



27 June 2011

Rt Hon Greg Clark MP  
Eland House  
Bressenden Place  
London  
SW1E 5DU

Dear Minister

### **Presumption in favour of sustainable development**

The UK Environmental Law Association 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 welcomes the Government's objective of promoting sustainable development. We are strongly supportive of the inclusion of an explicit presumption in favour of sustainable development within the planning system, as this holds the key to securing a prosperous future for the country now and for generations to come. Such a presumption is essential for the Government to translate its long-standing commitment to a sustainable future into tangible legislative and policy form. In order for the commitment to be unequivocal, it needs to be made at the highest level.

We are however concerned at the recently published working draft of the presumption in favour of sustainable development and do not believe that it will achieve the stated aim. We believe that, as drafted, the presumption will lead to delays in the planning system including longer appeals and more High Court challenges as those involve debate the interpretation that should be given to the presumption, will be at the expense of the country's social and life-supporting environmental capital and conflicts starkly with many of the principles set out in the Natural Environment White Paper. It also fails to recognise the need to comply with European obligations such as environmental impact assessment and appropriate assessment under the Habitats Directive.

Our principal concerns with the presumption as published so far are as follows:

1. The presumption can only work if it is linked back to an appropriate definition of sustainable development that integrates environmental, social and economic objectives. It should not prioritise economic objectives at the expense of environmental and social objectives, and should recognise that growth in economic and social capital is dependent on the integrity of the country's environmental capital.
2. The expectation that the default answer to any planning application in the absence of relevant planning policies in the Development Plan must be "yes" subverts the principle that planning decisions should be made in the public interest. The final paragraph of the presumption would make it very difficult to refuse permission for environmentally and socially damaging development and could lead to decisions that infringe European law obligations.

UK Environmental Law Association: making the law work for a better environment

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3. The presumption as drafted continues to misunderstand the ability of Development Plans to provide a black and white answer to planning applications. Development Plans require interpretation. They rarely provide a yes or no answer. A requirement to grant permission for applications where the plan is absent, silent, indeterminate or where relevant policies are out of date will simply lead to debate and challenge over whether in fact a plan is absent, silent, indeterminate or its policies are out of date. It will not lead to a simpler planning process.
4. Local Plans have been developed to date in such a way as to avoid duplication with national and regional policies. The revocation of the PPS/PPGs and Regional Strategies will leave a vacuum in many if not all Local Plans which it will take time to fill. Development decisions must be allowed to be taken on their merits while those gaps are filled.

We recognise that economic growth is an immediate and pressing issue but the public interest requires decisions to be taken with a view to the long term sustainability of society. A presumption in favour of sustainable development must be clearly linked back to an acceptable definition of what constitutes sustainable development. To this end, we attach a proposed revised draft of the Government's presumption in favour of sustainable development, which we believe fills the gaps highlighted above.

We look forward to the publication of the Government's draft National Planning Policy Framework and hope that the above issues can be addressed within that.

For clarification on any of the above points, please do not hesitate to contact me.

Yours sincerely

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