

**DERBYSHIRE COUNTY COUNCIL**

**MEETING OF CABINET MEMBER – JOBS, ECONOMY AND  
TRANSPORT**

**30 July 2013**

Report of the Acting Strategic Director – Environmental Services

**THE DERBY AND DERBYSHIRE JOINT WASTE PLAN**

(1) **Purpose of the Report** To update the Cabinet Member on the preparation of the Statutory Waste Plan and seek authorisation to continue the next stages of community engagement as part of its development.

(2) **Information and Analysis**

**Context**

Decisions on planning applications to develop waste sites and businesses are a major public facing role of the County Council. New waste infrastructure proposals are strategically and economically important, but controversial.

The planning system enables development to be proactively steered via a local plan, which can set out priorities over location, type and design of development. The Plan is a means of balancing positive growth agendas with community aspiration and environmental protection.

**Background**

The County Council, as a Waste Planning Authority, is required by the National Planning Policy Framework 2012 (NPPF) to produce a Waste Plan. Comprehensive coverage of all English local planning authorities by waste plans is also a requirement of the European Waste Framework Directive. The last three years have seen the significant reform of the planning system with changes affecting plan making. The Localism Act 2011 includes measures aimed at community empowerment in plan making and the abolition of the Regional Spatial Strategy for the East Midlands (RSS).

The County Council is acting as lead partner with Derby City Council to prepare a Joint Waste Plan covering the period to 2030. This will replace the existing Derby and Derbyshire Waste Joint Local Plan which was adopted in 2005.

## **The Waste Plan – Function and Content**

The Plan has a key role to play in providing sufficient opportunities for new investment to facilitate more sustainable waste management, including reducing waste and maximising recycling. Large numbers of new facilities will be required of the right type, in the right place and in ways that support strategic growth, regeneration and jobs in Derbyshire.

It is important that Derbyshire has an up to date Plan as otherwise, decisions will be made on National guidelines alone. The Waste Plan will deal with all waste streams and will have the following basic scope:

- A **Vision** will set out what local waste management will be like in 2030 and define the direction and content of the Waste Plan.
- **Objectives** will set out actions needed to make the Vision a reality.
- A **Spatial Strategy** and **Policies** to deliver the Vision and Objectives.
- **Locations and Sites** will be identified where there are opportunities for waste development to come forward during the Waste Plan period and arrangements for how this will be **Monitored**.
- Detailed **Development Management Policies** to address impacts.

When it is adopted, the Waste Plan will provide the main policy guidance for assessing applications for all waste management proposals. The main stages in the preparation of a Waste Plan are set out in Appendix A.

## **The “Duty to Co-operate”**

The NPPF sets out the formal duty to co-operate. This replaces former regionally coordinated approaches. Co-operation will need to be “constructive, meaningful and continuous” and authorities must demonstrate evidence of having effectively co-operated on cross-boundary issues, for example, on large scale or specialist movements of waste. A key element of co-operation has been working with the Environment Agency. The duty to co-operate is an absolute legal requirement of the plan-making process.

## **Localism and Community Empowerment**

Dealing with a strategic, complex commercial issue like waste requires an understanding of different communities. Dialogue needs to take place from street/village to the sub-regional level. To facilitate meaningful and inclusive views from **all** communities on difficult, controversial issues requires on-going engagement based on empowerment and conflict resolution, rather than via a traditional “consultation”. Engagement cannot focus on identifying “problems”, but must also discuss cumulative economic benefits.

## **The Waste Plan – Progress to Date**

While the approach to the Plan has been realigned to reflect new legislation, evidence collected and consensus developed to date can be used to underpin the next stages of plan development.

## **“Big Choices for Waste”**

Early work on the former Waste Core Strategy started with a consultation in 2010. This set out emerging issues and options. Over 400 comments to this consultation were received which informed areas of focus and the need for a refined evidence-driven approach.

## **“Towards a Vision for the Waste Plan” Engagement Exercise**

It became clear from discussions with communities, including specific concerns of local residents on recent waste planning applications, that a new approach was needed to engagement. There was consensus on some issues, such as recycling, but tensions remained on waste treatment. Also, there were concerns that waste facilities could potentially blight regeneration or cumulatively add to existing blight.

To address these tensions, iterative and open engagement exercises took place during 2011-2012 with groups of stakeholders. These exercises supported participants to develop an outline scope identifying key themes that could be included in the ‘vision’ of the Plan. This had the benefit that the Councils were not perceived as trying to force an agenda via conventional consultation. The outline scope, which can be made available if required, will be used as a basis for future engagement.

In addition, there has been a series of parallel projects to build evidence and consensus. The following represents a flavour of the range of work:

- **Towards Zero Waste Events** – to explore a key issue on which there is a range of positions and interpretations.
- **Statistical Basis for the Waste Plan** – development of a major new approach to evidence with the Environment Agency. Waste planning is “evidence heavy” and will likely to be a major area for challenge at the formal stages of plan preparation.
- **Engagement with Derbyshire Districts at Member/Officer Level** seminars held since 2011 to discuss strategic waste matters.
- **Rolling Discussions with Stakeholders** - with community groups, environmental groups, waste industry and individuals on key issues.
- **Engagement on “Duty to Co-operate”** - joint working with other authorities/Environment Agency on cross border issues.
- **Existing Community Liaison Committees** – utilising engagement arrangements set up via the issue of new planning permissions.
- **Background/Technical Evidence Base Development.**

## **Proposed Next Steps**

Over the summer it is intended to carry out the next phases of plan development, including preparing the “Towards a draft Waste Plan” consultation document and accompanying background papers. This will be a wide ranging consultation in the autumn/early winter 2013 and a crucial step in moving towards a draft Waste Plan for formal publication. It will take account

of comments received to date and the duty to co-operate. The documents will be subject to sustainability appraisal. In addition, on-going discussions with communities and the duty to co-operate work will continue as required to progress the Waste Plan.

(3) **Financial Considerations** The work required can be accommodated within the existing Planning Services budget with 25% of the costs being met by Derby City Council.

(4) **Legal Considerations** The Planning and Compulsory Purchase Act 2004 (as amended), National Planning Policy Framework and the European Waste Framework Directive all requires the Council to produce a Waste Plan.

In preparing this report the relevance of the following factors has been considered: prevention of crime and disorder, equality and diversity, human resources, environmental, health, property and transport considerations.

(5) **Key Decision** No.

(6) **Call-In** Is it required that call-in be waived in respect of the decisions proposed in the report? No.

(7) **Background Papers** Held by the Head of Planning Services. Officer contact details - Michelle Spence, extension 39813.

(8) **OFFICER'S RECOMMENDATIONS** That the Cabinet Member authorises:

8.1 Continuation of Waste Plan's engagement on the next stages of Plan development under Regulation 18 of the Town and Country Planning (Local Planning) (England) Regulations 2012 (the Regulations) such that the preparation of the Waste Plan complies with legal and procedural requirements.

8.2 That consultation documents produced, with dates for public engagement be circulated to the Derby and Derbyshire Development Plans Joint Advisory Committee, local Members and the Cabinet Member for input/suggestions.

8.3 That, following completion of the Waste Plan preparation and engagement under Regulation 18, the draft Waste Plan for publication and consultation under Regulation 19 of the Regulations be brought to Cabinet for approval.

**Mike Ashworth**  
**Acting Strategic Director – Environmental Services**

## **APPENDIX A**

### **Notes on the Stages in the Preparation of Local Plans**

The Planning & Compulsory Purchase Act 2004 (the Act) established a new system for the preparation of development plans. The Act (as amended) requires minerals and waste planning authorities to prepare local development documents for their area. These include the development plan documents which will comprise the statutory Minerals and Waste Local Plans.

Recent changes to the planning system affecting the preparation of Local Plans were introduced in the Localism Act 2011 and the National Planning Policy Framework. Matters relating to the processes, procedures and requirements for the making and content of Local Plans are set out in paragraphs 150-182 of NPPF and the Town and Country Planning (Local Planning) (England) Regulations 2012 (the Regulations).

### **Main Stages in the Preparation of the Minerals and Waste Local Plans**

Stage 1 - Preparation (Regulation 18 of the Regulations)

Stage 2 – Publication and Consultation on the Draft Local Plan (Regulations 19)

Stage 3 – Submission for Independent Examination (Regulation 22)

Stage 4 – Independent Examination in Public (Regulation 24)

Stage 5 – Planning Inspector's Report (Regulation 25)

Stage 6 – Adoption of the Local Plan by The Councils (Regulation 26)

#### **Stage 1 – Preparation**

Scoping and Evidence Gathering – Front Loading

Development of Policy Options - Formulation

This stage is the heart of the plan-making process and needs to be carried out properly to ensure the goal of a sound and legally compliant adoptable Local Plan is achieved. The whole of this preparation stage in the Local Plan process should include meaningful engagement with communities and other stakeholders which is frontloaded and on-going throughout the entirety of Stage 1. There should be genuine opportunities for communities and stakeholders to contribute ideas and influence the content of the Local Plan from the early scoping stage (so that it can look at relevant issues raised by them), through the development of options, evaluation of alternatives and focus of policies to the point where, as far as possible, the Local Plan reflects a collective vision and agreed set of strategies and policies for sustainable minerals and waste developments in Derby and Derbyshire. How community and stakeholder engagement has influenced the Local Plan has to be demonstrated.

As part of the preparation stage, it is also key to ensure the Local Plan development is based on an adequate, relevant and up-to-date evidence base which addresses the economic, social and environmental characteristics and prospects of the Plan area. It is important this is reviewed regularly and available for community and stakeholder input.

It is up to the Councils how this engagement is carried out and a range of consultation methods are used to help communities and stakeholders participate in the on-going Local Plan preparation process. Generally, there are a minimum of two wide ranging public consultations of minimum 6 week duration, interspersed with shorter more focussed events/discussions/workshops/web based events.

The Localism Act 2011 introduces a Duty to Co-operate as a mechanism to ensure that engagement takes place with other planning authorities and bodies on strategic and planning cross-boundary issues which are likely to have a significant effect on more than one planning area. The issues should be relevant to the Local Plan that is being prepared. This “Duty” runs throughout Stage 1.

(Note: The Derby and Derbyshire Minerals and Waste Plans are both in this preparation Stage 1).

## **Stage 2 – Publication and Consultation on the Draft Local Plan**

At this stage, the Draft Local Plan is now in the finalised form that the Councils propose to submit to the Secretary of State. The Draft Local Plan is published for a formal statutory six week consultation public before it is submitted to the Secretary of State. Comments at this stage are only sought on the soundness and legal compliance of the Local Plan. The Councils consider the matters raised in representations received and produce a consultation statement.

(Note: Should it be decided that significant changes are required following consideration of the representations then it would be necessary to withdraw the Local Plan and reconsult on a revised version).

### **Stage 3 – Submission of the Proposed Local Plan**

The proposed Local Plan, the sustainability appraisal, other accompanying evidence documents and the representations to the published Draft Local Plan are submitted to the Secretary of State.

### **Stage 4 - Independent Examination**

An independent Inspector will be appointed by the Secretary of State to assess whether the Local Plan has been prepared in accordance with the Duty to Cooperate, legal and procedural requirements, and whether it is sound.

#### **Legal Compliance**

There are numerous legal requirements to be met. These are looked at by the Inspector and include whether:

- the **Duty-to Cooperate** has been fulfilled;
- the Local Plan has been prepared in accordance with the **Minerals and Waste Development Schemes** and in compliance with the **Statements of Community Involvement**;
- the Local Plan has been subject to a **Sustainability Appraisal (SA)**, including a final report and it is clear how the SA has influenced the final Plan and dealt with mitigation measures;
- the Local Plan has regard to **national planning policy**;
- the Local Plan complies with the **Regulations**;
- the Local Plan takes account of **other plans and strategies** of the Councils and other agencies, including the Plans of adjoining Planning Authorities.

## Soundness

The Inspector must also consider whether the document is sound. The NPPF defines soundness as:

- **Positively prepared** – the Local Plan should be prepared based on a strategy which seeks to meet objectively assessed development and infrastructure requirements, including unmet requirements from neighbouring authorities where it is reasonable to do so and consistent with achieving sustainable development;
- **Justified** – the Local Plan should be the most appropriate strategy, when considered against the reasonable alternatives, based on proportionate evidence;
- **Effective** – the Local Plan should be deliverable over its period and based on effective joint working on cross-boundary strategic priorities; and
- **Consistent with national policy** – the Local Plan should enable the delivery of sustainable development in accordance with the policies in the NPPF.

(Note: work on the preparation of the Local Plan and the processes and procedures followed in Stages 1, 2 and 3 are aimed at achieving legal compliance and passing the tests of soundness at examination)

The Localism Act provides that the Councils may ask the Inspector to consider modifications to the Local Plan as part of the examination. Where main modifications are proposed after submission, there is an opportunity for interested parties to comment on these via the formal consultation on modification before the Inspector publishes the final report.

## Stage 5 – Inspector's Report

The Inspector publishes a report as to the legal compliance and soundness of the Local Plan. If the Local Plan is found legally compliant and sound and the Councils accept the recommendations of the Inspector then they can proceed to adoption.

## Stage 6 – Adoption

The Councils must adopt the Local Plan as soon as practicable following receipt of the Inspector's report. An adoption statement should be published in the local press, a copy sent to the Secretary of State and to anyone who has requested notification.



There is a 6 week period of legal challenge to the High Court from the date of adoption. This may only be made on a point of law.

Upon adoption, the Minerals and Waste Plans will become a part of the development plan. The planning system is plan-led and the policies in an up to date adopted Local Plan will carry full weight in determining planning applications in accordance with planning law, which requires that planning applications must be determined in accordance with the development plan, unless material considerations indicate otherwise.

### **Sustainability Appraisal**

The purpose of the planning system is to achieve sustainable development through positive growth and economic, social and environmental progress. It is a statutory requirement in the Planning and Compulsory Purchase Act 2004 that a Sustainability Appraisal (SA) of the Local Plan is prepared. EU Directive 2001/42/EC requires that a Strategic Environmental Assessment (SEA) is carried out in respect of the Local Plan.

Following Government guidance and in the interests of efficiency, the two processes are generally integrated. A SA of the Local Plan is carried out in order to assess its impacts on social, economic and environmental objectives and which also meets the requirements for a SEA of the Local Plan.

SA is an integral part of the plan-making process. It is an iterative process where outcomes are fed back to inform the development of the policies and proposals of the Local Plan. The documents produced during the Local Plan preparation should be subject to SA. The SA is subject to public consultation and should be published alongside each stage of the Local Plan preparation as a key supporting document.

### **Habitats Regulations Assessment (HRA)**

Habitats Regulations Assessment of Local Plans is required under the European Habitats Directive. (Directive on the conservation of natural habitats and of wild fauna and flora 92/43/EEC (Habitats Directive)). The Conservation (Natural Habitats, &c.) Regulations 1994, which transposed the Habitats Directive into national law, has been amended several times. The Conservation of Habitats and Species Regulations 2010 consolidate all the various amendments to the 1994 Regulations.

The Habitats Directive is primarily concerned with the protection of natural habitats and wildlife. In relation to the planning system, it requires that policies should encourage the management of features of the landscape which are of importance for wildlife. It also, requires that an assessment be made of any plan likely to have a significant effect on the conservation objectives of a designated site.

It assesses whether the Local Plan, 'in combination', could affect the 'integrity' of sites of international nature conservation importance in Europe. It takes a precautionary approach in that plans or projects that could affect site integrity may not be adopted unless a series of stringent requirements (testing of alternatives, proof of overriding need and provision of compensation) are met.

Assessment under the Habitat Regulations should be carried out to inform the Local Plan preparation with further assessments taking place in relation to any emerging site allocations, dependent upon the location of those sites. Natural England is a statutory consultee for HRA. The HRA documents should be available alongside each stage of the Local Plan preparation.