

# **Guidance Note on Development in Minerals Safeguarding Areas**

**September 2017**

## **1. Introduction, Scope and Status**

1.1 Minerals are a finite, non-renewable resource that plays a significant role in support of sustainable development. Minerals can only be extracted where they are found and it is important that non-mineral development does not take place which might prevent the future extraction of mineral resources.

1.2 As a Unitary council, Sefton will be the decision-making authority for most of the planning applications that occur within its boundary. Sefton is also a Minerals Planning Authority and therefore also has responsibility for providing a suitable framework for mineral extraction through the policies in its Local Plan and for determining any planning application for mineral extraction in accordance with those policies.

1.3 Sefton does not have extensive mineral resources in its area and does not include any hard rock minerals. It does contain sand and gravel suitable for use as construction aggregate as well as silica sand of potential usefulness for industrial purposes such as glass making. These minerals are surface or near surface sand and gravel deposits being of fluvial or wind-blown origin. Some of these resources have been worked in the past but currently no mineral extraction takes place within Sefton. Marine-won aggregate is also landed at the Port of Liverpool, part of which lies within Sefton. However, in accordance with national policy (National Planning Policy Framework para 143) Sefton has designated Mineral Safeguarding Areas (MSAs) for its resources on the Map through Policy NH8 of the Sefton Local Plan.

1.4 This Guidance Note has been prepared to assist those considering proposals for non-mineral related developments within the designated MSAs. The matters discussed in this document will be material considerations for any planning application for a location situated within a Mineral Safeguarding Area and this information Note will be subject to public consultation.

## **2. What Role do Sefton's MSAs Play in the Planning Process?**

2.1 An MSA does not prevent other forms of development from taking place. Nor does it presume that any mineral present will be worked. The intention is that the potential sterilisation of a mineral resource by other forms of development will be highlighted and taken into account in the planning process. For that reason, all development proposals within a MSA must be considered against Policy NH8 of the Sefton Local Plan.

2.2 Policy NH8 provides criteria against which to judge the appropriateness of a development within a MSA. The policy requires applicants to provide appropriate information to assist the council in making its planning decision. This is termed the Minerals Assessment, which should include a level of detail appropriate to the scale and nature of the proposed development. The Minerals Assessment should be carried out by a suitably qualified professional and should specify whether there are minerals present and, if so, whether it is feasible to extract them.

2.3 Judging the appropriate level of information required in a Minerals Assessment can often be agreed through pre-application engagement on a case by case basis and Appendix 2 sets out the evidence requirements in more detail. A potential applicant will then be better placed to collect and assess the necessary evidence before a development scheme is finalised and submitted to the council for planning consent. In this way the risks of delays occurring in the planning process will be reduced.

### **3. What Scope does Sefton's Local Plan Policy Have?**

3.1 Policy NH8 (set out in full in Appendix 1) seeks, where appropriate, to protect mineral resources from sterilisation by other forms of development. It designates MSAs which are defined on the Policies Map, and it sets out criteria for making decisions on development proposals within these. The policy recognises that it is not necessary to consider all development in this way, as not all development is likely to lead to the sterilisation of a mineral resource. For that reason some development is specifically excluded from any requirement to produce a Mineral Assessment, as follows:

- Applications for less than 10 new homes (or if the number of homes isn't known sites less than 0.5 hectare);
- Applications for non-residential development where the floor space to be created by the development is less than 1,000 square metres;
- Applications for non-residential development on a site having an area of less than 1 hectare;
- Applications that are in accordance with the development plan where the plan took account of the prevention of unnecessary mineral sterilisation and determined that prior extraction should not be considered when development applications in a MSA came forward;
- Applications for advertisement consent;
- Applications for reserved matters including subsequent applications after outline consent has been granted;
- Prior notifications (telecoms, forestry, agriculture, demolition);
- Certificates of Lawfulness of Existing Use or Development (CLEUD) and Certificates of Lawfulness of Proposed Use or Development (CLOPUD);
- Applications for works to trees;
- Applications for temporary planning permission.

3.2 Policy NH8 also provides criteria for determining the acceptability of minerals development for development management purposes which apply to all minerals resources whether affected by mineral safeguarding (e.g. sand and gravel from surface deposits) or not (e.g. energy minerals extracted through deep drilling).

### **4. Why do we Consider the Potential for Mineral Resource to be Sterilised?**

4.1 All other developments require careful consideration as they have the potential to sterilise mineral resource through their physical land take and by constraining the potential workability of nearby land (e.g. by preventing access).

4.2 Within the MSA for Sefton non-mineral development that risks the sterilisation of mineral resources can be acceptable if arrangements are made for the 'prior extraction' of the mineral resource. Consideration will be required in such cases of whether extraction is practical and desirable in the location concerned. By considering prior extraction at an early stage in the design of development proposals, applicants may avoid significant delays occurring.

### **5. How are Decisions Taken on Development in MSAs?**

5.1 When considering whether a development proposal is acceptable within a MSA, the Council will have regard to the criteria set out in Part 1 of Policy NH8, which sets out that development will not be permitted unless:

- It is compatible with safeguarding the mineral; or
- the applicant can demonstrate that the mineral concerned is no longer of any value or potential value; or
- the mineral can be extracted satisfactorily prior to the development taking place; or
- the development is of a temporary nature and can be completed and the site restored to a condition that does not inhibit extraction; or
- there is an overriding need for the development; or
- the development is included on the list of exempt developments.

5.2 In presenting a Mineral Assessment, the applicant should be seeking to provide evidence to address these issues in such a way as to help the Council reach an informed decision on a grant of planning consent. The following section provides a brief consideration of some of the factors to be considered.

5.3 In determining an application the Council will also have regard to relevant non-MSA policy and material considerations in the normal way.

***Is the development compatible with safeguarding the mineral?***

5.4 Some forms of development may not have a sterilising effect on a mineral resource within an MSA, though many are likely to do so. Most development of this type has already been included in the list of exempt development provided in association with Policy NH8 of the Local Plan. For development not already listed as exempt, clear justification will be needed for why any other proposed development does not have the potential to sterilise mineral resources if it is to be considered compatible with safeguarding.

***Previously Developed Land***

5.5 For previously developed land the principle of minerals sterilisation has either already been conceded through the previous development activities on that land or may not have been considered at all if the previous development pre-dated the introduction of safeguarding policy. If the former is the case then no further Mineral Assessment should be required for subsequent development. If the latter then a Mineral Assessment should be undertaken proportionate to the scale of the proposed development and taking into account the degree to which the potential for successful prior extraction of mineral may have been compromised. Developers are encouraged to make use of readily available material for their own purposes on site.

***Does the mineral have value now or in the future?***

5.6 The applicant will need to consider the type, potential quantity and quality of the mineral resource when considering any potential commercial interest in extracting it. This should focus on whether the resource meets industry specifications for its potential use (e.g. a BSI standard). Any requirement for further processing of the extracted mineral will affect the commercial viability of proposed extraction, both through the need for additional plant, transport and waste disposal costs.

5.7 It will also be necessary to consider if the mineral is present in sufficient quantities that provide a realistic prospect of extraction when deciding on the likelihood of commercial interest in it. Small ribbons, shallow deposits or isolated occurrences of minerals are less likely to be economic to work and so sterilisation may not be an issue. This is understood to be the position with much of the Shirdley Hill Sand deposits within Sefton, which were exploited in the past but which were abandoned as industry approaches to extraction changed. Unfortunately, little up-to-date detailed information about the precise distribution and quantity of these resources is

available to the Sefton Council beyond that set out in the Mineral Resource Map published by British Geological Survey in 2006.

5.8 Similarly, if a site is surrounded by other development to such an extent that it renders prior extraction uneconomic or unfeasible due to other policy considerations, then it is reasonable to assume that any mineral resource present may already be sterilised.

5.9 If mineral is present but not to the extent that commercially-viable prior extraction is possible, developers are nonetheless encouraged to make use of readily available material for their own purposes on site.

***Is it practical to extract the mineral prior to the development taking place?***

5.10 Significant constraints for prior extraction are likely to exist for small sites and those in close proximity to other existing development. An important consideration will be the proportions of overburden present, which governs the depth at which extraction can practically commence. In general terms it is uneconomic to extract material with an overburden to mineral ratio greater than 1:1 though this is influenced by the quality and value of the mineral. Appendix 2 provides guidance on considerations to guide the need for prior extraction of mineral.

5.11 The extraction of mineral creates a void which has its own engineering constraints. At depths greater than 5-6m below ground level voids will need to include steps in the sides for reasons of stability. This will not be practical on small sites, particularly as space will be taken up for the storage of excavated overburden and for site operational purposes. Returning the site to a condition fit for the purposes of the intended development scheme is also likely to be an issue requiring consideration.

***Could the mineral be available following completion of a temporary land use?***

5.12 Most temporary development is unlikely to lead to resource sterilisation, though scrutiny will be required of associated engineering works, land ownership arrangements and site restoration proposals before confirming this.

## **6. Consultation**

6.1 This note was made available for consultation during March to May 2017. A summary of comments made during the consultation period, and the Council's response, is available to view online at [www.sefton.gov.uk/spd](http://www.sefton.gov.uk/spd).

## **Appendix 1: Policy NH8 of the Sefton Local Plan**

1. To minimise the need for minerals extraction, the use of recycled, secondary and substitute materials will be encouraged. Mineral Safeguarding Areas have been defined for deposits of sub-alluvial sand and windblown silica sand (The Shirdley Hill Formation). Within Mineral Safeguarding Areas, as shown on the Policies Map, proposals for development will not be permitted unless:

- a.** It is compatible with safeguarding the mineral; or
- b.** the applicant can demonstrate that the mineral concerned is no longer of any value or potential value; or
- c.** the mineral can be extracted satisfactorily prior to the development taking place; or
- d.** the development is of a temporary nature and can be completed and the site restored to a condition that does not inhibit extraction; or
- e.** there is an overriding need for the development; or
- f.** the development is included on the list of exempt developments in figure 11.3

2. Existing, planned and potential infrastructure supporting the aggregates industry will be safeguarded from inappropriate development. This includes strategic rail freight links and sites for concrete batching, the manufacture of coated materials, other concrete products and the handling, processing and distribution of substitute, recycled and secondary aggregate material. Proposals for non-mineral related development that may threaten, lead to the loss of or damage to, the functioning of safeguarded infrastructure or locations will not be permitted unless it can be demonstrated that:

- a.** An alternative site within an acceptable distance can be provided, which is at least as appropriate for the use as the safeguarded site; and
- b.** It can be demonstrated that the infrastructure no longer meets the current or anticipated future needs of the minerals, building and construction industry or the waste management industry.

3. Proposals for the exploration, extraction, storage, processing and distribution of minerals will be permitted if all of the following criteria are met:

- a.** Adverse impacts relating to any criteria set out in Section 4 of this policy can be avoided or appropriately mitigated;
- b.** The developer must demonstrate the proposed location for the development is suitable, taking into account factors such as environmental, geological and technical issues;
- c.** Restoration and aftercare of sites will be implemented at the earliest opportunity and to an agreed timescale, to a standard and manner consistent with the agreed end use and the context of its surrounding area including its character, setting and landscape.

4. Planning and environmental criteria to be taken into account when considering planning applications for minerals development are as follows:

- a.** Amenity (e.g. dust, noise and vibration);
- b.** Air and water quality;
- c.** Lighting;
- d.** Visual intrusion into local setting and landscape;
- e.** Landscape character;
- f.** Traffic, including air and rail, and access;
- g.** Risk of contamination to land;

- h.** Soil resources and the impact on best and most versatile agricultural land;
- i.** Flood risk and drainage;
- j.** Land stability;
- k.** Ecology, including habitats, species and designated sites and particularly the internationally important nature sites;
- l.** Heritage assets and their setting.

5. In determining shale gas applications Sefton will seek the highest levels of environmental, health and social protection and benefit consistent with prevailing national policy and regulation, including that relating to Environmental Impact Assessment and Habitats Regulations Assessment. Compliance with industry best practice standards as defined by United Kingdom Onshore Oil and Gas (UKOOG) will also be expected.

## Appendix 2: Minerals Assessment

Sufficient information on mineral resources is required for local authorities to determine planning applications for non-mineral development within an MSA. A Minerals Assessment should be carried out by a suitably qualified professional and should specify whether there are minerals present and, if so, whether it is feasible to extract them. The level of detail provided should be appropriate to the scale and nature of the proposed development and should include the following areas, as necessary:

1. Presentation of geological data. This could take the form of:
  - a. Desk top study of existing surface and solid geological and mineral resource information;  
or
  - b. Borehole investigations.
2. Assessment of the mineral resource potential of any mineral present considering the geological data collected and its suitability for its intended use, before or after processing, and the quantity present.
3. Assessment of the mineral recovery potential:
  - a. Acceptability
    - i. Site surroundings and neighbours, and their sensitivity to impacts associated with working minerals;
    - ii. Depth of overburden;
    - iii. Size of site, and the ability of the site to accommodate batters and storage of overburden, mineral processing and storage facilities and other ancillary functions;
    - iv. Benefits such as SUDs, local vernacular, reduced visual impact.
  - b. Viability
    - i. Whether the prior extraction will prejudice the development of the land by:
      - (i) Delaying the implementation of the proposed development beyond an acceptable timescale;
      - (ii) Affecting the ability of the land to receive the proposed development;
      - (iii) Significantly affecting the development's viability.
    - ii. Consideration should be given to the location of potential markets for the mineral, including on site.
    - iii. Does the developer hold the mineral rights?
4. Potential for proximal (off-site) sterilisation
  - a. Extent of MSA around development and its development potential.
  - b. Impact of proposed development on current or potential future working of any nearby quarry and the impact of the quarry on the proposed development

BGS can be contacted for information on mineral resource datasets at [enquiries@bgs.ac.uk](mailto:enquiries@bgs.ac.uk)



### Appendix 3: Prior Extraction Considerations

Prior extraction will be undertaken using additional machinery similar to that that would be used for most site preparation activities when preparing a site for development. These will typically be excavators and dumper trucks, the numbers and size of which will be determined by the size of the site and depth of the extraction. Some activities associated with prior extraction may require additional planning consent.

In Sefton prior extraction would apply to sand and gravel resources occurring at the surface or at relatively shallow depths below it. Both the Shirdley Hill sands and glacio-fluvial sand and gravel deposits are considered relatively straightforward to extract and often this can be achieved through use of a mobile excavator plant. Deeper extraction may require more specialist plant and skills and will take longer and be more expensive. In addition, such excavation will result in the creation of a void that may require backfilling before any subsequent development can proceed.

These activities have both benefits and impacts that the local planning authority is required to consider as material considerations in the planning process. Some of these are as follows:

- **Flood Risk:** the prior extraction of a mineral has the potential to affect the vulnerability of a location to flooding and affect drainage away from the site. However, produced voids may also have the potential to provide benefits if utilised as part of surface water attenuation scheme.
- **Dust:** the extraction of mineral has the potential to cause dust arisings, in addition to those associated with normal construction processes. These will be temporary effects for the duration of the activity. Nevertheless dust and its control can be an important issue, particularly if there are vulnerable receptors, such as waterways, located close to the site.
- **Noise:** extraction activities can be a source of noise, in addition to those associated with construction activity on the site. Also a temporary effect, noise and its mitigation is nevertheless an important consideration.
- **Traffic:** mineral extraction is likely to add to the numbers of heavy goods movements to and from the site involved, and the effect that this will have on the local road network will need to be acceptable if prior extraction is to allowed to proceed.
- **Land Stability:** The excavation of voids in order to extract mineral has the potential to affect land stability both on the specific development site and beyond its boundaries.

## Appendix 4: Glossary

**BSI Standard:** an agreed approach to achieving a required outcome, as set out by the British Standards Institute as a set of rules, guidelines or definitions.

**Development Plan:** The development plan for an area is made up of an adopted Local Plan (which will include Minerals and Waste Local Plans whether or not produced as separate documents) together with any adopted Neighbourhood Plans.

**Interburden:** Rock and other material lying between areas of mineral resource. The presence of interburden will affect the value of a mineral resource because of the complications (and therefore cost) it introduces into operations to extract and process the mineral resource.

**Local Plan:** Documents(s) containing land use planning policies for the area.

**Local Planning Authority:** local authority or council that is empowered by law to exercise statutory town planning functions.

**Material Considerations:** matters relevant to a planning application that must be taken into account by a local planning authority before making a decision on whether or not to grant consent.

**Mineral Assessment:** an assessment containing sufficient information on the mineral resource to allow the local planning authority to determine a planning application within a MSA.

**Minerals Planning Authority:** normally a county council, an authority with responsibility for setting policy and managing and monitoring mineral extraction activity within its area. However, Sefton Council as a Unitary Authority is both Local Planning Authority and Minerals Planning Authority and exercises both functions together.

**Mineral Safeguarding Area:** areas of known mineral resource that are of sufficient economic or conservation value to warrant protection against future need for the resource.

**Non-minerals Development:** development that is not associated with the winning and working of minerals.

**Non-renewable Resource:** a resource that does not renew itself naturally at a sufficient rate to allow for sustainable economic exploitation.

**NPPF:** The National Planning Policy Framework provides a national set of policy for local planning authorities to draw upon in plan making and for development management of planning applications.

**Overburden:** Rock or soil overlying a mineral resource. The depth of overburden will affect the value of a mineral resource because of the complications (and therefore cost) it introduces into operations to extract and process the mineral resource.

**Prior Extraction:** the extraction of mineral resources for beneficial use prior to the implementation of a development scheme that might otherwise result in their sterilisation.

**Proximal Sterilisation:** The inability to work a mineral resource due to the impact of unrelated development nearby.

**Safeguarding:** ensuring that mineral resources are not needlessly sterilised by the implementation of non-mineral development schemes.

**Sterilisation of Mineral Resources:** a term used when development or other changes in land-use occur which permanently prevent the extraction of mineral resources of current or future economic value.

Sustainable Development: development that meets the needs of the present without compromising the ability of future generations to meet their own needs.