

How ready is the legal and governance framework in the United Kingdom to meet the challenge of climate change?



Sectoral summary: land use planning

Q1: Is climate change expressly recognised in the legal framework for land use planning?

Climate change is expressly recognised across a range of legislation and planning policy documents. Together these seek to integrate climate change mitigation and adaptation into different stages of the planning process.

The following is a non- exhaustive list of some key legislation and policy:

- Section 19(1A) of the Planning and Compulsory Purchase Act 2004 requires local planning authorities to include in their local plans *“policies designed to secure that the development and use of land in the local planning authority’s area contribute to the mitigation of, and adaptation to, climate change”*. Failure to achieve this can lead to the successful challenge of a local plan.
- The Planning Act 2008 sets out the consenting regime for Nationally Significant Infrastructure Projects (“NSIPs”). Given the size and nature of these projects, NSIPs can have significant consequences for climate change mitigation and adaptation. Sections 5(7) and (8) require National Planning Statements (“NPSs”), which are designated by the Secretary of State to guide the development and mitigation of NSIPs, to explain how policies in the NPS take “account of Government policy relating to the mitigation of, and adaptation to, climate change”.
- The Planning and Energy Act 2008 and Energy Act 2008 offer tools for climate change mitigation. The former allows local planning authorities to include policies in their local plan which require a proportion of energy used in developments to be from local low carbon or renewable sources, or to impose efficiency standards that exceed the requirements in the Building Regulations. The latter provides the statutory basis for national planning policies relating to energy and sustainable buildings, as well as setting out powers to introduce feed-in tariffs and a renewable heat incentive scheme directed towards greater renewable energy uptake.
- The Flood and Water Management Act 2010 addresses the threat of flooding and water scarcity associated with climate change adaptation. The legislation provides for Lead Local Flood Authorities (LLFAs) responsible for local sources of flood risk (surface runoff, groundwater, and ordinary watercourses). LLFAs are statutory consultees on major developments, and local authorities must also ensure the requirements for a preliminary flood risk assessment are met.
- The National Planning Policy Framework 2021 (“NPPF”) sets out the national planning priorities for England as well as policy guidance. It contains a number of policies relating to climate change (considered below).
- The Planning Practice Guidance (“PPG”) has [a section which addresses climate change](#) in which it sets out advice on how to identify mitigation and adaptation measures in the planning process in order to address the impacts of climate change. For example, the PPG suggests how different types of evidence relating to climate change can inform local plans (from sustainability assessments through to flood risk assessments). The PPG also advises local authorities that their local plans can set energy performance standards for new housing or the adaptation of buildings to provide dwellings, that are higher than the Building Regulations.

Q2: What are the main issues arising from climate change for the sector?

The first main issue is ensuring that climate change is prioritised. Land use planning is a technically complex – as well as politically sensitive-area. In setting the framework for decisions about how land may be developed, the planning system balances the competing demands of economic growth, housing need, infrastructure requirements and environmental protection (including climate change).

Against this backdrop, there is a need for more micro and macro level policies dedicated to climate change adaptation and mitigation (from energy efficient windows and tree-lined streets to the choice of power station for a region) in the development plan (which set the framework for decisions). There is also a need for these policies to be given sufficient weight in individual decisions to ensure they are implemented.

The second main issue is resources. Ensuring that the decision-making framework secures climate change mitigation and adaptation depends in part on an evidence base of adequate quality, and in manpower and tools for the decision makers (usually local planning authorities) to implement mitigation and adaptation measures. The system must also allow for the provision of necessary technical evidence and invite meaningful community engagement.

Q3: What initiatives are taking place within the sector to further the goal of achieving Net Zero and how might other sectors learn from that?

Planning has the potential to make a major contribution to climate change mitigation. Whether in formulating policy in respect of infrastructure provision or framing the granting of individual planning permissions, planning law guides decisions which will have consequences for climate change for years to come.

The UK (and specifically England) has one of the most sophisticated development and land use planning systems in the world. Many of the tools which could help lead to Net Zero already exist and could in theory be implemented through planning policy.

For example, the NPPF in England contains a number of policies in support of a shift towards Net Zero, which inform plans and planning decisions. These include:

- Para 8(c) and 11(a) make clear that “*mitigating and adapting to climate change*” is a core policy objective, which should be reflected in local plans and planning decisions.
- Para 20(d) states that strategic policies should make sufficient provisions for planning measures to address climate change mitigation (and adaptation).
- Paras 98 and 131 recognise that landscape features such as open spaces and trees have ancillary benefits in terms of climate change mitigation (and adaptation).
- Chapter 14 deals specifically with climate change and sets out a number of policies in the sections “*Planning for climate change*”, “*Planning and flood risk*”, and “*Coastal change*”, all of which deal with both climate change mitigation and adaptation.

Q4: What initiatives are taking place within the sector to adapt to climate change and how might other sectors learn from that?

In addition to the points raised in relation to the NPPF, land use planning can operate over the long term to help the UK adapt to changes such as rising sea levels, and can also help shape resilience.

Both the Environment Bill and the NPPF also include measures to adapt to climate change (often in the example of flood management or green corridors, which can be intertwined).

In addition, the Environment Bill (which is soon to become law in England) makes further provision for the restoration and enhancement of nature by implementing mandatory biodiversity protections into the planning system, in the form of a planning condition requiring at least ten percent biodiversity net gain for the majority of planning consents. This biodiversity net gain potentially offers both mitigation (carbon sinks, flood management) and adaptation (green corridors for species migration, new habitat creation), if properly implemented.

Q5: Is the regime effective in light of future challenges?

At present, whilst steps are being taken and initiatives implemented, development and land use planning decisions are not leading to a significant reduction in greenhouse gas emissions as a result of development consented, nor are they adequately mitigating against climate change. In this respect the regime is not as effective as it could be.

However, where decisions are made that support climate change mitigation and adaptation, they can have manifold positive impacts. For example, nature recovery and nature-based solutions (including larger and more joined up protected areas) not only provide direct benefits in the form of carbon sinks or flood management, but often include multiple positive externalities in terms of species protection, biodiversity increase and offering a space for people in nature.

Q6: What are the top additional interventions (of any kind) that would improve the legal and governance framework in the sector?

1. Introducing a new statutory presumption, or amending national and local planning policy, so that when planning authorities determine applications, significant weight must be accorded to development that would help address climate change. To be effective this should ensure that climate change mitigation and adaptation are given greater (or at least equal) weight as existing priorities such as economic growth or housing delivery, where these are in conflict.
2. Increasing resources for local authorities to address climate change, enabling evidence-based and effective planning decision and local plan making.