatives that have been rejected as unreasonable (and why that was the case) and why the spatial strategies selected to guide minerals and waste development were considered to be the most appropriate.
37. Turning to the minerals strategy, it is a truism that minerals can only be worked where they are found; this inevitably constrains the alternative spatial strategies available. Part of the Council’s argument for continuing the spatial strategy that emerged and informed the withdrawn 2012 Plan is that the provision to be made has not changed. While this is correct for sharp sand and gravel (which is the issue that is of most concern to local communities), it is not true for soft sand and crushed rock. Even for sharp sand and gravel, the way the provision figure has been derived for the withdrawn 2012 Plan and this Plan is completely different.
38. The withdrawn 2012 Plan was prepared in the context of the South East Plan setting the apportionment of the nationally assessed regional guidelines for individual mineral planning authorities. As is clear from the withdrawn 2012 Plan the Council did not seek to provide for that apportionment either for sand and gravel or for crushed rock (Document 9.15, paragraphs 4.10 to 4.16). The implications of different apportionment options were assessed as part of the SEA/SA and Appendix 2 of Document 11.2.10 explains how the figures in the Plan were selected.

³ *Cogent Land LLP v Rochford District Council* [2012] EWHC 2542 Admin

⁴ *Heard v Broadland District Council* [2012] EWHC 344 Admin

39. The NPPF changed the approach to assessment of provision to one that is based upon the annual preparation of the LAA. I shall deal with the provision later in this interim report. However, for the purposes of this issue it should be noted that the quantitative departure from the rolling average of 10 year sales data is calculated on the basis that Oxfordshire will continue to make its historic contribution towards the aggregate needs of a wider area than the County. The Council itself poses the question as to whether future production should (Council’s emphasis) reflect past proportions of the national total and suggests this is for the local plan process to determine (Document M3/1, paragraph 6.2). There is no evidence that the SEA/SA process has considered this in respect of this Plan in the way that it did for the withdrawn 2012 Plan.
40. Turning now to the sharp sand and gravel spatial strategy itself, the three principles underpinning the withdrawn 2012 Plan were (Document 9.15, paragraph 4.19):
- That the rate and intensity of mineral working in west Oxfordshire should not increase, largely to meet the concerns of the local communities about the ‘cumulative’ impact of mineral working;
 - Distances from quarry to market should be as short as practicable; and
 - Working in the area to the south of Oxford should continue to enable local supplies of gravel for planned housing and economic growth in southern Oxfordshire.
41. The Plan now expresses this in what appears to be a subtly different way (Document 1.1, paragraphs 4.27 to 4.35). While the principles may not be different in practice, the Plan makes it clear that the consequence in spatial terms is ‘changing the balance of production capacity between the strategic resource areas in western Oxfordshire and southern Oxfordshire’. That change in the balance was not explicit in the withdrawn 2012 Plan. It goes on to say that any requirement for additional sites for sharp sand and gravel should be met primarily in the southern part of the County at least over the first half of the plan period (paragraph 4.30). The strategic resource areas that flow from this approach and that are shown on the key diagram are depicted in a less schematic way than those in the withdrawn 2012 Plan giving the impression that the areas are more extensive.
42. Two points arise from this that should be addressed in any future SEA/SA. First, it should be established whether or not there has been a subtle shift in emphasis. If there has, then it represents an alternative to that pursued in the withdrawn 2012 Plan and should be assessed as such.
43. Second, even if there has not and it is the same strategy that is now being pursued, the SEA/SA should determine if it is the most appropriate of the reasonable alternatives. In doing so, account should be taken of the housing, employment and other developments likely to come forward through adopted and emerging local plans to determine how the chosen strategic resource areas relate to them, especially as not all the resource areas that can be identified have been included in the strategy policy (policy M3). Account should also be taken of mineral planning permissions granted and other

changes in production capacity since the strategy was first settled to determine if and at what point in the plan period the change in the balance is likely to be delivered. A further point raised during the hearing sessions was that the quality of the resource in the southern part of the County is such that larger areas of land would need to be worked to achieve a mineral yield equivalent to that from the resource in the west. There is no evidence that the environmental implications have been assessed and, to the extent that the evidence to do so is available, it should be.

44. I turn now to the spatial strategy for the delivery of the required waste management capacity. In the main, the representations made in respect of this part of the Plan fall under the more general concerns described in the early paragraphs under this issue than specific criticisms of the strategy itself.
45. Nevertheless, it is clear from the summary sheets Parts A and B of the Document already referred to in connection with the minerals strategy (Document 11.2.10, Appendix 2) that the waste strategy has not changed since first being settled between August and September 2011. Part A reveals that no strategy options were considered for municipal solid waste (MSW) recycling but consideration was given to three for commercial and industrial (C+I) waste recycling; two for C+I waste residual treatment; and three for construction, demolition and excavation (CDE) waste recycling. While the SA identified positive effects in respect of the MSW option and one of the residual C+I waste treatment options, the SA made no recommendations as to which should be taken forward.
46. The withdrawn 2012 Plan set out the waste strategy in policy W5 and illustrated it on the waste key diagram. Part B notes that ‘little’ change was made to that approach in the 2014 consultation draft and a number of clarifications only were made in the pre-submission consultation version.
47. During the hearing sessions the Council indicated that it was minded to consider a revision of policies W1 to W6 as a response to the discussions held with SCP and the principles drafted (Document H10). At the time of writing those revised policies are not available. However, as policy W4 is the ‘strategy’ policy, it will need to emerge through SEA/SA as the most appropriate of the reasonable alternatives considered. As the previous alternatives were developed over five years ago, these will have to be identified afresh.

The Provision to be made for Waste and Minerals

Background

48. Although the Plan gives an indication of the provision to be made for waste management capacity and minerals in the supporting text, this is not included in policy. With respect to the provision to be made from recycled and secondary aggregate no indication of the required amounts are given in either policy or text.
49. National Planning Policy for Waste (NPPW) paragraph 3 requires waste planning authorities to prepare local plans that identify sufficient opportunities to meet the identified needs of their area for the management of waste

streams. Similarly, NPPF paragraph 145 requires mineral planning authorities to plan for a steady and adequate supply of aggregates by among other things making provision for the land-won and other elements of their LAA in their mineral plans. There are similar requirements in relation to industrial minerals (NPPF paragraph 146). NPPF paragraph 143 requires that, so far as practicable, account should be taken of the contribution that substitute or secondary and recycled materials and mineral waste would make to the supply of minerals, before considering the extraction of primary materials whilst aiming to source mineral supplies indigenously.

50. Given what is a clear policy steer the consensus view from the hearing session discussion on this point was that the Plan would not be consistent with national policy if policies M1, M2, W1 and W3 failed to include the numerical provision to be met if that figure, or a range, could be determined from the best available evidence. As set out above, knowing the objectively assessed need and the provision to be made in the Plan if different is a pre-requisite of undertaking an iterative SEA/SA of the strategy options.
51. I shall consider the waste management issues first since a view about the provision that could be made from recycled and secondary aggregate is an important input into the LAA.

Provision for waste management

Policy

52. NPPW paragraph 2 requires that the planned provision of new capacity and its spatial distribution is based on robust analysis of best available data and information and an appraisal of options. It cautions that spurious accuracy should be avoided. It also requires that in doing so it is data and information on waste arisings that is collected and assessed (emphasis added).
53. Two outcomes are therefore required; an understanding of the tonnage of waste in each of the principal waste streams that needs to be managed and the additional waste capacity that needs to be provided (emphasis added). Respectively, policies W1 and W3 should provide these amounts if possible. The figure that is included in policy W1 for CDE waste to be managed is directly relevant to that to be included in policy M1.

The evidence

54. The Council has commissioned a number of reports to establish these figures.
55. In February 2014 a review of the waste needs assessment that underpinned the withdrawn 2012 Plan was carried out by consultants, BPP Consulting (Document 6.4). It concluded that there were a number of weaknesses in the data and recommended further action be taken to remedy the shortcomings. These were commissioned and reported on in the suite of Documents 6.4a to 6.4e. For each of the principal waste streams baseline (2012) and forecast (2031) estimates of waste arisings were given. These are shown in tonnes in the table below:

Table 1

	2012	2031
MSW	<i>315,000</i>	<i>322,000</i>
C+I	<i>710,000</i>	<i>773,000</i>
CDE	<i>1,360,000</i>	<i>2,100,000</i>

56. This work was built upon in the Waste Needs Assessment (Document 6.3) and is reflected in Table 4 of the Plan. Only the C+I figures were carried forward from the consultants’ work, the figures for the other two waste streams being assessed by the Council. The table below shows those figures for the base year (2012) and the end of the Plan period (2031) only. As can be seen, there is a considerable reduction in the estimates for CDE waste arisings even at the top-end of the range when compared with the consultants’ estimates.

Table 2

	2012	2031
MSW	<i>300,000</i>	<i>376,000</i>
C+I	<i>710,000</i>	<i>773,000</i>
CDE	<i>1,005,000/932,000</i>	<i>1,483,000/1,379,000</i>

57. The ‘capacity gap’ (shortfall) estimated by the Council and shown in Table 7 of the Plan amounts to a capacity requirement for non-hazardous waste recycling of 316,000 tonnes and for inert waste recycling of 120,400 tonnes.
58. In January 2016 BPP Consulting were asked to review the baseline, forecasts and targets for the C+I and CDE waste streams in the light of new policy measures, data available from the 2014 Waste Data Interrogator and the emergence of new methodologies for estimating arisings for these two waste streams at national level. The conclusions were presented in one of the Topic Papers (the April 2016 Supplement to Waste Needs Assessment, Document 11.2.7) and one example of the new national methodologies is set out in Document M5/1a. This moves from an assessment of waste at the point of production to an ‘as managed’ approach. The consultants were asked to provide baseline estimates on this basis. The table below sets out the conclusions for the two waste streams in tonnes.

Table 3

	2014	2031
C+I	533,500	553,000/605,000
CDE	1,033,500	1,030,000*

*this figure is taken from Document M9/1, page 17 as it does not appear explicitly in Document 11.2.7

59. The capacity shortfall(-)/surplus(+) indicated by these revised estimates at 2031 are: non-hazardous waste recycling = -337,100 tonnes; composting/food waste treatment = +53,900 tonnes; non-hazardous residual waste treatment = +60,400 tonnes; and inert waste recycling = +127,800 tonnes. That would mean that further provision would need to be made in Plan 2 only for non-hazardous waste recycling facilities.
60. The evidence base for the waste section of the Plan has been materially challenged only by SCP who acts for four companies who I understand to be active in the local waste management market with a particular interest in the production and supply of recycled aggregates from the CDE waste stream. The initial representations to the pre-submission Plan focused on this waste stream (Documents 4.1, references 113 to 116). However, following publication of Document 11.2.7 the scope of the concern widened to include comment on the evidence base underpinning the C+I waste stream assessment (see representation 113ac within Document 4.3).
61. The nature of the issues raised and pre-hearing session agreements reached is set out in the Statement of Common Ground between the Council and SCP (Document H2). Of relevance to the issue that this interim report is addressing there was agreement:
- That a minimum target figure should be included in policy M1 and that it should be 0.926 million tonnes per annum (mtpa);
 - That the targets for CDE waste recycling in policy W2 should be increased for 2026 and 2031 to 65% and 70% respectively with consequential changes to the Plan;
 - That a contingency capacity should be included in policy to acknowledge that sites do not operate at full capacity;
 - That there should be consistency between waste streams to ensure the correct capacity is attributed to the correct waste stream; and
 - That errors in capacity calculations should be corrected.
62. There was however no agreement on:
- Whether the agreed target figure to be included in policy M1 should be production or capacity provision;
 - The baseline C+I and CDE waste stream figures;

- What the contingency capacity should be and how it should be reflected in policy;
 - How the capacity attribution agreed to be necessary should be carried out in practice; or
 - The growth rate to be used for the CDE waste stream over the Plan period.
63. Discussion between the parties took place over a number of days during the hearing sessions but outside the hearing sessions themselves. The relevant additional documents produced are H16 and H18.
64. Document H16 was produced by SCP. It takes the 2014 review baseline and forecast figures as the starting point (see Table 1 above). It then applies the SCP view of some of the matters in dispute and concludes that there would be a theoretical capacity gap at 2031 of: non-hazardous waste recycling = 643,000 tonnes; non-hazardous residual waste treatment = 92,300 tonnes; and inert waste recycling = 606,500 tonnes. In producing these estimates no account is taken of the ‘contingency capacity’; if it was, the shortfalls would be greater. These figures are arisings.
65. In Document H18 the Council produces its estimates which use the 2016 review data (Document 11.2.7) and are therefore equivalent to Table 3 above. The figures are ‘as managed’ and not therefore directly comparable to those given by SCP in Document H16. The baseline year is moved forward to 2016 and thus the C+I baseline figure of 542,000 tonnes is not directly comparable. Nevertheless, the 2031 forecast figure of 582,500 tonnes is within the range given for that year in Table 3. The current and projected ‘arisings’ for CDE waste remains at 1,033,500 tonnes for both the base year and the forecast year since the Council now applies the national no-growth assumption for this waste stream.
66. This ultimately works through to a capacity shortfall for which the Plan needs to make provision of: non-hazardous waste recycling (MSW, C+I, CDE) = 337,100 tonnes; and CDE inert waste recycling = 75,500 tonnes. This Document also gives an indicative number of facilities that may be required. It does include a 15% contingency capacity to account for the fact that CDE inert waste recycling sites do not always operate to full capacity.

Appraisal - MSW

67. There has been no challenge to the MSW figures in the Plan and there is no evidence before me to suggest that the figures in Plan Table 5 should not be included in policy W1 in a manner similar to that set out by the Council on pages 16 and 17 of Document M9/1.

Appraisal - C+I waste

68. The principal difficulty here is that, while national policy requires that waste planning is evidence-based, data on C+I waste arisings is no longer collected. For its own purposes government commissioned consultants (Jacobs) to devise a new and repeatable method for estimating C+I waste arisings from existing

data sources without the need to undertake extensive surveys of the C+I sector (Document M5/1a, Introduction). Jacobs set out the limitations of the survey method which include coverage, response rates, consistency with other data sets, cost and repeatability. The same consultants nevertheless produced the last national and regional estimates of C+I waste arisings in 2009 by such surveys.

69. That and other survey data were used by BPP Consulting to generate the baseline figure of 710,000 tonnes in Table 1 above. The methodology is set out in Document 6.4c. In essence, it involves applying waste produced by different business types to the business profile of the Plan area. Much of the survey data used was collected during the first year of the deep recession after 2007/8. It can be seen from Table 2 in Document 6.4c that compared with other estimates for Oxfordshire using different methods the BPP Consulting figure is somewhat of a high outlier.
70. The method used in the Topic Paper seeks to apply at the County level the ‘as managed’ method developed by Jacobs. It is not clear if it is transferrable to that spatial level. It is not clear either whether it can be characterised as representing the latest government advice as suggested by the Council (Document M5/1, paragraph A1.7) since it is not referred to in the PPG, even though that post-dates the report publication.
71. Furthermore, the method does give a baseline figure some 25% lower than that derived from the ‘as produced’ method. BPP Consulting argues that this is to be expected and that a similar reduction can, in fact, be observed at national level (Document 11.2.7, page 9).
72. The capacity gap to be planned for, which is, after all, the main purpose of the process, is the product of many different assumptions such as growth rates, existing capacity and the like. However, notwithstanding the different approaches to the calculation of the baseline estimates, there is a certain consistency to the Council’s figure for the capacity gap. That figure is in the order of 340,000 tonnes with Document H18 indicating that this could be met through the identification of a total of seven facilities of 50,000 tpa capacity over the Plan period. Even allowing for the poor correlation between facility capacity and site size this would nevertheless provide a context for Plan 2.
73. I recognise that SCP do not agree with these figures and that those in Document H16 suggest a much higher capacity gap at each milestone year during the Plan period. This is largely a result of different assumptions that have been made rather than differences in the data used. The Council’s method does have the advantage of being repeatable and thus capable of being monitored annually. The monitoring framework was one of the matters discussed during the hearing sessions and the Council will bring forward modifications to address some deficiencies that have been identified.
74. On balance therefore I consider that if numbers for C+I waste are to be included in policy W1, they should be those shown in Document M9/1, page 17 for this waste stream.

Appraisal – CDE waste

75. The PPG states that when forecasting future arisings for this waste stream waste planning authorities should start from the basis that net arisings will remain constant over time as there is likely to be a reduced evidence base on which forward projections can be made⁵. It then lists a number of factors and potential information sources that may be relevant, all of which have been considered and used as deemed appropriate by BPP Consulting in preparing Document 11.2.7.
76. The Council’s estimate of baseline arisings has varied considerably over time. Those for forecast arisings at the end of the Plan period have ranged between 2,100,000 tonnes in the 2014 consultation draft Plan (see Table 1 above) and 1,033,500 tonnes now (see Table 3 above and Document H18); that represents a halving of the amount. Growth rates assumed also differ between some annual growth up to and including the submission of the Plan (see Table 2 above) to zero growth now (see Table 3 above and Document H18). While the reasons for each of these variations are explained in the evidence base, most are not related to new and better data coming forward. Rather they are responses, sometimes at national level, to what is a dearth of reliable data.
77. When translated into capacity required the implications are stark. Even on the Council’s figures this varies between a surplus of some 127,800 tonnes at 2031 following preparation of the Topic Paper 11.2.7 (see Document M9/1, page 24) and a shortfall of 120,400 tonnes in Table 7 of the submitted Plan. If the analysis by SCP is correct the equivalent shortfall would rise to over 600,000 tonnes (Document H16). The Council’s latest estimate of the shortfall is some 75,500 tonnes (Document H18).
78. I have no reason to doubt that the best available data and information has been used or that the analysis of it has been robust notwithstanding that some of the assumptions made could be challenged. However, given outcomes as divergent as those set out above, which result purely from the methodologies used and assumptions made, I do not consider it appropriate to include figures for this waste stream in policy W1.
79. This outcome was discussed at length during the hearing sessions. The Council confirmed that its policy intention was to encourage the production of recycled aggregates from the CDE waste stream and to look positively at providing additional facilities both through Plan 2 allocations and through development management. To that end it did not see any figures being interpreted as a cap.
80. SCP perception and experience of the development management process in the County was different. SCP recognise that it will be difficult to show compliance with some of the development management policies in the Plan, particularly policy C8 (Landscape), for some recycling schemes. A ‘need’ figure is therefore to be preferred in order that contribution towards it may be a material consideration to weigh in the s38(6) balance. In the absence of a

⁵ ID: 28-033-20141016

figure some indication in policy that great weight would be given to the benefits of additional capacity provision would be necessary.

81. To that end Document H10 was submitted by SCP setting out seven principles to guide the further policy modifications to be made by the Council. Further Documents (H17, H17a and H17aa) were submitted by SCP with suggested policy wording. It became clear during the discussion of Document M9/1b during the final hearing session that SCP did not consider what was believed by SCP to be an agreement had been honoured in the redrafting of some of those policies, particularly M1. However, it will be necessary to consider the changes proposed as a whole and, of course, further comments may be made when the main modifications are published for consultation. I will nevertheless give some guidance later which may assist the Council in its consideration of the policy M1 wording and indeed others.
82. For all these reasons therefore, I do not consider that it would be appropriate to include a figure for this waste stream in policy W1. For the purposes of strategy consideration and SEA/SA the Council will nevertheless need to consider how to bring forward what on its own evidence would be effectively an unconstrained number of sites (see principle 5 in Document H10).
83. That leaves policy M1 which encourages the production and supply of recycled and secondary aggregates in preference to primary aggregates. SCP and the Council have already agreed that the figure should be 926,000 tpa and that this figure should be a minimum, not a ceiling (Document H2). The issue between them is whether this figure should represent a minimum target for production of these products or a capacity provision.
84. SCP argues that it should be production. While capacity may exist and be provided, if it is not fully utilised and/or not used to maximise the recovery of aggregates from the waste stream though the use of, for example, wash plants, the aim of the Plan to use these materials in preference to land-won aggregates would be frustrated.
85. While I appreciate the point, it presupposes that the figure would be interpreted as a ceiling with proposals being refused once that capacity had been provided. The Council has consistently said that is not the intention although the detailed policy wording put forward will need to be studied. It will also depend to a considerable extent on the number of sites for such uses that are identified in Plan 2. NPPW paragraph 7 is clear that applicants are only expected to demonstrate a quantitative or market need where proposals are not in accord with an up-to-date local plan. It continues that where this (ie. the demonstration of a quantitative/market need) would be the case, local planning authorities should consider the extent to which the capacity of existing operational facilities would meet any identified need.
86. Having regard to Document H10, principle 6 would be delivered since any site where there would be adverse effects of the type stated should not be proposed as, and would not be confirmed as, an allocation in Plan 2. Principle 6 does not therefore need to be given policy expression. Once sites are allocated, principle 2 goes beyond national policy as set out in NPPW paragraph 7. The Council will nevertheless have to consider what happens in the interim as it has in the various iterations of submitted policy M5. The

Council will need to consider also principle 4. The courts have generally held that ‘weight’ is a matter for the decision taker on the facts. I note that it is only in respect of development in Green Belt where the ‘weight’ to be given is set out in policy. Finally, with regard to principle 7 the Council may wish to discuss this again with statutory consultees such as Natural England and Historic England to ensure that policy wording requiring unqualified ‘harm’ to lead to a refusal of planning permission would be consistent with national policy.

Conclusion

87. For the above reasons I conclude that:

- The figure of ‘at least’ or ‘a minimum of’ 926,000 tonnes per annum should be incorporated in the revision of policy M1;
- The figures shown for MSW and C+I waste in the table within policy W1 on page 17 of Document M9/1 should be included in the revision of that policy; and
- No figures should be shown in the revision of policy W1 for the CDE waste stream.

88. The Council will need to consider how it should present in policy W3 the capacity requirements implied once it has determined the waste strategy to be followed and how required capacity will influence site allocation in Plan 2 in any event. It will also be important to keep the C+I waste figure in particular under review; a repeatable methodology is thus important.

Provision for minerals

Background

89. Although there is a range of minerals present in the County it is the working of aggregates, and of sharp sand and gravel in particular, that is contentious. National planning policy requires mineral planning authorities to plan for a steady and adequate supply of aggregates (NPPF paragraph 145). This Plan therefore needs to determine the provision to be made over the Plan period as a whole.

90. The demand for aggregates is determined through the LAA. The provision to be made is therefore the annual requirement in the base year LAA multiplied by the years in the Plan period; 18 in this case. The base year LAA is that prepared in November 2014 (Document 6.1). This is the first post-NPPF LAA to be issued by the Council. While it reviews and updates previous versions I do not consider them relevant since they do not directly inform this Plan. As explained in the Interim Update (Document 6.2, paragraph 1.2) production of the 2015 LAA has been held up by the delay in the DCLG Aggregate Minerals Survey 2014 for England and Wales. Material of relevance was published by SEEAWP just before the hearing sessions opened (Document H3).

91. The sites to be identified, if any, in Plan 2 will be determined by the balance of the whole-period provision that still needs to be met at the date of its submission for examination. As indicated in Table 2 of the Plan and the

update of that Table in Document M9/1a, this will vary over time as permitted reserves alter through depletion (sales/production); revisions to estimated reserves are made by operators; new planning permissions are granted; and so on. The Council’s current intention is that Plan 2 will simply address the site allocations necessary to meet the needs identified in this Plan. This is a valid approach consistent with the *Oxted* judgement⁶. If subsequent LAAs show that provision to be seriously over or under estimated, that may lead to a review of the Plan. The monitoring framework to be modified by the Council will explain the triggers for such a review.

92. NPPF paragraph 145, bullet 1 states that the LAA must be based on a rolling average of 10 years’ sales data and other relevant local information. The PPG is even clearer⁷. Posing the question ‘Can mineral planning authorities prepare a LAA solely on the basis of a 10 year average supply?’ it says ‘LAAs must also consider other relevant local information in addition to the 10 year rolling supply, which seeks to look ahead at possible future demand, rather than rely solely on past sales.’ While some participants commended the simplicity of the rolling average, using that in isolation would clearly be contrary to national policy and guidance.
93. Those contending that ‘other relevant local information’ needs to be exceptional or unique to the area rather than a local expression of a national event such as the 2007/8 recession were unable to identify anything in national policy or guidance to support that interpretation.
94. In examining the 2014 LAA it is appropriate to consider whether or not the assumptions made were reasonable at that time. Later and more up-to-date evidence is now available in respect of some of those assumptions. This may help to inform that consideration.

The structure of the LAA

95. In the Introduction the LAA accurately reports NPPF paragraph 145 and references each of the relevant PPG paragraphs on the preparation of an LAA. Chapters 2 and 3 are factual information about respectively the geology of the County and past supplies of aggregates. These are not in contention although their use in later interpretation is. Chapter 4 is the key section. The PPG does not give an exhaustive list of other relevant local information to be taken into account. Chapter 4 therefore sets out the factors affecting supply and demand and gives a view on whether each would justify a departure from the rolling 10 year average. Where the view is taken that a departure would be justified, the direction is stated and, where possible, quantified. Chapter 5 sets out the future provision that should be made and Chapter 6 contains conclusions.
96. In my judgement the LAA has been prepared in accordance with national policy and guidance. There was a consensus that each of the factors considered in Chapter 4 were appropriate although there was no consensus about the conclusions drawn for some. One additional factor, production

⁶ *Oxted Residential Ltd v Tandridge District Council* [2016] EWCA Civ 414

⁷ ID: 27-064-20140306

capacity, was suggested but after discussion the view was taken that this is a matter more relevant to the calculation of the landbank; I agree.

97. There was a further consensus view that while the LAA would be influenced by a whole range of macro level national policy (including economic policy and planning policy such as protection of nationally important landscapes) it should not be influenced by the County’s mineral spatial planning policy going forward; I agree with that too [see also 27].
98. I now turn therefore to consider Chapter 4 and the conclusions drawn on each ‘other relevant local information’ factor listed dealing first with ‘supply’ factors and then ‘demand’.

Supply - Continued availability of primary land-based resources and reserves

99. There was no disagreement that the County has abundant natural resources of land-based primary aggregates including both sand and gravel and crushed rock. Nor was it disputed that in the context of other areas in the south east these resources were largely unconstrained by environmental and other factors. The accessibility of some of the resource areas to areas of demand and the restrictions imposed upon transport from one to the other by the need to cross the River Thames is an issue for the SEA/SA in my judgement.
100. The conclusion (Document 6.1, paragraph 4.18) that this factor does not justify any departure from the historical sales average is therefore founded on robust evidence.

Supply - Ongoing availability of secondary and recycled materials

101. This is a supply factor that is difficult to judge. As explained previously, it is not possible to arrive at a robust view of the amount of source material that will be available. Self-evidently that will be influenced by development activity in the County and its immediate surroundings. The more development that takes place the more source material is likely to be available. Equally however, there will probably be a matching rise in the demand for aggregates too. The underlying assumption in the LAA that the proportionate contribution from these materials would remain consistent is not therefore inherently unreasonable.
102. Nevertheless, the argument was made that improvements in production techniques through, for example, the greater use of wash plant technology, could increase significantly the amount of aggregates recovered from this source.
103. This was challenged on several counts. First, it was argued that the fraction of the material from which aggregates could be recovered was considerably less than 100%. Second, there were serious concerns about the quality of the aggregates that were produced and their ability to substitute for land-won aggregates in certain applications. In that respect the limitations of the particle size distribution certificates and the very brief extract taken from what was identified during the hearing session as a very lengthy report (not provided in evidence) submitted in the pre-submission representations (Document 4.1, 113, Appendix 7) were identified. In particular, the use of

such recycled aggregates in load bearing products was challenged in discussion without rebuttal.

104. The argument for availability of secondary materials was essentially that there was an enthusiasm to transport large quantities by rail from Cornwall and other sources. There was no evidence that any contracts were in place and the marginal costs of doing so were challenged.
105. My view on the evidence presented is that the conclusion that there is no justification for departure from the historical sales average (Document 6.1, paragraph 4.24) was reasonable at the date when the LAA was prepared. This is however a factor that needs to be kept under annual review rather than adjusting the figure now on the basis that stated local plan policy of encouragement for the production of aggregates from these materials. Whether proportionately more aggregates will be delivered from existing and forthcoming permitted facilities will need to be monitored.

Supply - Commercial decisions by operators

106. This proved to be the most contentious of the ‘other relevant local information’ factors since it is the one that gives rise to a departure from the historic sales average which is then quantified (Document 6.1, paragraph 4.31). I agree that the conclusion is justified but shall return to a consideration of the quantitative adjustment made later.
107. There is a mix of documentary and anecdotal evidence to support the LAA conclusion. Although the precise reasons for the Council’s contention that production was reduced or suspended at three quarries (Document 6.1, paragraph 3.10) were disputed, the quarry operator confirmed the position in respect of one and explained how material was imported from other company quarries in Gloucestershire and Somerset (Document H9). There is some indicative corroboration to be found in Document M3/1, Appendix A which shows significant aggregate imports in 2009 from Gloucestershire, the West of England (mostly South Gloucestershire) and Somerset. However, the subsequent decline in 2014 is inconsistent. Anecdotally this was explained by crushed rock substituting for sand and gravel in certain applications.
108. PPG advice is that average sales over the past three years should also be looked at to identify the general trend of demand as part of the consideration as to whether it might be appropriate to increase supply⁸. Over the period 2012 to 2014 sales of soft sand and crushed rock rose steadily while the rising trend in sales of sharp sand and gravel from 2010 was interrupted only by a fall in 2013 (Document 6.2, Table 2). Document H3 moves this on for 2015 which shows a slight decline in crushed rock sales but a (slight) continuation of the rising trend in soft sand sales and a marked uplift in sharp sand and gravel sales. This is shown graphically (for example Documents M3/1 Figure 7.1 and M3/5, page 3) where the increase in sales for all three aggregate types compared with the recession years is marked.

⁸ ID: 27-064-20140306

109. The conclusion drawn by the Council is that this is evidence that, with the general uplift in demand as the economy recovers, companies have switched production back to Oxfordshire by taking quarries out of mothball. This is consistent with the quarry operator’s advice in 2012 that mothballing would be temporary only (Document H9) and confirmation that Table 2.1 in the LAA (Document 6.1) was accurate with respect to activity, or lack of it, at the company’s Oxfordshire quarries (Document H13). Furthermore, confirmation was given that mineral from beneath the plant site at Cassington quarry would be extracted ‘very soon’.
110. Taken in the round, I consider this is compelling evidence that the rolling 10 year sales average at 2014 was depressed as a result of the commercial decisions taken by one operator to switch production away from Oxfordshire and to supply markets from other quarries. The conclusion of the LAA to adjust the rolling 10 year average for this reason is therefore justified. Moreover, the subsequent two years’ sales data reinforces the reasonableness of that conclusion.

Supply - Overall trends in supply compared with apportionments

111. This factor seeks to consider the extent to which the County has kept pace with its apportionment in the South East Plan. It also acknowledges the requirement in both policy and guidance to take account of published National and Sub National Guidelines on future provision. However, since these do not go beyond 2020 and date from 2009 little weight should be given to them now.
112. It finds that past sales in the County have fallen well below the apportionments set in the South East Plan. However, the reasons for that have already been identified and adjusted for under the previous factor. To do so again risks an element of double counting.
113. Furthermore, Oxfordshire’s consistent position that the sub regional apportionments for both sand and gravel and crushed rock have been too high is recognised. As set out above [38], the Council did not accept the sub-regional apportionments as a basis for aggregate planning in the County. That was never tested through examination. However, as SEEAWP confirms in what it describes as the ‘bottom up’ process put in place by the NPPF, it is for SEEAWP and ultimately the National Aggregate Coordinating Group to consider whether, collectively, mineral planning authorities are maintaining a steady and adequate supply of aggregate to meet the national need, whatever that may be at any point in time (Document H3, paragraph 2.3).
114. The conclusion (Document 6.1, paragraph 4.35) may be reasonable but, in my judgement, it is not one that can be made by a mineral planning authority in isolation. Rather it is something for the relevant Aggregates Working Party and/or the National Aggregate Coordinating Group to consider in the context of all LAAs regionally and/or nationally. I therefore disagree that this is a factor justifying a departure from the historical sales average.

Demand – Economic growth

115. To some extent, this factor is one of the drivers for commercial operators deciding to increase production from Oxfordshire quarries. The assessment was made on the basis of actual GDP outturns over the period 2004 to 2013 (Document 6.1, Table 4.3) and the Office for Budget Responsibility forecasts in March 2014 for the period 2014 to 2018 (Document 6.1, Table 4.4).
116. While it might be reasonable to question those forecasts now in the light of, among other things, the outcome of the referendum on continued membership of the European Union, the conclusion at the time that there would be a justification for departing from the historical sales average for the reasons set out (Document 6.1, paragraph 4.41) was not unreasonable.

Demand – Population growth and house construction

117. It is common sense as well as consistent with PPG advice⁹ to consider planned growth in population and housing over the Plan period. The first is indirectly associated with demand for aggregates, the second directly so and accounting for about 35% of all aggregate sales (Document 6.1, paragraph 50). Oxfordshire is an area likely to experience considerable growth with potential housing construction well above recent rates. Whether this would be deliverable is a matter for the local planning process in each Oxfordshire local planning authority to determine.
118. I acknowledge the argument that such levels may never be delivered. Nevertheless, some increase appears likely and the amount and the implications of that figure seem to me matters more appropriate for the annual review of the LAA.
119. The LAA concludes that there is qualified justification for a departure from the historic sales average (Document 6.1, paragraph 4.46). On balance I agree although care needs to be taken in any future quantification of that departure not to double count the effect of operators’ commercial decisions which may reflect that upturn.

Demand – Major infrastructure projects/key development

120. There is some evidence that the major employment growth and the associated infrastructure provision planned for the area will generate a future demand for aggregates. The conclusion drawn (Document 6.1, paragraph 4.56) is similar to that for the previous factor and my conclusion in respect of it is the same.

Import and export factors

121. The view of the Council, which did not seem to be disputed on any evidential basis as opposed to inference, is that the economics of importing marine dredged sand and gravel to the County are such that it is unlikely to materially displace land-won aggregates.

⁹ ID: 27-064-20140306

122. Assumptions about the continuation of rail and other imports of primary and secondary materials were considered by participants to be reasonable at the date when the LAA was prepared. While road imports from Gloucestershire would now have been affected by the depletion of the reserves at the Fairford quarry (Document H13), the Council agreed that high levels of rail imported crushed rock from Somerset had been maintained (Document M3/1, Appendix A).
123. Therefore, while the conclusion that a departure from the historic sales average on this factor would be justified (Document 6.1, paragraph 4.60) may have been reasonable at the date of preparation, subsequent events would suggest that the conclusion now might be ‘no’.

Conclusion – is a departure from the historic sales average justified?

124. On the supply factors the LAA concluded that a departure would be justified by two and would not be, also by two. My conclusion is that one ‘yes’ was not reasonable at the time and that, in the light of information available now, one ‘no’ should be kept under close review. However, the other two remain reasonable assumptions to have been made, especially that which has led to the quantitative adjustment.
125. The LAA concluded that all four of the demand factors would justify a departure from the historic sales average. I have concluded that none was an unreasonable conclusion at the time but that each looks less clear cut in the light of subsequent events and information. However, none were used to make a quantitative adjustment which I consider the correct outcome.

Is the quantitative adjustment robust?

126. The evidence is that, certainly within the SEEAWP area, no other mineral planning authority’s LAA has departed from the historic sales average when assessing demand. For that reason it was confirmed by a number of participants that SEEAWP had scrutinised this LAA very carefully and concluded it was robust. As it is national policy that the advice of the Aggregate Working Party must be taken into account in the preparation of the LAA (Framework paragraph 145, bullet 2) I attribute significant weight to that endorsement.
127. There is no particular methodology for adjusting the rolling 10 year sales average where this is considered to be justified. The method used by the Council cannot therefore be criticised as being inconsistent with any national policy or guidance. Nevertheless, it needs to be a coherent and robust method.
128. It is in fact quite simple. The Council has recognised the role that Oxfordshire has played in meeting the aggregate needs of an area wider than the County. Since there is no resource constraint reason why this should not continue [99 to 100] it has assumed that sales should reflect the County’s pre-recession contribution to the England requirement.
129. Table 4.1 in Document 6.1 shows for sharp sand and gravel a very marked reduction in the Oxfordshire percentage of England sales from 2008. Table

4.2 shows the equivalent figures for crushed rock. The fall is much less marked. This is suggested to be because sand and gravel is more capable of being substituted by crushed rock for most end use applications and was therefore more affected by the commercial decisions taken by one operator in particular (Document 6.1, paragraph 5.5). There is some tentative support for this view in the tripling from 2009 to 2014 of crushed rock imports to the County from Somerset where the same operator has a rail-linked hard rock quarry.

130. The method therefore calculates the average pre-recession annual contribution to the England total and applies that to the 2014 10 year average. The same method is applied to crushed rock but not soft sand for which the same effect on sales was not evident; the explanation being that it is more difficult to substitute by other materials for end use applications.

131. Some participants suggested an alternative approach of attributing the sales that would have come from those quarries that were mothballed back into the notional sales figures for the ‘closure’ years and calculating the future demand on that basis. There are well established rules on commercial confidentiality that give rise to difficulties in deriving such data. Nevertheless, an industry participant made an estimate during the hearing session and concluded that for sharp sand and gravel the outcome in 2014 would have been almost the same. There was little chance to challenge that calculation. While clearly material, I therefore attribute limited weight to it.

Overall conclusion

132. I therefore conclude that the finding of the LAA is soundly based on the best available evidence at the time and is therefore robust. Provision for the plan period should therefore be made in policy M2 as follows:

- Sharp sand and gravel 1.015 mtpa giving a total provision requirement of 18.27 million tonnes (Document 6.1, paragraph 5.11)
- Soft sand 0.189 mtpa giving a total provision requirement of 3.402 million tonnes (Document 6.1, paragraph 5.14)
- Crushed rock 0.584 mtpa giving a total provision requirement of 10.512 million tonnes (Document 6.1, paragraph 5.17)

133. How that objectively assessed need can or should be delivered is not a matter for the LAA. It will need to be assessed by the Council as it considers the strategy to deliver those provision requirements and undertakes SEA/SA of the Plan to be modified as a whole.

Next steps

134. The Council will now need to bring forward its suggested main modifications to give effect to the conclusions that I have reached in this interim report. This will require a considerable amount of work including a review of the strategies for the delivery of the minerals and waste visions and objectives and revised wording of the key strategy policies. In this regard, the Council will need to consider the national policy that the contribution of recycled and secondary

materials be taken into account, so far as practicable, before the extraction of primary materials is considered when redrafting policy M1 and the waste policies. The Council was clear in evidence that this was its policy intention, as was its confirmation that it would not seek to constrain or cap production of recycled or secondary materials through the development management function. To a large degree the discussion, or more accurately the non-discussion, of waste data was based on what those taking part had assumed was an agreement to this effect (Document H10). Subject to my observations on them [86] the Council will wish to reflect those principles in policy wording.

135. The whole Plan incorporating the main modifications that the Council wishes to put forward in response to my interim findings, the discussions at the hearing sessions and the various written representations that have been made will then need to be subject to SEA/SA. It would assist all with an interest in the Plan if the Council could set out not later than the end of October a staged time table for the preparation and publication of this work. I will wish to see the Council’s suggested main modifications and the SEA/SA before they are published for consultation or before the necessary cabinet/member approval to do so is sought.

136. The Programme Officer will keep all parties informed via the examination web site and direct contact as appropriate.

Brian Cook

Inspector