BERKSHIRE UNITARY AUTHORITIES JOINT MINERALS AND WASTE CORE STRATEGY DEVELOPMENT PLAN DOCUMENT – URGENT MATTER ARISING FROM THE EXAMINATION IN PUBLIC

1 Purpose of Report

To urgently advise members of important matters arising from the public examination into the Berkshire Unitary Authorities Joint Minerals and Waste Core Strategy Development Plan Document.

To gain authority to ask the Secretary of State to withdraw the existing version of the Joint Minerals and Waste Core Strategy Development Plan Document.

2 Recommendation(s)/Proposed Action

The Cabinet is requested to recommend that the Secretary of State withdraws the existing version of the Joint Minerals and Waste Core Strategy Development Plan Document.

3 Community Strategy Priorities

- A Cleaner, Greener place to live, Work and Play
- Prosperity for All

4 Other Implications

(a) Financial

There are no direct financial implications associated with the proposed action. There are likely to be additional cost implications associated with revising the Core Strategy.

(b) Risk Management

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<th>Recommendation</th>
<th>Risk/Threat/Opportunity</th>
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<td>The Cabinet is requested to recommend the</td>
<td>If the Council does not approve the recommendation the Joint</td>
<td>That the Council requests that the Secretary of State withdraws the current Joint</td>
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Secretary of State to withdraws the existing version of the Joint Minerals and Waste Core Strategy Development Plan Document.

Minerals and Waste Core Strategy is unlikely to be approved (found to be "sound") by the Secretary of State. There would also be the additional cost associated with continuing with the public examination into the document and paying for the Government Inspector’s time to produce a report which writes up his findings.

Minerals and Waste Core Strategy. That time is taken in revising the existing Joint Minerals and Waste Core Strategy to ensure that the Government Inspector’s representations are adequately addressed.

(c) Human Rights Act and Other Legal Implications

In its current form, the Joint Minerals and Waste Local Plan is unlikely to meet the necessary legal requirements in the Planning and Compulsory Purchase Act 2004 (amended) and the Town and Country Planning (Local Development) (England) Regulations 2004 for it to be approved by the Secretary of State.

(d) Equalities Impact Assessment

This action is unlikely to have any impact in relation to race, gender, sexual orientation and disability groups. The Joint Minerals and Waste Core Strategy Development Plan Document has been subject to an Equalities Impact Assessment.

(e) Workforce

There are limited workforce implications associated with the proposed action.

5 Supporting Information

5.1. Members will be aware that the Joint Strategic Planning Unit (JSPU) has prepared a Joint Minerals and Waste Core Strategy Development Plan Document on behalf of the six unitary authorities in Berkshire. This was submitted to the Secretary of State for approval at the start of 2009, and in June 2009 has been subject to an Examination in public by a Government Inspector.

5.2. The purpose of the Joint Minerals & Waste Core Strategy Development Plan Document (JMWCS) is to provide the overarching advice and guidance on how the six unitary authorities will plan for and manage minerals and waste development in Berkshire up to 2026.

5.3. In the run up to the Examination the appointed Government Inspector had indicated that he thought that the JMWCS would be found to be acceptable and would therefore be approved (found to be "sound") by the Secretary of State. Having received this positive feedback there appeared to be no reason for the JSPU to not proceed with the Examination. Issues have now come to light during the Examination which has meant that the Inspector has now changed his mind. This has resulted in the proceedings coming to a halt.
5.4. In simplistic terms, representatives from the waste industry identified that the evidence base which was being used to underpin assumptions about the total amount of waste arising in Berkshire was incorrect. This came as somewhat of a surprise to most of the attendees at the Examination (including the Inspector), as some of this information was the same as that used to inform the waste policies in the published South East Plan (May 2009). Refer to Appendix A for the Government Inspectors summary of issues and reasons for adjournment.

5.5. It is essential that information about “waste arisings” in Berkshire is correct as it is used to determine whether or not new waste management (or disposal) facilities need to be provided by each authority to deal with this waste over the period to 2026. As this goes to heart of the JMWCS the Inspector advised that he would not be able to approve the JMWCS in its current form and that the JSPU and the Berkshire unitary authorities would have to decide how to proceed.

5.6. During the Examination the Inspector advised there are four options available to proceed with the current JMWCS:

- Option 1: To continue with the Examination and for the Inspector to issue a report back that the plan can not be approved. The JSPU would still have to pay for the Inspector’s time to attend the Examination and write his report.
- Option 2: To adjourn the Examination for a period up to 6 weeks to enable these issues to be considered in more detail by the JSPU.
- Option 3: To suspend the Examination for a period of up to 6 months to enable the JSPU to review the data and make minor changes to the JMWCS. The Inspector indicated that in order for him to continue examining the JMWCS after the period of suspension it could not be significantly different to the version previously submitted (i.e. if the JMWCS changed significantly as a result of the additional work undertaken, the Inspector would consider it to be a new plan which would require a new examination)
- Option 4: For the Berkshire unitary authorities to withdraw the JMWCS and resubmit the revised document (in their own timescale) once these issues had been properly addressed.

5.7. To allow time for the individual authorities to decide which of the above options to proceed with, it was agreed that the Examination into the JMWCS would be adjourned for 6 weeks. The decision taken by the Berkshire unitary authorities will need to be reported to a procedural meeting on the 28th July 2009.

5.8. In considering the Inspector’s comments it is apparent that the changes that are needed to the JMWCS to make it acceptable can not be undertaken within a 6 week or even a 6 month period. Furthermore, the changes that are needed to the JMWCS are likely to make the plan significantly different to the version submitted to the Secretary of State at the start of this year. In view of this the only available option, other than for the Inspector to recommend that the plan is not approved (which has cost implications), is for the Berkshire unitary authorities to ask the Secretary of State to formally withdraw the Plan. Officer Representatives from each of the Berkshire unitary authorities are therefore seeking authority for this before the 28th July deadline.

5.9. The Berkshire unitary authorities are still considering the full implications of withdrawing the JMWCS in terms of future workload and resources required. Once these issues have been fully identified they will be reported back to the Cabinet.
Moreover, the reasons why this situation has arisen will also need to be looked at in detail and reported back at this time.

6 **Comments of Other Committees**

Not applicable

7 **Conclusion**

7.1. If the examination into the JMWCS proceeds it is clear that the Government Inspector will reject the Plan and find it to be “unsound”. Given the limited options available, the Cabinet is therefore requested as a matter of urgency to recommend that the Secretary of State withdraws the existing version of the Joint Minerals and Waste Core Strategy Development Plan Document.

8 **Appendices Attached**

‘A’ The Government Inspector’s summary of issues and reasons for Adjournment

9 **Background Papers**

‘1’ - 9th June 2008 Cabinet Report
Appendix A: The Government Inspector's summary of issues and reasons for Adjournment

Note to Planning Inspectorate LDF team

BERKSHIRE MINERALS & WASTE CORE STRATEGY

WASTE STRATEGY ISSUES

During the course of the hearing sessions of the examination into the soundness of the Berkshire Minerals & Waste Core Strategy, some important issues relating to the waste strategy have arisen. I have formally adjourned the hearing sessions, so that the Berkshire Unitary Authorities/JSPU can consider these issues and advise on a way forward. A procedural meeting is scheduled for 28 July 2009 to review the position.

Briefly, the issues concern the accuracy of the evidence base used to support the waste strategy, particularly the classification and capacity of existing waste management facilities, and the output of the model, which indicates a shortfall of around 12 million tonnes of non-hazardous landfill capacity. These matters are not fully addressed in the submitted Core Strategy and are central to the strategy for dealing with waste arisings in Berkshire during the plan period to 2026. At present, the Core Strategy does not demonstrate conclusively how waste management capacity equivalent to at least 10 years of the annual rates set out in the South-East Plan could be provided and ensure sufficient opportunities for the provision of waste management facilities in appropriate locations, including residual waste disposal, as required by national guidance in PPS10 (¶ 16-18).

The Berkshire Unitary Authorities/JSPU have confirmed that the Waste Core Strategy is based on the ERM data used for preparing the latest South-East Plan. The 2008 ERM data informed the policies and waste capacity targets and requirements in the approved version of the South-East Plan. More recent data has been produced (May 2009), which updates earlier data.

However, the accuracy of some of the base data used in the ERM model has been questioned. The classification and capacity of some of the existing waste management facilities is apparently incorrect, particularly in terms of the type of waste handled. It also differs from the JSPU’s own information in its latest Annual Monitoring Report and from site inspection. Consequently, the ERM data may have underestimated C&D waste recycling capacity and overestimated MSW/C&I waste recycling capacity. It also incorrectly records recovery and treatment capacity for waste, and there are questions about the accuracy of the waste transfer capacity.

The latest ERM data also indicates that, using the targets and figures in the latest South-East Plan, there will be a shortfall of over 12 million tonnes of non-hazardous landfill capacity in Berkshire by 2026. Charts accompanying the latest data indicate that existing non-hazardous landfill capacity is expected to run out in 2009. These figures are based on estimated waste arisings from Berkshire, including an additional allowance for importing a declining proportion of London’s waste, at 1.12mt (2006-2015) and 0.63mt (2016-2025). Existing non-hazardous landfill capacity is estimated at about 0.55mt, and although a further 0.49mt may come forward, current work on the emerging M&WDPD has not identified any further opportunities for additional non-hazardous landfill capacity.

The submitted and amended Core Strategy gives little indication about how this additional non-hazardous landfill capacity or any alternative capacity will be provided. Nor does it specify the quantum of landfill capacity or alternative waste management capacity required over the plan period. Apart from general statements about encouraging waste to be dealt with higher up the waste hierarchy and providing flexibility to accommodate a wide range of waste management facilities, it gives little indication about the strategy to deal with this apparent shortfall in landfill capacity, either in terms of identifying this additional capacity or providing alternative waste management capacity for other treatment/recovery methods.
The key policy (Policy W2) only refers to MSW/C&I recycling/composting capacity and C&D waste recycling capacity.

Furthermore, during the hearings, it became apparent that there are cross-boundary flows of residual waste from Berkshire to landfill sites/waste management facilities in the adjoining counties (including Oxfordshire, Buckinghamshire & Hampshire), as well as flows of waste from counties such as Wiltshire into Berkshire. Although the Core Strategy aims for overall net self-sufficiency, neither the evidence base nor the Core Strategy seems to fully address this issue.

This results not only in serious question-marks about the robustness and credibility of the evidence base, one of the key tests of soundness, but also in doubts about the deliverability of the waste strategy in terms of addressing the significant shortfall in non-hazardous landfill capacity over the plan period. Although much of the data has only become available in recent months, there are clearly questions about its accuracy, along with the implications of any changes to the data, which should be addressed before the Core Strategy is finalised.

The Berkshire Unitary Authorities/JSPU are considering how to address these key issues. They have already agreed to incorporate into the Core Strategy the waste recycling/composting/recovery targets set out in the latest South-East Plan, along with the revised waste capacity targets and policy requirements. However, the targets and requirements set out in the South-East Plan do not cover all elements of all waste streams at sub-regional level. Furthermore, if the base data of existing waste management facilities is incorrect, the requirements for additional waste management capacity for Berkshire set out in the South-East Plan may be incorrect. Although the South-East Plan sets out landfill capacity requirements for the region by 2026, it gives no sub-regional figure for Berkshire. It also gives no sub-regional figure for other recovery capacity or other waste streams (e.g., hazardous waste). All participants agree that the LDF process provides an opportunity to examine the sub-regional apportionment and its implications for Berkshire. A re-run of the ERM waste capacity model for Berkshire, using the latest correct information, would seem to be a minimum requirement before the basic strategy can be finalised, along with consideration about the apparent significant shortfall in future non-hazardous landfill capacity and the wider implications for alternative methods of treatment/disposal and cross-boundary waste flows. The latest papers from the JSPU\(^1\) do not, in my view, fully address these issues.

This leads me to the initial conclusions, firstly that the evidence base supporting the waste Core Strategy is neither robust nor credible, and secondly, that the waste strategy does not properly address the key issues of how to deal with the significant shortfall of non-hazardous landfill capacity and cross-boundary transfers of waste. As such, it is most unlikely to be found sound at present.

There are various options open to the JSPU to address these shortcomings:

- Formally withdraw the Core Strategy and redraft the DPD to address these key issues;
- Suspend the examination and undertake further work, including re-running the ERM model with the correct base information and considering how to address the results, particularly the likely shortfall in non-hazardous landfill capacity; the amended policy requirements would probably require further Sustainability Appraisal and consultation before the examination could continue; the appropriateness of this course of action would depend on the scale and nature of the changes required to the plan;
- Adjourn the hearing sessions and consider whether the Core Strategy could be amended to address these key issues without altering the underlying strategy and policies; in view of the nature and scale of the changes required to fully address these issues, this may not be the most appropriate solution;
- Continue with the hearings, with minor amendments to the Core Strategy; the inspector would have to conclude that the Core Strategy is unsound and

\(^1\) JSPU 34 & 35
formally recommend its withdrawal; all participants agree that this would be a waste of time and resources.

In considering these options, the JSPU/Berkshire Unitary Authorities should take careful note of the guidance in the Planning Inspectorate’s Procedure Guidance² (Section 9: Exceptional Procedures). If the examination is to be suspended, they should consider the scale and nature of the work required to overcome the perceived shortcomings of the Core Strategy. If new evidence needs to be commissioned, it may lead to major changes to the plan and suggest that the plan, as submitted, is not sound. The examination should not be suspended for more than 6 months, since this would lead to uncertainty and delay. A longer delay would suggest that major changes to the plan are needed, in which case the plan should be withdrawn to allow proper consultation to be undertaken. Any changes to the plan that need to be made will have to be subject to another consultation period so that representations can be made. It may also be necessary to undertake further Sustainability Appraisal, with further consultation. The appropriate course of action should be confirmed with GO-SE & SEERA.

If the suspension leads to a substantially revised plan to that submitted, it suggests that the plan, as submitted, is unsound. It would be inappropriate for the inspector to examine a plan with such major revisions to its content and strategy. If major additional work needs to be undertaken, it is likely that the plan was not sound on submission and it should be withdrawn. As the PINS Guidance states³, it is not appropriate to try to rectify a seriously flawed plan through the suspension procedure. If the JSPU/Berkshire Unitary Authorities are reluctant to withdraw the plan, it is likely that it will be found unsound, which is in no-one’s interest in terms of time and money.

A copy of this note has been sent to the Berkshire Unitary Authorities/JSPU, along with GO-SE & SEERA.

Stephen J Pratt
DPD Inspector
16.06.09

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² Local Development Frameworks – Examining Development Plan Documents: Procedure Guidance; PINS; November 2008
³ Ibid: paragraph 9.25