

Topic paper for the review of the  
Hertfordshire County Council Minerals Local Plan

**Brick Clay**

Version 3 - November 2018

**1. Introduction**

The purpose of this topic paper is to provide commentary on the considerations that have been taken into account during the development of the brick clay policy throughout the review of the adopted Minerals Local Plan (MLP).

This topic paper has been updated since the Initial Consultation and Draft Plan consultation. It comprises an introduction to clay, an outline of Hertfordshire's existing brick clay reserves, the requirements for the provision of clay, the issues and options when planning for clay, and the approach to planning for brick clay within the MLP.

**2. What is Clay?**

Clay is a fine grained sticky soil which results from the decomposition and weathering of rocks. Clay has a structure which allows the mineral to be impermeable to water.

Clays are divided into two classes: residual clay, found in the place of origin, and transported clay (also known as sedimentary clay) which has been removed from the place of origin by erosion or deposition.

Clay minerals can be divided into four major groups, each with different characteristics and uses. **Brick clay** is most common in Hertfordshire and is used mainly for the production of facing and engineering bricks, pavers and clay tiles for roofing and cladding.

The county council uses British Geological Survey (BGS) data for information about mineral resources and guidance on mineral planning policy and legislation. BGS provides public-good science for government, and research to understand earth and environmental processes, providing objective and authoritative geoscientific data, information and knowledge to help society use its natural resources responsibly.

**3. Hertfordshire's Brick Clay Resources**

Hertfordshire's main brick clay resource is found in the north west of the county. Figure 1 shows the superficial deposits, which are the geologically recent deposits, overlaying the bedrock geology.

Although clay is apparent over much of the north west of Hertfordshire, the deposits can be patchy and are variable in quantity, quality and thickness.

The main brick clay resource is located in the Hemel Hempstead area and has been worked at a number of sites. As of 2018 the extraction of clay and production of the specialist bricks at Bovingdon Brickworks ceased. There is no longer any infrastructure for the production of bricks in the county. Historically this site made them from local mottled clays of Reading Formation and Clay-with-Flints. Bovingdon Brickworks had a long history of traditional brick making and the bricks produced were unique due to the characteristics of local clay reserves and the processes used to fire the bricks, giving them a unique rich colour and texture.

Bovingdon Brickworks was located at Pocket's Dell Quarry, close to Berkhamstead on the far west of the county.

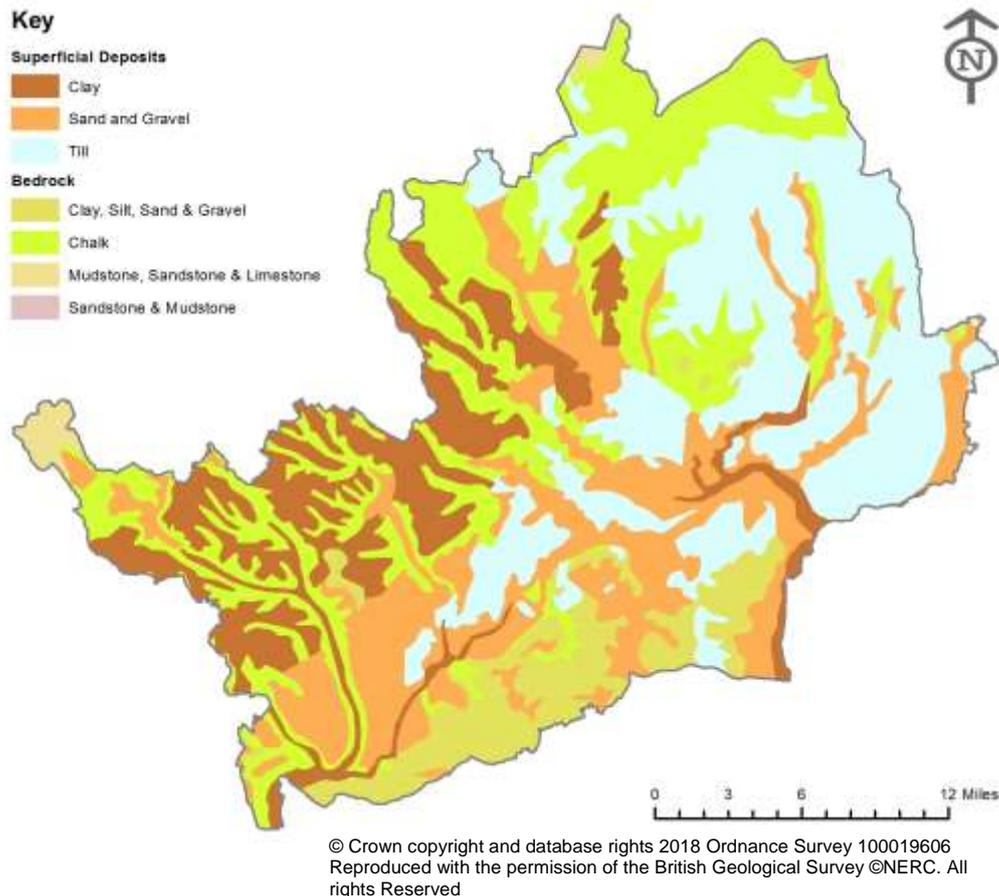


Figure 1: Geological map of the main mineral resources of Hertfordshire (Taken from Hertfordshire LAA 2017) <sup>1</sup>

<sup>1</sup> BGS & ODPM, 2003, Technical report CR/03/075/N Mineral Resource Information in support of National, Regional and Local Planning: Hertfordshire and Northwest London Boroughs

#### 4. Current National Planning Policy

National planning policy and guidance for minerals sets out the requirements for the county council to plan for clay, which is regarded as an industrial mineral.

##### 25 years supply

In 2012 the NPPF<sup>2</sup> (paragraph 146) introduced a requirement of mineral planning authorities to provide a stock of permitted reserves of at least 25 years for brick clay, to support the level of actual and proposed investment for new or existing plant and the maintenance and improvement of existing plant and equipment, whilst taking account of the need for provision of brick clay from a number of different sources to enable appropriate blends to be made.

This has been translated into the revised NPPF (July 2018) in the footnote attached to paragraph 208(c) which states that:

*‘Minerals planning authorities should plan for a steady and adequate supply of industrial minerals by:  
maintaining a stock of permitted reserves to support the level of actual and proposed investment required for new or existing plant, and the maintenance and improvement of existing plant and equipment’*

*at least 25 years for brick clay, and for cement primary and secondary materials to support a new kiln’*

Therefore, the national policy requirements to maintain a supply of permitted reserves do not apply to Hertfordshire as there are no longer brickworks in the county.

##### Mineral Safeguarding Areas

The national policy requirements for the safeguarding of mineral resources were revised through the new NPPF (2018). The wording of the former NPPF 2012 required that Local Planning Authorities identify Minerals Safeguarding Areas and Mineral Consultation areas. The new requirements of the NPPF 2018 (surrounding safeguarding of mineral resources) are as follows:

Paragraph 204 of the NPPF 2018 states:

*Planning policies should:*

*‘Safeguard mineral resources by defining Mineral Safeguarding Areas;  
and adopt appropriate policies so that known locations of specific mineral resources of local and national importance are not sterilised by non-mineral development where this should be avoided (whilst not creating a presumption that the resources defined will be worked)’*

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<sup>2</sup> <https://www.gov.uk/government/publications/national-planning-policy-framework--2>

In line with national policy the Minerals Local Plan will need to define Mineral Safeguarding Areas (MSAs). These are areas which contain specific mineral resources of local and national importance. The areas are safeguarded to avoid the mineral being sterilised by non-mineral development.

To find out more information on mineral safeguarding, please see the 'Minerals Safeguarding' Topic Paper.

## **5. Adopted Minerals Local Plan**

The existing Minerals Local Plan (2007) was produced before the change in national policy required the provision for 25 year supply of clay to maintain brickworks, so does not identify clay reserves. The current policy in relation to clay is outlined below:

### **Mineral Policy 6: Other non-energy minerals**

Proposals for chalk or clay extraction will only be permitted if:

- i) it can be demonstrated that need for the mineral cannot be met adequately from existing permitted reserves of other sources
- ii) the need for mineral in question can clearly be demonstrated to outweigh all adverse effects of the proposed development.

The policy and supporting text in the adopted plan recognise that there are limited brick clay resources and that the national guidance at the time did not require the maintenance of a stock or landbank of permitted reserves to maintain brickworks.

## **6. Reviewing other Mineral Planning Authorities Local Plans**

In revising the Minerals Local Plan it is important to review other, more recently adopted Minerals Local Plans. This helps to identify gaps in the adopted Minerals Local Plan policies and provides examples of how national policy requirements have been implemented into local policy. In reviewing other clay policies within Minerals Local Plans, more recently adopted plans were considered, adopted 2011-2014.

Other authorities in the region had sufficient planning permissions to provide the required landbank and as such there has been no need to identify further reserves over the plan period in their plans. They do however include policies and identify safeguarding areas.

## **5. Initial Consultation Stage**

The Initial Consultation document was prepared before the closure of Bovingdon Brickworks and therefore identified ways of maintaining clay

reserves to feed the brickworks in the county as there was not a supply of at least 25 years of brick clay as required by national policy.

Inline with national policy requirements at the time, three possible options to provide sufficient levels of permitted reserves of brick clay were identified for the emerging Minerals Local Plan at Initial Consultation stage:

- Option 1 - Mineral Safeguarding Areas (MSA) with Minerals Consultation Areas (MCA)
- Option 2 - Preferred Areas
- Option 3 - Permitted Reserves

These were presented to consultees within the Initial Consultation document.

Sourcing clay from outside Hertfordshire boundaries was not considered, although brick clay from a number of different sources is important to enable appropriate blends to be made. It was concluded that whilst the Minerals Local Plan would not seek to identify clay resources from outside of Hertfordshire, policy may be required to enable the cross-boundary supply of clay for brickworks to blend minerals in order to make particular bricks.

### **Option 1 - Mineral Safeguarded Area (MSA) and Mineral Consultation Area (MCA)**

At the time of setting out these options, national policy included the need for MSAs and MCAs.

Mineral Safeguarding Areas are the allocation of an area of known mineral resources where there has been evidence to suggest that clay resources are present. The purpose of safeguarding an area is to protect the resource from being sterilised by non-mineral development.

The safeguarding process does not ascertain the amount of mineral that is able to be extracted, nor have economic or full environmental assessments been carried out. Sites within these areas therefore would still require the approval of a planning application, supported by detailed information if they were to be brought forward.

A Mineral Safeguarding Area does not automatically prevent other forms of development in these areas; the opportunity for prior extraction of minerals would need to be investigated.

Mineral Consultation Areas assist with mineral safeguarding by facilitating discussions between the relevant interested parties and ensures that District/Borough councils consult the County Council before determining application for development in Mineral Consultation Areas in order to safeguard the mineral resources.

Defining Mineral Consultation Areas was considered to enable developers to consider the implications of mineral resources at an early stage of any proposals.

With this approach, the Minerals Local Plan included a policy on minerals safeguarding and mineral consultation areas. The defined safeguarding and consultation areas (MSAs and MCAs) were to be reflected in district/borough councils Local Plans and policies maps to assist the consultation procedure for the Mineral Consultation Areas.

### **Option 2 - Preferred Areas**

Preferred areas are locations which have been identified as suitable, in principle, for mineral extraction to take place. There may be more than one preferred area in a plan which would collectively meet the anticipated need for the minerals. Preferred areas will have been subject to a site selection process and identified as suitable sites for extraction using the results from the site selection process, available commercial information and planning constraints. A planning application would still have to come forward and provide suitable evidence to suggest that any adverse environmental impacts can be mitigated.

### **Option 3 - Permitted reserves**

A permitted reserve relates to approved planning permissions. This is an area of land which has an approved planning application(s) which permits the extraction of 25 years' worth of clay reserves or more. Planning permissions can also be cumulative which collectively results in 25 years' worth of clay.

Responses received from the Initial Consultation showed that there was general support for the inclusion of a policy and MSA/MCAs.

## **6. Draft Plan Stage**

The Draft MLP incorporated a combination of the options identified at Initial Consultation Stage.

The Draft MLP identified Minerals Safeguarding Areas and Mineral Consultation Areas for brick clay based on available British Geological Survey information to protect brick clay resources from non-minerals development that might sterilise existing mineral reserves. The Draft MLP also included a policy to support applications proposing extraction of brick clay for use at a specified brickworks if the level of permitted reserves for that brickworks is below 25 years.

It was not considered suitable to assess brick clay resources with a similar site selection methodology to that used for sand and gravel due to difficulties with land ownership and the availability of geological data with comprehensive

coverage to accurately identify the intermittent nature of Hertfordshire brick clay reserves. Therefore, the Draft MLP did not identify Preferred Areas.

The Policy in the Draft Plan was as follows:

**Policy 6 Brick Clay**

**Bovingdon Brickworks is a safeguarded and strategic site for the extraction of brick clay and the production of bricks.**

**Bovingdon Brickworks will be supported by the following two Specific Sites in Hertfordshire, as identified on Inset Map 5 and the Policies Map:**

- **Pocket’s Dell Quarry; and**
- **Land at Cox and Croft Fields, Shantock Hall Lane.**

**The Mineral Safeguarding Areas for clay, is shown on the Policies Map.**

**Proposals for new sites or extensions to existing brick clay workings will be permitted where it can be demonstrated that:**

- **the level of permitted reserves for a specified brickworks is insufficient to maintain brick clay production for at least 25 years;**
- **the proposal directly contributes towards the required supply for brick clay at the specified brickworks; and**
- **the proposals are consistent with other policies within this plan.**

To further support the safeguarding of brick clay reserves, an ‘Excluded Development’ list was provided within the supporting text for Policy 8: Mineral Safeguarding. Excluded developments are included to avoid unnecessary consultation for applications that fall within Mineral Safeguarding Areas and Minerals Consultation Areas. The list sets out what kinds of development are excluded from consultation as they are unlikely to bring about the unnecessary sterilisation of minerals. The ‘Excluded Development’ list for developments in Mineral Safeguarding Areas and Minerals Consultation Areas that do not require consultation with the minerals planning authority can be seen below:

Excluded Development List	
Mineral Type	Excluded Development

Sand and Gravel (same for both MSA and MCA)	<ul style="list-style-type: none"> <li>• Householder planning consent: Applications for alterations to existing single buildings including works within the boundary/garden of a house i.e. domestic extensions, conservatories, loft conversions, dormer windows, garages and similar structures (car ports, outbuildings) within the curtilage of an existing dwellinghouse</li> </ul>
Brick Clay (same for both MSA and MCA)	<ul style="list-style-type: none"> <li>• Applications for Advertisement Consent</li> <li>• Applications for Listed Building Consent</li> <li>• Lawful Development Certificate (LDC) for existing use, proposed use, or operation or activity in breach of a planning condition</li> <li>• Prior Notifications (telecommunications; forestry; agriculture; demolition)</li> <li>• Applications for removal, variation and approval of conditions</li> <li>• Applications for Tree Works (including consent under Tree Preservation Orders and notification of proposed works to trees in conservation areas)</li> <li>• Applications for change of use of existing development, unless intensifying activity on site</li> <li>• Applications for reserved matters including subsequent applications after outline consent has been granted</li> <li>• Application for non-material amendments</li> <li>• Applications that are in accordance with the development plan where the district/borough local plan took account of the prevention of unnecessary mineral sterilisation and determined that prior extraction should not be considered when an application for development in a MSA come forward (Sand and Gravel, and Brick Clay only)</li> <li>• Applications for small-scale urban infill development within existing built-up areas i.e. the development of a small gap between existing buildings/enclosed by other types of development</li> <li>• Developments within a conservation area within existing urban areas</li> <li>• Applications for prior approval</li> </ul>

### Response to the Draft Plan Consultation

A total of 2,578 consultees responded to the consultation on the Draft Minerals Local Plan, submitting a total of 3,252 individual representations between them.

Consultees included all of the District and Borough Councils, a selection of Parish Councils and adjoining authorities, industry representatives and a significant number of local residents.

Comments were received regarding the operation of safeguarding the resource and also regarding the closure of Bovington Brickworks and the site being promoted through the District Local Plan for alternative employment uses. This chapter and policy have been updated for the Proposed Submission document.

To see a summary of the feedback received in response to the Draft Plan consultation, please follow the link below:

<https://democracy.hertfordshire.gov.uk/ieListDocuments.aspx?CId=218&MId=1154>

## **7. Minerals Local Plan Proposed Submission Document**

The next stage in the Minerals Local Plan review involved re-drafting the document from 'Draft Plan' stage to 'Proposed Submission' stage, to take into account (where possible) the feedback received from the consultation on the Draft Mineral Local Plan as well as changes to national policy.

Whilst it has been established that there is no need to identify reserves to maintain any brickworks in Hertfordshire, it is understood that there may be a requirement to enable cross-boundary supply of clay to other brickworks to blend minerals and make particular bricks. In light of this, a new policy is included in the Proposed Submission Plan.

The brick clay policy is proposed as follows:

### **Policy 6: Brick Clay**

**Proposals for brick clay workings will be permitted where it can be demonstrated that:**

- **the level of permitted reserves for a specified brickworks is insufficient to maintain brick clay production for at least 25 years;**
- **the proposal directly contributes towards the required supply for brick clay at the specified brickworks; and**
- **the proposals are consistent with other policies within this Plan.**

In terms of the safeguarding of the brick clay resource, the changes to national policy in the revised NPPF 2018, as set out in section 4 of this topic

paper, have led to changes to the 'Mineral Safeguarding' policy under chapter 10 of the Proposed Submission Minerals Local Plan.

In addition, the 'Excluded Development' list has been amended and will appear under chapter 10: Safeguarding, listing the kinds of development that are excluded from consultation as they are unlikely to bring about the unnecessary sterilisation of minerals. This chapter has been updated in light of the need to only refer to MSAs and not MCAs.

The 'Excluded Development' list for developments in Mineral Safeguarding Areas that do not require consultation with the minerals planning authority can be seen below:

Excluded Development List	
Mineral Type	Excluded Development
Sand and Gravel and Brick Clay	<ul style="list-style-type: none"> <li>• Householder planning consent: Applications for alterations to existing single buildings including works within the boundary/garden of a house i.e. domestic extensions, conservatories, loft conversions, dormer windows, garages and similar structures (car ports, outbuildings) within the curtilage of an existing dwellinghouse;</li> <li>• Applications for Advertisement Consent;</li> <li>• Applications for Listed Building Consent;</li> <li>• Lawful Development Certificate (LDC) for existing use, proposed use, or operation or activity in breach of a planning condition;</li> <li>• Prior Notifications (telecommunications; forestry; agriculture; demolition);</li> <li>• Applications for removal, variation and approval of conditions;</li> <li>• Applications for Tree Works (including consent under Tree Preservation Orders and notification of proposed works to trees in conservation areas);</li> <li>• Applications for change of use of existing development, unless intensifying activity on site;</li> <li>• Applications for reserved matters including subsequent applications after outline consent has been granted;</li> <li>• Application for non-material amendments;</li> <li>• Applications that are in accordance with the Development Plan where the district/borough Local Plan took account of the prevention of unnecessary mineral sterilisation and determined that prior extraction should not be considered when an application for development in a MSA come forward (<u>Sand and Gravel, and Brick Clay only</u>);</li> <li>• Applications for small-scale urban infill development within existing built-up areas i.e. the development of a small gap between existing buildings/enclosed by other types of development;</li> </ul>

	<ul style="list-style-type: none"> <li>• Developments within a conservation area within existing urban areas; and</li> <li>• Applications for prior approval.</li> </ul>
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## 8. Next Steps

The county council intends to submit the Proposed Submission Minerals Local Plan and all representations received to the Secretary of State for independent Examination.

An independent Planning Inspector will be appointed to hold an 'Examination in Public' for the emerging Minerals Local Plan. The Planning Inspector will review all representations submitted in response to the publication of the Proposed Submission Plan and will assess the Minerals Local Plan against all relevant legislation and national Policy requirements. The county council may need to make modifications to the emerging Minerals Local Plan throughout this process, in response to the discussions at the Examination in Public.

Following the conclusions of the Examination in Public, the council will consult on any modifications which accompany the Inspector's Report and then adopt the new Minerals Local Plan.

The table below sets out the next steps for the emerging Minerals Local Plan, following the ten week publication of the Proposed Submission Minerals Local Plan Document.

**Table 1 – Minerals Local Plan Review Timetable**

Summer 2019	Submission
Autumn 2019	Examination
Winter 2019	Inspector's Report
Winter 2019 / Spring 2020	Finalisation
Summer 2020	Adoption