

# Policy Evidence Report

## Policy 12: Landfill Excavation

**Hertfordshire Minerals and Waste  
Local Plan 2040**

**Hertfordshire County Council**



Supporting Regulation 22(c)(iii)(iv)

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# 1. Introduction

- 1.1. Hertfordshire County Council is reviewing its adopted Minerals Local Plan, Waste Local Plan and supporting documents. These comprise the following documents (with adoption date):
  - Minerals Local Plan Review (March 2007)
  - Minerals Consultation Areas SPD (November 2007)
  - Waste Core Strategy and Development Management Policies DPD (November 2012)
  - Waste Site Allocations DPD (July 2014)
  - Employment Land Areas of Search SPD (November 2015)
- 1.2. The documents listed above are to be replaced by a single Minerals and Waste Local Plan (MWLP) covering the period to 2040. The new MWLP will set the overall spatial framework and development management policies for sustainable minerals and waste management development in Hertfordshire.
- 1.3. This Policy Evidence Report provides a context and justification for the creation of Policy 12: Landfill Excavation in the emerging Minerals and Waste Local Plan.

## 2. National Policy Context

- 2.1. The National Planning Policy Framework (NPPF 2021) and National Planning Practice Guidance (PPG) provide the basis of national planning policy. Given that this practice is still new and infrequent, there is little national policy on operating a landfill excavation operation. Being a waste development it must comply with the protection, conservation and mitigation measures outlined in national policy.
- 2.2. The PPG section on Waste states:
  - ‘Local planning authorities can ensure that waste is handled in a manner which protects human health and the environment through ... ensuring land raising or landfill sites are restored to beneficial after-uses (eg agriculture, biodiversity, forestry, amenity) at the earliest opportunity and to high environmental standards.’  
*Paragraph: 005 Reference ID: 28-005-20141016*
  - ‘The Local Plan relating to waste should identify sufficient opportunities to meet the identified needs of an area for the management of waste, aiming to drive waste management up the Waste Hierarchy ...’.  
*Paragraph: 011 Reference ID: 28-011-20141016*
- 2.3. The National Planning Policy for Waste states that ‘positive planning plays a pivotal role in delivering this country’s waste ambitions through: - delivery of sustainable

development and resource efficiency, including provision of modern infrastructure, local employment opportunities and wider climate change benefits, by driving waste management up the waste hierarchy ...'.

- 2.4. The government's Resources and Waste Strategy - Our Waste, Our Resources: A Strategy for England (2018) has a strong focus on new and innovative technologies to manage our waste. The strategy states that: 'Landfilling has been a mainstay of waste management for over a century. Sites vary widely by age and waste composition. Waste already deposited in landfill will continue to pose a risk to the environment for many years. We commissioned a scoping study into ways we can deal with the issues legacy landfills create and will be undertaking research and analysis to support new approaches to landfill aftercare management. We are also working with industry, local authorities, and other partners, to provide clarity around surrender criteria, explore potential alternative sources of revenue, and optimise passive landfill management technologies.'

### **3. Local Context**

- 3.1. More than 750 historic landfill sites are recorded in Hertfordshire by the Environment Agency and therefore there is opportunity for developments to come forward upon them. The landfill sites are in varying conditions with a range of materials disposed of within them; this could be inert, non-inert and/or hazardous waste. Some of these historic landfill sites are now areas of new or proposed developments as a result of restoration works.
- 3.2. Landfill excavation can restore a site to a quality sufficient to develop upon and can provide valuable spaces for development in line with District or Borough Local Plans. The excavated material, providing it is inert and uncontaminated, can be sent to aggregate recycling facilities or reused on site in line with Policy 10: Secondary and Recycled Materials and Policy 11: Sustainable Design and Resource Efficiency.
- 3.3. There is no local policy regarding landfill excavation given that it is a practice not yet seen within Hertfordshire. However, the opportunities it presents and the growing potential for an operation to come forward have led to the inclusion of this policy within the plan.

### **4. Minerals & Waste Local Plan Policy**

- 4.1. Prior to the publication of the emerging MWLP, the Council was preparing separate Minerals and Waste Plans, which were at differing stages of production. The emerging Minerals Local Plan (MLP) was published for a Regulation 19 Proposed Submission consultation in 2019, and the emerging Waste Local Plan (WLP) was published for a

Regulation 18 Draft Plan consultation in 2021. These emerging Plans have now been brought together into a single MWLP. The Policy which this Evidence Report relates to has been formulated from one or more relevant policies in those previous emerging Plans, and takes into account the representations received at those previous stages of consultation.

## Draft Waste Local Plan 2021

4.2. The Draft Waste Local Plan was published for a ten week Regulation 18 consultation from 11 January 2021 to 19 March 2021. This document included Non-strategic Policy 17: Landfill Excavation. The policy read as follows:

### Non-Strategic Policy 17: Landfill Excavation

Waste development proposals for the excavation and re-restoration of historic landfill sites will be permitted where it can be clearly demonstrated that:

- the lack of intervention poses unacceptable adverse impacts on the natural, built and historic environment and/or human health;
- excavation is required to enable a beneficial after-use (including built development) to take place on the site;
- excavated waste will be moved up the hierarchy;
- landfill gas utilisation has been maximised;
- effective leachate treatment continues; and
- any significant ecological interest which may have developed on a previously restored site will be addressed through mitigation or compensation, as appropriate.

Proposals will be required to submit a feasibility assessment to establish the following: ground investigations, contamination, final destination of excavated waste, and the ongoing management of existing infrastructure associated with the landfill.

- 4.3. During the consultation on the Draft Waste Local Plan, this policy received 3 representations. The points raised are summarised below:
- a) The term '*re-restoration*' should be simplified to '*restoration*'.
  - b) The policy phrase '*adverse impacts*' should be extended to '*adverse risks or impacts*' to include the potential for harms.
  - c) The first bullet point should be a potential consideration instead of a requirement to offer the opportunity for worthwhile excavation even when there are no adverse impacts of the existing landfill.
  - d) The second bullet point should be extended to state '*beneficial after-use (including built development and natural habitats)*' to offer the opportunity for enhancements to the environment.
  - e) The third bullet point should be expanded to state '*excavated waste will be moved up the hierarchy by reclamation of materials*' to avoid the burning of reclaimed materials for energy.

- f) The fourth bullet point should be expanded to state *'landfill gas utilisation has been maximised where unstable, biogenic material was present'* to allow for situations where the contents are found or ensured to be wholly inert.
- g) The fifth bullet point should be expanded to state *'effective leachate monitoring and necessary treatment continues'* to allow for the situation where no leaching is found yet evidence of a potential of leaching is found.
- h) The policy should be expanded to support suitable opportunities for other waste streams to be reclaimed through excavation and driven up the waste hierarchy, even where materials cannot be recycled, as such non-inert materials can be used for sustainable energy recovery as part of a wider strategy of diversion of waste from landfill. The following wording is suggested:
- i. *'Waste development proposals for the excavation, re-use and re-restoration of historic landfill sites to facilitate new sustainable development proposals will be permitted where it can be reasonably demonstrated that:*
    1. *excavation is required to enable a beneficial after-use (including all forms of built development) to take place on the site;*
    2. *the lack of intervention poses unacceptable adverse impacts on the natural, built and historic environment and/or human health, except where the primary requirement for excavation is to facilitate new development.*
    3. *excavated waste will be moved up the hierarchy;*
    4. *landfill gas utilisation has been maximised;*
    5. *effective leachate treatment continues; and*
    6. *any significant ecological interest which may have developed on a previously restored site will be addressed through mitigation or compensation, as appropriate.*
    7. *Proposals will be required to submit a feasibility assessment to establish the following: ground investigations, contamination, final destination of excavated waste, and the ongoing management of existing infrastructure associated with the landfill.'*
  - i) The policy makes it difficult for an applicant to demonstrate that excavation of historic inert and stable waste would be required to enable a beneficial after-use for a site. The policy is considered too stringent to allow landfill extraction even if there are clear environmental benefits to doing so. A new bullet point is suggested: *'excavation won't prejudice a beneficial after-use...'*.

4.4. The county council's response to the above representations is as follows:

- a) To be able to excavate a landfill, the area must have already been restored, be it from historic mineral workings or the infilling of land for other purposes.
- b) The policy states *'the lack of intervention poses unacceptable adverse impacts...'*. It is accepted that a lack of intervention could pose an adverse risk,

sufficient to warrant remediation, therefore the Policy has been amended to reference risk rather than impact.

- c) The excavation of a historical landfill site could provide significant wider benefits through regeneration, regardless of whether the site currently poses an unacceptable risk. The first two bullet points of the Policy have therefore been amended to an 'or' relationship.
- d) Planning Practice Guidance states that beneficial after-use of restored landfill sites includes the creation of agriculture, biodiversity, forestry and amenity. There is therefore no need to include natural habitats as an example within the policy.
- e) Whilst the burning of waste for energy recovery is lower down the waste hierarchy, it is still preferable to landfill.
- f) Landfill gas can be produced by several different processes and is not limited to unstable biogenic material. Therefore, no change to the policy wording is required.
- g) It is agreed that effective monitoring of leachate should take place, with treatment taking place where necessary.
- h) The policy does not restrict the types of waste that can be excavated and moved up the waste hierarchy, therefore no further change to the policy is required.
- i) The policy states that proposals will be permitted where excavation is required to enable a beneficial after-use. Landfill excavation is not always a preferred option and therefore, proposals must demonstrate a need for the development as outlined within the policy.

## **5. Alternative Reasonable Options**

5.1. The following alternative options have been considered (and fully assessed in the Sustainability Appraisal Report):

- Option 1 – A criteria-based policy to deal with proposals for landfill excavation and re-restoration (preferred)
- Option 2 – A more restrictive policy, which restricts landfill excavation to the purposes of safeguarding human health and the environment only
- Option 3 – A policy which is less restrictive, allowing for example the disposal of excavated waste into other landfill

## **6. Conclusion**

6.1. This Policy Evidence Report demonstrates the justification for the inclusion of this policy in the emerging Minerals and Waste Local Plan Draft Plan. It summarises the national policy context and local context, along with the main issues raised through previous consultation and how the council has addressed those issues.

- 6.2. Any representations received on this policy at the Regulation 18 consultation stage will be carefully considered by the county council and used to inform any changes to the policy wording as appropriate.
- 6.3. This Policy Evidence Report was written to support the Draft Plan (Regulation 18) consultation. The next iteration of this report, to be published in support of the Proposed Submission (Regulation 19) version of the Plan, will summarise the main issues arising from the Regulation 18 consultation and will form part of the Regulation 22 statement, as set out by the Town and Country Planning (Local Planning) (England) Regulations 2012.