



UK Environmental Law Association
Response to the Eco-towns Consultation: *Living a Greener Future*

The UK Environmental Law Association (UKELA) aims to make the law work for a better environment and to improve understanding and awareness of environmental law. UKELA's members are involved in the practice, study or formulation of Environmental Law in the UK and the European Union. It attracts both lawyers and non-lawyers and has a broad membership from the private and public sectors.

UKELA prepares advice to government with the help of its specialist working parties, covering a range of environmental law topics. This response has been prepared with the help of the Planning & Sustainable Development Working Party and covers UKELA's response to the Government's consultation document on eco-towns *Living a greener future*.

Introduction to response

UKELA welcomes the Government's considerable efforts to integrate sustainable building into its housing policy, not least through revised planning policy statements, upgraded Building Regulations, and the roll-out of BREEAM principles, in an effort to deal in a balanced way with housing pressures for new developments in some regions, and its wider commitment to sustainable development objectives. As such, UKELA supports the underpinning principle of seeking to embed environmentally efficient, zero carbon, sustainable development in the planning system.

The idealism behind the eco-town's initiative is refreshing, and reminiscent of the spirit which created the New Towns in the post war years. Many of the lessons learned from that experience will need to be translated into a 21st Century context if eco-towns are to "work", such as attracting a range of employment opportunities; creating new communities from the incoming residents; and monitoring of the ongoing evolution of the physical, social and economic development of the eco-town and the surrounding sub-region.

However there have been substantial changes in the way in which government operates, in the last sixty years. First, in the immediate post war years direct government intervention in a whole range of fields was widely accepted. The New Towns Act was a welcome part of the post-war housing drive and economic reconstruction. The focus of town and country planning was development control. Now however we have a plan led system, spearheaded by regional and sub-regional strategies and local development frameworks. Stakeholder involvement is seen as a key part of the process, not least because of ensuring public acceptability of proposals which will affect the future environment and economic development. The proposed eco-towns are relatively small in size and must be seen as complementing rather than competing with other settlements in the sub-region: that necessitates good transport links between them. Therefore UKELA considers that it would be both unacceptable and counter-productive to impose eco-towns on unwilling communities, which would be the result of progressing schemes, be they from the public or private sector, in the short timeframe envisaged by the Government.

Secondly, central and local government has now become the enabler rather than the provider of services: there is a much greater reliance on private sector investment. Eco-towns will require considerable investment in infrastructure, much of it experimental. UKELA welcomes the idea that all the infrastructure should be in place *before* residents and businesses move in.

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Similarly there is a great need for affordable housing of different denominations in most regions. The re-use of brownfield land, potentially containing contaminated sites, should be encouraged. However, Government will need to be prepared to foot the substantial bill that will come with developing such areas and in putting the necessary infrastructure in place. The private sector usually requires monies to be flowing in before they are prepared to invest in projects undertaken in the public interest. If eco-towns are to fulfil their potential and provide the flagship examples as to how to create genuinely low carbon, sustainable communities, it is essential that Government is prepared to underwrite the considerable up-front investment which would be involved, i.e. to replicate the leadership shown by post war governments in their creation of New Towns. Eco-towns will not happen, let alone be an example to development elsewhere, without it.

This UKELA response focuses on the first question of three main elements upon which views are sought in the Consultation:

The way in which the eco-towns concept is being developed and the different potential benefits that an eco-town could offer

In summary, UKELA is concerned that the manner in which the current proposals are being developed, and in particular the manner in which the eco-towns shortlist has been developed:

- (i) is not in compliance with the requirements of the Directive on the assessment of the effects of certain plans and programmes on the environment 2001 (the SEA Directive), and
- (ii) is contrary to the access to justice and public participation principles of the Aarhus Convention on access to information, public participation in decision making and access to justice in environmental matters 1998.

More detailed comments on other elements of the eco-town proposals and on the potential environmental and sustainability balance, are contained in the Annex to this response.

Aarhus Convention

Article 7 of the Aarhus Convention provides that *"To the extent appropriate, each party shall endeavour to provide opportunities for public participation in the preparation of policies relating to the environment"*. At no time to date has there been any opportunity for public participation in the policy decision to promote eco-towns. UKELA is concerned at the extent to which the potential developers of eco-towns have had access to Government to date, while the public appear to have been excluded from these discussions. This would appear to be contrary to article 7 of the Aarhus Convention.

SEA Directive

The SEA Directive requires the formal environmental assessment of, amongst other things, town and country planning and land use plans and programmes which set the framework for future development consent of the projects listed in the Environmental Impact Assessment ("EIA") Directive. In other words, it provides a high level environmental assessment, before individual proposals get to detailed application stage. Yet we can find no reference to a strategic environmental assessment being formally conducted in relation to the plan/programme to implement eco-towns.

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By being location specific, what the proposed PPS on eco-towns is effectively producing is a national spatial strategy for new towns, even though badged as a policy statement.

It is appreciated that the *Living a greener future* consultation document states that the shortlist of locations will be subject to a more detailed Sustainability Appraisal (SA) that will be consulted on in the summer, and that the final decision on the PPS will take into account the SA and the views of consultees. If this is to incorporate the environmental assessment requirements of the SEA Directive, UKELA is concerned that this is too late in the process. At no stage of these consultations does the fundamental question appear to be considered of whether eco-towns are the most sustainable alternative in the first place. That decision appears already to have been taken, including producing apparently arbitrary criteria such as the requirement that eco-towns must be separate and distinct from existing settlements. UKELA questions the basis upon which this criterion in particular was chosen as it must surely be more sustainable to develop new communities where there is already urban infrastructure in place.

The process to date is contrary to article 6 of the SEA Directive which requires that the authorities and the public are given *"an early and effective opportunity within appropriate time frames to express their opinion on the draft plan or programme and the accompanying environmental report before the adoption of the plan or programme..."*. Article 5(1) of the SEA Directive also provides that the environmental report must identify, describe and evaluate *"the likely significant effects on the environment of implementing the plan or programme and reasonable alternatives..."*. Carrying out an SA on the short-listed locations for eco-towns cannot recover this failure.

In order for eco-towns to meet their stated aims of sustainability, there needs to be a full sustainability, including SEA Directive-compliant environmental assessment, of the fundamental principle behind eco-towns. Amongst other things, eco-towns have the potential to impact on loss of UK domestic productive land, biodiversity, natural carbon sinks, attractive landscapes, and the soil's absorptive capacity needed to reduce threat from flash-flooding. They risk leading to carbon intensive vehicle use as those living in the new communities travel elsewhere for jobs, education, entertainment, shopping and other facilities. All these potential impacts should form part of the strategic environmental assessment, including an assessment against alternative options for delivering the Government's housing targets, and against a policy background that will require all new build housing to be zero carbon by 2016 in any event – whether contained in a new eco-town or otherwise. Only if that process demonstrates that eco-towns are the most sustainable option should the programme progress to considering potential locations for such eco-towns.

If any further comments or representations are required from UKELA, or for clarification on any of the above points, please contact:

Anne Harrison
 UKELA Planning and Sustainable Development Working Group Chair
 Associate (Barrister)
 Beachcroft LLP
 Portwall Place
 Portwall Lane
 Bristol BS99 7UD
aharrison@beachcroft.co.uk

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Annex containing more detailed comments / Other considerations

New Town planning

To the extent that a properly conducted sustainability and environmental assessment were to conclude that eco-towns were the most sustainable option, lessons should be drawn from the previous experiences of promoting and populating previous generations of New Towns.

At that point it is also important that local "host" communities are engaged in the process of locating and designing the new eco-towns. The development of a plan for the locations of such eco-towns must be done within the context of developing relevant Regional Spatial Strategies and Local Development Plans and not scarfed onto them. Where the planning system is still "bedding in" the new development plan system introduced less than four years ago, it is important that this process is not seen to dismiss that system but should rather work with and within it.

To work in a social context, it is important that existing communities do not feel that they have been "invaded" or that an eco-town has been imposed upon them. There would appear to be overwhelming objection to the current proposed eco-town locations by local communities. This is not a good way to start the process of creating new sustainable communities.

Funding and Infrastructure

The funding for eco-towns must be obtained in advance of any development commencing and infrastructure put in place before the eco-towns are populated. In terms of phasing, it would be important to ensure that the basic facilities such as schools, hospital, shopping centres etc. are in place at the very beginning of the town being inhabited, so that people moving there do not start off by having to travel for these services and thereby get into the habit of travelling to them before they are available locally.

Protection of Soils

Any eco-town development should take into consideration the objectives of the *EU Soil Strategy*, to minimise soil loss, sealing, compaction, and to retain soil carbon to reduce climate change impacts. While we understand that these objectives will now be pursued by the EU through an alternative instrument to the draft *Soil Framework Directive*, nevertheless these are all matters that should be taken into consideration in determining where and whether eco-towns should be built.

Truly sustainable land use policy should also balance the need for housing in greenfield locations against concerns over a world of growing food insecurity and climate change.

Further development pressures in greenfield countryside

UKELA is concerned that establishing new urban centres on greenfield sites far from existing settlements will, if successful, create new urban and suburban growth poles that will increasingly, directly and indirectly, remove further areas of land from current use as productive farmland, valuable habitat or landscape. Once developed, and if successful in attracting new communities and being a desirable place to live, they are likely to lead to pressure for further development adjacent to them, on what is currently valuable agricultural greenfield land.

Carbon cost

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For the smaller scale eco-town proposals, growth in associated car and heavy vehicular traffic will be hard to avoid due to distance from larger urban centres. To this extent, if eco-towns are to be developed then UKELA would favour larger scale proposals that will provide environmental economies of scale and have sufficient critical mass to justify the development of a full urban infrastructure and reduce the need or likelihood of residents routinely travelling elsewhere for jobs, entertainment, education (for all or any ages), health, shopping or other facilities.

In any event, in terms of transport infrastructure, predominance should be given to rail and public transport links such that use of private cars and road vehicles is disadvantaged.

Sustainable new build, and in some cases larger clusters of sustainable new build in the form of an eco-town, may have a valuable role to play where insufficient accommodation exists. This may be where there are specific local opportunities, for example jointly exploiting with industry district heating potential, demonstrating new construction methods, specific local needs. However, we are concerned that sustainable new build is often not as effective as sustainable retrofit, due to embodied carbon and we question the definition, if there is any, that is being given to the "zero carbon" criterion. For example, research by the Empty Homes Association using the University of Bath's Inventory of Carbon and Energy (ICE) reports that well-insulated new homes eventually make up for their high embodied energy costs as a result of their lower operational CO2 emissions, however in most cases this would take more than 50 years. This is longer than the intended lifespan of many new developments. Clearly, the issue of durability of new housing is crucial to whether long term sustainability or a truly "zero carbon" development can be achieved.

As a result, we would challenge the assumption that eco-towns would score well in a comprehensive environmental assessment or SA. However, following a SEA Directive compliant assessment should enable this assessment to be made.

In particular, we believe that, consistent with other areas of sustainability policy such as waste management, a clear hierarchy of principles should be established (or in some ways re-established, as much of this is in line with long-established planning principles). This hierarchy could be as below, determining optimum use of resources available to each.

Broad hierarchy:

- (1) Ensure full use of existing new build, including buy-to-let flats, often completed to high standards in convenient city centres, notably for single occupants, or young couples getting onto the housing ladder, requiring little or no retrofit, but left empty, whether through rental or ownership schemes
- (2) Sustainable retrofit and refurbishment of existing buildings in use, and of the estimated 850,000 derelict or otherwise empty properties across the UK, wherever economic
- (3) Re-development of individual existing urban sites where refurbishment is not economic, by new sustainable construction techniques – this will need to include doing more to overcome problems incurred with problematic contaminated land and should include community heating schemes and other innovative technologies such as are being encouraged in the eco-towns proposals
- (4) Enhancement and reinvigoration of both small and large urban centres towards sustainability, with measures such as community district heating schemes, improved public transport, and

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principles advocated by the growing grass-roots *Transition Towns* movement including food production and open space

- (5) Growth of existing settlements where urban infrastructure is already in place, by means of sustainable construction, subject to habitats, flood plain and other constraints
- (6) Reinvigoration of existing communities, including declining villages, with sustainable retrofit initiatives
- (7) Conversion of dying villages in remote rural areas or areas of larger centres into small-scale eco-villages as part of a regeneration strategy, drawing upon the fabric of local tradition and infrastructure as much as possible
- (8) Creation of new eco-towns where no more sustainable option exists to resolve pressing housing or other community needs, and where existing urban centres are incapable of economic upgrade to deal with the demand housing development. These should preferably be wholly on previously developed land and should as far as possible be sited in declining industrial regions with good transport links and public transport. There should be no arbitrary criteria of separation or distance from existing settlements.

Clearly, local needs can differ, implying some flexibility in interpretation of 'higher' and 'lower' level priorities, and pursuit of several measures in parallel.

Delivering standards

One further aspect that UKELA is concerned should be considered is monitoring and policing of the standards promised by eco-towns. There is currently great concern that Part L of the Building Regulations on energy efficiency is one of the least well policed by building inspectors, who are in any case in short supply. The same is true of energy assessors and BREEAM assessors. The lack of follow-up post-occupancy means that performance of sustainable buildings is often far better on paper than in reality. Without far tighter inspection of construction/upgrade and follow-up post-occupancy eco-towns could well fail to deliver on many of their objectives.

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