

Derbyshire and Derby Minerals Local Plan 2022 – 2038

Guidance Note to Accompany Representation Form

January 2023



Derby City Council



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1. Introduction

- 1.1 The pre-submission draft of the emerging plan for mineral development in Derby and Derbyshire outside the Peak District National Park (the Plan) has been published by Derbyshire County Council and Derby City Council as Minerals Planning Authorities [MPAs] in order for representations to be made on it before it is submitted for examination by a Planning Inspector. The Planning and Compulsory Purchase Act 2004, as amended, [PCPA] states that the purpose of the examination is to consider whether the Plan complies with the relevant legal requirements, including the 'duty to co-operate' at section 33A of the PCPA, and is sound. The Inspector will consider all representations about the Plan that are made within the period set by the MPAs.
- 1.2. To ensure an effective and fair examination, it is important that the Inspector and all other participants in the examination process are able to know who has made representations about the Plan. The MPAs will therefore ensure that the names of those making representations can be made available (including publication on the County Council's website) and taken into account by the Inspector.

2. Legal Compliance and Duty to Co-operate

- 2.1 You should consider the following before making a representation on legal compliance:
 - The emerging plan should be included in the County Council's current Mineral and Waste Development Scheme and the City Council's current Local Development Scheme and the key stages set out in the schemes should have been followed. These development schemes are effectively programmes of work prepared by Councils that set out the plans they propose to produce in compliance with the 2004 Act. Each development scheme should set out the key stages in the production of any plans which the relevant Council proposes to bring forward for examination. An emerging plan that is not in a current development scheme should not be published for representations. Each development scheme should also be on the relevant Council's website and available at its main offices.
 - The process of community involvement for the emerging plan in question should be in general accordance with the Statement of Community Involvement [SCI] for the area (where one exists). The SCI sets out the

relevant Council's strategy for involving the community in the preparation and revision of plans and the consideration of planning applications. The MPAs are required to provide a Sustainability Appraisal [SA] report when they publish a plan. This should identify the process by which SA has been carried out, and the baseline information used to inform the process and the outcomes of that process. SA is a tool for assessing the extent to which the plan, when judged against reasonable alternatives, will help to achieve relevant environmental, economic and social objectives.

- The Plan should comply with other relevant requirements of the PCPA and the Town and Country Planning (Local Planning) (England) Regulations 2012, as amended [the Regulations].

2.2. You should consider the following before making a representation on compliance with the duty to co-operate:

- Section 33A of the PCPA requires the MPAs to engage constructively, actively and on an ongoing basis with neighbouring authorities and certain other bodies over strategic matters during the preparation of the emerging plan. The MPAs will be expected to provide evidence of how they have complied with the duty. Non-compliance with the duty to co-operate cannot be rectified after the submission of the Plan. Therefore, the Inspector has no power to recommend modifications in this regard. Where the duty has not been complied with, the Inspector cannot recommend adoption of the emerging plan.

3. Soundness

3.1 The tests of soundness for the Plan are set out in paragraph 35 of the National Planning Policy Framework (NPPF). Plans are sound if they are:

- **Positively prepared** – providing a strategy which, as a minimum seeks to meet the area's objectively assessed needs, and is informed by agreements with other authorities, so that unmet need from neighbouring authorities is accommodated where it is practical to do so and is consistent with achieving sustainable development;
- **Justified** – an appropriate strategy, taking into account the reasonable alternatives, and based on proportionate evidence;
- **Effective** - deliverable over the plan period and based on effective joint working on cross-boundary strategic matters that have been dealt

with rather than deferred, as evidenced by the statement of common ground; and

- **Consistent with national policy** – enabling the delivery of sustainable development in accordance with the policies in the NPPF.

3.2. If you think the content of the Plan is not sound because it does not include a policy on a particular issue, you should go through the following steps before making representations:

- Is the issue with which you are concerned already covered specifically by national planning policy, e.g. the National Planning Policy Framework?
- In what way is the Plan unsound without such a policy?
- If the Plan is unsound without such a policy, what should such a policy say?

4. General advice

4.1 If you wish to make a representation seeking a modification to a plan or part of a plan you should set out clearly in what way you consider the Plan or Part of the plan is legally non-compliant or unsound, having regard as appropriate to the soundness criteria in paragraph 3.1 above. Your representation should be supported by evidence wherever possible. It will be helpful if you also say precisely how you think the plan should be modified.

4.2 You should provide succinctly all the evidence and supporting information necessary to support your representation and your suggested modification. You should not assume that you will have a further opportunity to make submissions. Any further submissions after the Plan has been submitted for examination may only be made if invited by the Inspector, based on the matters and issues he or she identifies.

4.3. Where groups or individuals share a common view on the plan, it would be very helpful if they would make a single representation which represents that view, rather a large number of separate representations repeating the same points. In such cases the group should indicate how many people it is representing and how the representation has been authorised.

- 4.4. Please consider carefully how you would like your representation to be dealt with in the examination: whether you are content to rely on your written representation, or whether you wish to take part in hearing session(s). Only representors who are seeking a change to the Plan have a right to be heard at the hearing session(s) if they so request. In considering this, please note that written and oral representations carry the same weight and will be given equal consideration in the examination process.

5. Information on Personal Data

- 5.1 The basic meaning of 'personal data' is: any Information relating to an identified or identifiable living individual.
- 5.2 The County Council is data controller for any personal data that it collects. This will include any personal data that might be received in the representations that are made about the Plan (including those representations made using Part B of the MPAs' representations form), and personal data information received under any accompanying items (including personal data to be entered on Part A of the MPAs' representations form, which) should, as a minimum, include an individual's name and address).
- 5.3 The County Council is committed to ensuring that it always processes personal data in accordance with the UK General Data Protection Regulations and the Data Protection Act 2018. The County Council generally protects the personal data it controls from any processing by disclosure to other parties or publication. The Planning Service privacy Notice which is available from the Council's website [Planning service privacy notice - Derbyshire County Council](#) gives further information on its role as data controller for data collected through to its planning work, which includes plan preparation work under the Planning and Compulsory Purchase Act 2004 (as amended).
- 5.4 However, in line with the functions and legal obligations in the 2004 Act and the Town and Country Planning (Local Planning) (England) Regulations 2012, particularly regulations 19 20 22 and 35:-
- if any representation(s) about the Plan are received from you on or before 2nd May 2023, the County Council will, when it sends to the Planning Inspectorate the Plan for examination, also:

- send to the Inspectorate and Derby City Council copies of your representation(s),
- share with the Inspectorate and the City Council any item you provide with the representations that sets out your personal data that the Inspectorate might need for contacting you about your representations and the examination (e.g. a completed Part B of the representations form), and
- **publish the representation(s) on the County Council’s website and make them available for inspection at County Hall and at the Council House in Derby.**

5.5 There are two lawful bases under the UK GDPR in Article 6(1) for the processing of personal data, including sharing of data with the Inspectorate, that the above actions necessarily involve: processing to the extent that it **is necessary for compliance with a legal obligation to which the Council is subject** (Article 6(1)(c)), and processing to the extent it **is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller**(Article 6(1)(e).

5.6 In the event of representations including personal data that is considered sensitive under data protection law, such as an individual’s ethnicity or health condition or political opinion, processing of this data for the purposes of the 2012 Regulations may have a particular lawful basis through UK GDPR Article 9(2)(g), in being necessary for reasons of substantial public interest. The ‘substantial public interest conditions’ at Schedule 1 of the Data Protection Act 2018 Part 2 include (at paragraph 6, relating to statutory and government purposes) processing that is necessary for the exercise of a function conferred on a person by an enactment or rule of law.

5.7 The Inspectorate will become data controller for the personal data it collects by receiving from the Council the representations and other items relating to the examination of the Plan mentioned above. Information on how the Inspectorate approaches the processing of personal data, including in respect of these examinations, is provided in its Customer Privacy Notice: [Customer Privacy Notice - GOV.UK \(www.gov.uk\)](http://www.gov.uk)

- 5.8 For detailed information about the County Councils practice and policies on handling personal data, please refer to the Councils website at: [UK General Data Protection Regulation \(GDPR\) - Derbyshire County Council](#)
- 5.9 For further information and guidance about the law on data protection generally please refer to the Information Commission Office publications available at its website: [Information Commissioner's Office \(ICO\)](#)