

Environment, Economic Growth and Transport Scrutiny Committee
Meeting to be held on Wednesday, 4 December 2024

Electoral Division affected:
(All Divisions);

Corporate Priorities:
Protecting our environment;

The Management of Minerals and Waste Operations through Planning Policy and Enforcement

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Brief Summary

This report explains the county council's activities under its statutory plan-making and development management responsibilities in relation to minerals and waste operations, specifically:

- the adopted Joint Lancashire Minerals and Waste Local Plan in respect of policies dealing with highways and transport issues.
- the control of odour and other environmental impacts related to the design, engineering and operation of landfill sites in the county; and
- monitoring of compliance and enforcement of planning controls for minerals and waste management sites.

The report also explains the powers and responsibilities of the Environment Agency in regulating and controlling waste management developments and the coordinated activity between the two statutory authorities.

Recommendation

The Environment, Economic Growth and Transport Scrutiny Committee is asked to consider the report with a view to formulating any recommendations to the Cabinet Member for Environment and Climate Change.



Detail

1. Planning policy and the control of highway impacts

The county council is the minerals and waste planning authority for Lancashire and is required to produce a local plan containing planning policies relating to these types of development. Working with Blackburn with Darwen and Blackpool, the county council has published a Joint Lancashire Minerals and Waste Local Plan. The existing local plan, adopted between 2009 and 2013, is comprised of two separate documents: a 'Core Strategy' containing strategic policies, and a local plan that sets out development management and site allocation policies. A review of the local plan is underway with a draft local plan anticipated to be published in 2025. A new local plan will continue to provide policies to ensure the impacts of development on the highway and to highway amenity are appropriately managed.

The Lancashire Minerals and Waste Local Plan (Development Management and Site Allocations Development Plan Document) presents a number of policies that are designed to ensure that the highways and traffic impacts of mineral extraction and waste management facilities are minimised. These policies take several forms, with preferred locations listed to be considered sequentially, limits to environmental impacts expressed, mitigating measures to be provided, or altogether new access arrangements to be delivered in some key locations should future development occur.

Planning conditions are routinely used to control the impacts of minerals and waste operations to acceptable levels thereby allowing permission to be granted where it might otherwise be refused. Conditions can be imposed in relation to the following highway/ highway amenity related impacts: hours of operation; wheel cleaning; numbers of vehicle movements per day or output / throughput per year; improvements to / maintenance of site access roads; and sheeting of vehicles.

Planning conditions can only be imposed where they meet certain specified tests which are set out in paragraph 56 of the National Planning Policy Framework, namely that conditions must be necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. If a condition cannot meet these tests, it should not be imposed. Similar tests exist in relation to planning obligations.

Planning obligations secured through section 106 of the Town and Country Planning Act 1990 can also be used in certain circumstances to control developments and their impacts which are not capable of being lawfully controlled through planning conditions. These can include off-site highway improvements, and payments to the highway authority to fund improvement to highway infrastructure.

Comments and concerns are regularly raised in relation to the traffic generated by prospective minerals and waste developments. These concerns are generally in response to potential impacts to the amenity of local communities and/or to the suitability of the local road network to accommodate this traffic, and predominantly concerns about heavy goods vehicles.



On occasion, Traffic Regulation Orders already in place might limit HGVs from using unsuitable roads thereby ensuring that otherwise unacceptable traffic impacts are prevented. However, it is not unusual for minerals and waste developments to be proposed in locations where there are no existing vehicle restrictions but where such traffic might raise safety or amenity concerns on certain roads.

Where these impacts are demonstrable and raise legitimate concerns to the planning authority, measures can be considered to control routing of traffic. Applicants will often propose traffic routing controls through mechanisms such as construction or traffic management plans implemented through planning conditions. Planning Obligations may sometimes be used to control HGV routing through similar mechanisms. The effectiveness and enforceability of such controls can depend on the degree of control which the site operator can exert over HGV drivers and third parties who have business with the site in question.

2. The control of odours and other environmental impacts related to the design, engineering and operation of landfill sites

Historically, the majority of biodegradable household, commercial and industrial waste in Lancashire was disposed of in landfill sites. Over the last 20 years or so, the number of landfill sites taking these wastes has declined due to a reducing demand and increasing recycling rates and the emergence of other waste management methods. Currently there are only five landfill sites in Lancashire accepting non inert wastes. These are:

- Clifton Marsh, Freckleton
- Jameson Road, Fleetwood
- Clayton Hall, Chorley
- Whinney Hill, Accrington
- Whitemoss, Skelmersdale (which accepts hazardous waste only)

Clifton Marsh and Jameson Road are sites that have been developed on coastal marshes through land raising. The remaining sites listed above are existing or former mineral working voids.

For all such sites, the area to receive waste is lined with low permeability clays and/or man-made materials to provide an impermeable layer over the base and sides of the site which will capture leachate and prevent groundwater pollution. Above the liner will be a drainage layer incorporating gas and leachate pipework to provide for the effective control of leachate levels and landfill gases. Once an area of the site is filled to the final consented level, it is capped using similar materials to those used for lining.

During landfilling operations, environmental impacts such as odours, birds and litter, are mitigated by minimising operational areas, covering waste at the end of each working day, and maximising the capture of landfill gas. Other techniques may be employed such as bird scarers, deodorising sprays and covered tipping bays in windy conditions.



All landfill sites are subject to a planning permission. In order to operate they also require an environmental permit issued by the Environment Agency under the Environmental Permitting Regulations. The two regulatory regimes are separate but complementary as explained in paragraph 194 of the National Planning Policy Framework:

'The focus of planning policies and decisions should be on whether proposed development is an acceptable use of land, rather than the control of processes or emissions (where these are subject to separate pollution control regimes). Planning decisions should assume that these regimes will operate effectively. Equally, where a planning decision has been made on a particular development, the planning issues should not be revisited through the permitting regimes operated by pollution control authorities'.

The determination of a planning application for any form of waste management will assess the likely pollution impacts to ensure that there would be no unacceptable environmental impact contrary to the policies of the development plan. The controls that are available through the pollution control regime are an important part of this assessment. Should a development be found acceptable, it will typically be subject to a range of planning conditions. The scope of any such conditions must have regard to the policy in paragraph 194.

Planning conditions should be concerned with matters that sit outside the scope of the pollution control regime. Legitimate conditions for a planning permission will be phasing, hours of operation, traffic and highways, landscaping, and restoration and aftercare.

Matters covered by the permitting regime, such as lining and capping construction, control of leachate and landfill gas, noise, litter and odour controls should not be duplicated by the planning permission.

The Environment Agency regulates landfill site operation under the Environmental Permitting (England & Wales) Regulations. Operational activities at a permitted landfill site are covered by conditions within an environmental permit. This is a specific permitted area, vehicle movements and HGVs travelling on highways etc are not part of a permit. Where odour issues occur from a landfill site, the Environment Agency is lead regulator looking at whether an operator is taking appropriate measures to minimise odour.

3. Monitoring and enforcement of planning permissions for minerals and waste sites

Government policy on planning enforcement matters is set out in paragraph 59 of the National Planning Policy Framework:

'Effective enforcement is important to maintain public confidence in the planning system. Enforcement action is discretionary and local planning authorities should act proportionately in responding to breaches of planning control. They should consider publishing a local enforcement plan to manage enforcement proactively in a way that is appropriate to



their area. This should set out how they will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where appropriate'.

Lancashire has some 50 or so mineral extraction sites and landfill facilities, and numerous other waste management sites providing aggregate recycling, energy from waste, scrap metal recycling and wastewater treatment. Mineral extraction sites and landfill facilities in particular are often long-term developments which, due to their nature, can result in impacts that can continue over their lifetime. There will also be conditions to ensure satisfactory restoration and aftercare upon their cessation. This is distinct from most other land use types where the impacts are mainly confined to the initial development stage. Recognising this, the county council is able to charge for monitoring visits to active mineral extraction and landfill sites.

Such monitoring visits will include an audit of the development's planning conditions and is followed up with a written report to the operator detailing compliance with conditions and a commentary on any issues that are noted at the visit. In addition to these types of monitoring visits, the county council will also visit all types of mineral extraction and waste management operations as part of complaint investigations or meetings with operators.

The county council's planning enforcement policy sets out service standards in terms of responding to complaints, how complaints will be investigated and the circumstances in which the various types of enforcement action may be taken.

Many complaints are received about breaches of planning control for minerals and waste management operations and all complaints are investigated. In cases where a breach has occurred, the planning authority may decide, as a planning judgement considering the policies of the development plan and other material consideration, that it is so minor as to not be expedient to take enforcement action.

Where planning enforcement is necessary, resulting from site monitoring or a complaint, the planning authority will strive to resolve the matter through negotiation in the first instance rather than resorting to formal enforcement action. Situations in which a developer may not be aware that their actions are a breach of planning control can be resolved by cessation or a change in the operation or use. It may be possible to resolve issues by inviting a developer to submit a retrospective planning application which provides an opportunity to bring an unregulated development within control through the imposition of planning conditions. Formal enforcement action should be regarded as a tool of last resort where other actions have failed.

Several options are available to the county council to deal with breaches of planning control should action be appropriate:

- An *Enforcement Warning Notice* allows the planning authority to communicate a breach of planning control and advise that an application for planning permission is made or further enforcement action may be taken.
- An *Enforcement Notice* will specify what, in the planning authority's view, constitutes the breach of planning control and what steps need to be taken and by when, including what activities must cease, to remedy the breach. Once a



notice takes effect (after 28 days), the remedial works must be carried out within the specified timescale, or the matter could result in prosecution in the courts.

- A *Stop Notice* is served in conjunction with an enforcement notice where a planning authority considers it is expedient that a breach of planning control should cease before the expiry of the period of compliance in an enforcement notice and can take effect immediately. There is a risk of having to pay compensation to a developer / landowner in the event that a stop notice or associated enforcement notice is subsequently quashed on appeal.
- A *Temporary Stop Notice* can be served, without an enforcement notice, where a breach of planning control is identified and where the activity should cease immediately. It remains in effect for up to 56 days and provides the planning authority with the means to decide on the need for more permanent action.
- A *Breach of Condition Notice* can be used where a planning condition has been contravened and provides an operator with at least 28 days to remedy the breach. Examples could include working outside permitted hours or breaching a limit on noise levels.
- A planning authority may apply to the Courts for an *Injunction*, regardless of whether or not any other enforcement action has been taken. Should an injunction be breached, a developer would be in contempt of court.

Many complaints about unauthorised development relate to waste management operations which are also subject to control by the Environment Agency under the environmental permitting system. The county council already liaises with the Environment Agency on a regular basis, and coordinates any necessary enforcement activity, in relation to enforcement against unauthorised waste management facilities.

Consultations

N/A

Implications:

This item has the following implications, as indicated:

Legal

The process to preparing a local plan and to carrying out enforcement activity is prescribed in relevant legislation. There are no significant legal implications detailed in the report, however, due regard should be had in the production of a local plan, to the criteria and evidence relied upon, and to the manner of engagement with interested parties, to ensure proper weight can be given to its final content. In taking enforcement action due regard should be had to engagement with interested parties, the criteria and evidence, the relevant policies, procedures, harm and risks informing said enforcement action.

Financial

There are no significant financial implications detailed in the report.



Risk management

Failure to maintain an up-to-date local plan can impact the weight to be given to its policies in the determination of individual planning applications. Similarly, timely, proportionate, and evidenced enforcement action are important considerations to provide effective control of unauthorised activity.

Local Government (Access to Information) Act 1985 List of Background Papers

Paper	Date	Contact/Tel
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None

Reason for inclusion in Part II, if appropriate

N/A

