

## MINERAL PRODUCTS ASSOCIATION

### COMMENTS ON THE NATIONAL PLANNING PRACTICE GUIDANCE (BETA VERSION – OCT 2013)

#### GENERAL

Members of the Mineral Products Association believe that the most important function of previous and current planning guidance was in providing a robust basis for statements to planning officers, planning inspectors or to the courts. It is essential that this real value of the new practice guidance as a reference document is recognised. The new resource should give clarity to all users of the planning system and hence reduce the time taken to reach decisions.

The format of the Beta version of the NPPG is not amenable to that use because it:

- attempts to be a layman's guide to planning, with all the attendant superfluous wording that goes with that role, when it should focus on being a practice guide i.e. principally for the use of practitioners;

*Remedy: If a layman's guide is required, it should be a separate web resource or a separate section of the NPPG with entry questions tailored to the needs of non-planners.*

- appears to comprise too many pages, a fact which is masked by the on-line-only nature of the resource;

*Remedy: As in the point above, consider more carefully the entry questions and focus more on providing guidance for practitioners.*

- is not properly indexed, making referencing of specific sections of the text so laborious as to be impractical;

*Remedy: Provide paragraph numbering, indexing and direct links to paragraphs.*

- Relies upon a limited number of questions as the entry portal to more detailed guidance but in the form presented it is difficult to judge which question a specific subject will be covered under;

*Remedy: Revise the questions to make them more pertinent; focus on key questions that might be asked by planning practitioners and provide a separate section to answer questions from laymen.*

- Is a purely on-line facility and so is not sufficiently portable or reliable to serve the needs of practitioners; and

*Remedy: See below*

- Is not printer-friendly.

*Remedy: Provide a facility to download and print specific sections, paragraphs etc., of the NPPG.*

Whilst the concept of an online resource that can be readily updated is attractive, caution should be exercised. The inertia in the current system of printed guidance is partly, if not mainly, due to the consultation that must continue to be carried out before changes are agreed. Frequent re-interpretation of sometimes fundamental points of both planning policy and guidance create an uncertain environment for decision-makers and developers alike. Inclusion of mineral sites in the development plan and the subsequent preparation, submission and determination of applications may take several years. A changing policy and guidance background is a major disincentive to investment in such work by developers.

## **COMMENTS ON THE MINERALS GUIDANCE**

### **Practice Guidance that is needed but not yet included**

Guidance is urgently needed to accompany paragraph 116 of the NPPF which relates to development in National Parks and AONB. The MPA does not believe that the definition of 'major development' in the Town and Country (Development Management Procedure)(England) Order 2010, which classes all mineral development as major, should be applicable to the NPPF and to that paragraph in particular. Some minerals development is undoubtedly minor. It is also essential for the Practice Guidance to give clarification on how even major mineral development might meet the 'exceptional circumstance' 'public interest' test set out in paragraph 116.

### **What are mineral resources and why is planning permission required?**

These are two separate questions. The first is simply a question of definition. The definition of mineral resources that is given is incompatible with the accepted definition provided by the BGS:

[http://www.bgs.ac.uk/planning4minerals/Resources\\_4.htm](http://www.bgs.ac.uk/planning4minerals/Resources_4.htm)

The MPA believes that the fundamental flaw in the definition offered in the NPPG is that the environmental acceptability of the method used to extract a mineral can only be assessed at the time that extraction is contemplated. It should not be included in the definition.

The fundamental reason why planning permission is required is because the winning and working of minerals constitutes development and all development requires planning permission. That simple point is not made in the guidance.

### **What is the purpose of safeguarding mineral resources?**

Mineral safeguarding is a 'pillar' of sustainable development and should be given weight accordingly.

Dealing with mineral safeguarding matters occupies more MPA time at Examinations of mineral plans than any other subject. To address that, there is clearly a need for Government guidance but this draft NPPG does not provide it. More consultation should be carried out with the minerals industry and the Planning Inspectorate before it is finalised.

For example: use of the word 'known' in the definitive first paragraph of this section is at best superfluous; at worst it gives mineral planning authorities an opportunity to set the bar too high on their own definition of 'known' and hence duck their responsibility to safeguard. Where no other

data are available, BGS resource maps should be the basis for safeguarding. If this is not acceptable, then Government should consider commissioning the BGS to produce definitive safeguarding maps for England, as has been done in Wales.

All the answers should be re-drafted to emphasise that a precautionary approach should be taken to mineral safeguarding, e.g.:

- where there is some doubt that a mineral deposit constitutes a resource, it should be defined within a Mineral Safeguarding Area and only excluded if there is proof that it is not viable.
- Mineral Safeguarding Areas should be defined in urban areas and designated areas unless justification is demonstrated for not doing so.

The NPPG should advise how to fulfil the duty to safeguard 'existing, planned and potential sites for mineral infrastructure' in the same way as the NPPF does for mineral safeguarding. A local plan policy which simply says that such sites will be safeguarded means nothing if 'safeguarding' is not further defined by the plan itself or in guidance or National policy.

### **How should mineral planning authorities plan for mineral extraction?**

The Mineral Products Association fully supports the commitment to the hierarchical approach to the definition of sites (Specific Sites, Preferred Areas and Areas of Search) advocated by the draft NPPG. These different levels of designation should be referred to with capitals as shown as they are definitive terms specific to mineral planning and should not be open to reinterpretation by individual planning authorities.

The principal aim of Development Plans is to give certainty. This hierarchical approach is an incentive to mineral operators to provide information to allow Specific Sites to be defined wherever possible, with the increased certainty that goes with them. The MPA therefore particularly welcomes the section headed "Why should minerals planning authorities seek to designate specific sites as a priority?" However, it is not clear how their definition allows planning authorities or local communities "...to explicitly rule out other sites".

Whilst these terms have been defined in mineral planning guidance for many years it may be prudent to review those definitions before they are included in the final version of the NPPG.

### **Questions 5. and 6.**

It is suggested that much of what is said in these two sections would be more logical if it were combined in a new question: "Who is responsible for ensuring compliance with planning conditions?"

### **Who is responsible for restoration and aftercare of minerals sites?**

Notwithstanding the MPA comment on questions 5 and 6; the MPA strongly supports the mention of the Mineral Products Association Restoration Guarantee fund. However, the guidance given in response to the last three questions in this section is confusing and potentially conflicting.

## **Questions 7., 8., 9., 10 and 11**

It is suggested that questions 8., 9.,10. and 11 should all fall under question 7.

### **What is the Managed Aggregate Supply System?**

The MPA strongly support the confirmation in this section that aggregates landbanks are principally a monitoring tool but would point out that a definition of aggregate landbanks is not given in this Beta version until Question 11.

### **What is a Local Aggregate Assessment?**

Notwithstanding the view expressed under 7, 8, 9, 10 and 11, the MPA supports most of what is said in this section. In particular, the MPA supports the statement that the LAA should contain ‘...a forecast of the demand for aggregates based on the rolling average of 10 years sales data and other relevant information.’ In our experience, many planning authorities are interpreting the ‘and’ as an ‘or’ leading to a range of inconsistent methodologies being used, principally to reduce the provision that must be made.

### **Does each mineral planning authority have to prepare a Local Aggregate Assessment?**

The answer to this should be ‘YES’. In our view that should be stated unequivocally at the beginning of this answer. The answer to the next question, ‘If there is no...etc’, could be included under the same heading.

### **What is the purpose of the national and sub-national guidelines published by Government?**

It is not clear why this very significant issue is included under the question associated with Local Aggregate Assessments and nowhere else.

### **Can Mineral Planning Authorities simply use figures apportioned from the sub-national guidelines by the Aggregate Working Party as a substitute for Local Aggregate Assessments?**

The answer to this should be ‘NO’ . No other answer is compatible with other guidance given in this NPPG.

### **What are aggregate landbanks?**

The MPA strongly supports the statement that aggregate landbanks should be used principally as a trigger to reviews of local plans. This clarification addresses the apparent conflict between the advice in paragraphs 25 and 26 of ‘Guidance on the Managed Aggregate Supply System’ (October 2012). Landbanks are often used without proper justification in the development management process as a reason to refuse planning permission for proposals that are otherwise acceptable in every respect. Planning authorities should be made aware that an excessive landbank is not defined in the NPPF or the NPPG and reminded that the overall objective of the mineral planning system is to ensure an adequate and steady supply of materials, not to ‘ration’ supplies.

Guidance on the use of the latest LAA to calculate the length of the landbank is also strongly supported. This gives clarity, establishes the role of the LAA in triggering local plan reviews and is

clearly a more sound approach than that contained in paragraph 23 and 24 of the current MASS guidance.

### **How should minerals planning authorities plan for industrial minerals?**

The MPA believes that the use of the term 'landbank' to describe both the total stock of aggregate reserves in a planning authority area and the stock of reserves at individual sites producing industrial minerals, causes confusion. The NPPF (paragraph 146) uses the expression 'stock of permitted reserves' in the context of industrial minerals but describes 'landbanks for industrial minerals' in paragraphs 52 and 53 of the NPPF Technical Guidance. The MPA believes that the latter reference was an error which should be corrected in the NPPG. The term 'landbank' should only apply to total stocks of permitted reserves in a mineral planning authority area.

The MPA supports the change of advice on calculation of the required stock of permitted reserves at silica sand sites. Using a 10 year average brings it into line with the practice for aggregates and 'damps out' short term fluctuations in demand. However, it is not clear why the advice on cement raw materials is that there is no formal way of calculating the required stock. The national policy for cement (NPPF paragraph 146) is that at least 15 years stock should be maintained and at least 25 years where a new kiln is involved. This policy is open to only broad interpretation if practice guidance on the method of calculation (i.e. what is a 'year') is not given as it is with silica sand.

### **COMMENTS ON THE FLOOD RISK and COASTAL CHANGE GUIDANCE**

A significant proportion of future sand and gravel resources is located in the functional flood plain. Their working is being put at serious risk by the guidance in the Beta draft NPPG.

Table 2 in the Flood Zone and Flood Risk Tables classes 'Sand and gravel working' as 'water compatible development' but 'landfill' as 'more vulnerable'. As a consequence, under the terms set out in Table 3, the Practice Guide advises that sand and gravel extraction in the functional flood plain (Zone 3b) which is restored by infill with inert material 'should not be permitted.'

Infill with inert material is often the restoration method of choice. It can be designed to meet the Exception Test set out in the NPPF (paragraph 102). Infill is necessary if a high level after use is desired or if there are issues of birdstrike to be dealt with. Infill may enhance the delivery of biodiversity gain. Whilst doing that it can also deliver an increase in flood storage capacity.

*Suggested remedy: Revise Table 2. to include 'sand and gravel operations' as 'water compatible development' in place of 'sand and gravel working'. For avoidance of doubt, a footnote could be added to make it clear that the term 'operations' for purposes of the NPPF and NPPG includes everything from overburden stripping to restoration and after care.*

This leaves it clear for the mineral planning authority and/or the Environment Agency as a consultee to specify, if appropriate, that the restoration and after care must meet the requirements set out in Table 1 for 'Appropriate uses' in Zone 3b.