

# National Planning Policy Framework

## Consultation questions

We are seeking your views on the following questions on the Government's proposal for a new National Planning Policy Framework.<sup>1</sup>

Email responses to: [planningframework@communities.gsi.gov.uk](mailto:planningframework@communities.gsi.gov.uk)

Written responses to:

Alan C Scott

National Planning Policy Framework

Department for Communities and Local Government

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### (a) About you

#### (i) Your details

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**(ii) Are the views expressed on this consultation an official response from the organisation you represent or your own personal views?**

Organisational response



Personal views



**(iii) Are your views expressed on this consultation in connection with your membership or support of any group? If yes please state name of group.**

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<sup>1</sup> (see: <http://www.communities.gov.uk/publications/planningandbuilding/draftframeworkconsultation>)

Yes

No

Name of group:

UK Environmental Law Association

**(iv) Please tick the *one* box which best describes you or your organisation:**

Private developer or house builder

Housing association or RSL

Land owner

Voluntary sector or charitable organisation

Business, consultant, professional advisor

National representative body

Professional body

Parish council

Local government (i.e. district, borough, county, unitary, etc.)

Other public body (please state)

Other (please state)

**(v) Would you be happy for us to contact you again in relation to this consultation?**

Yes

No

DCLG will process any personal information that you provide us with in accordance with the data protection principles in the Data Protection Act 1998. In particular, we shall protect all responses containing personal information by means of all appropriate technical security measures and ensure that they are only accessible to those with an operational need to see them. You should, however, be aware that as a public body, the Department is subject to the requirements of the Freedom of Information Act 2000, and may receive requests for all responses to this consultation. If such requests are received we shall take all steps to anonymise responses that we disclose, by stripping them of the specifically personal data - name and e-mail address - you supply in responding to this consultation. If, however, you consider that any of the responses that you provide to this survey would be likely to identify you irrespective of the removal of your overt personal data, then we should be grateful if you would indicate that, and the likely reasons, in your response, for example in the comments box.

## (b) Consultation questions

### Delivering Sustainable Development

**The Framework has the right approach to establishing and defining the presumption in favour of sustainable development.**

1(a) – Do you agree?

- |                           |                                     |
|---------------------------|-------------------------------------|
| Strongly agree            | <input type="checkbox"/>            |
| Agree                     | <input type="checkbox"/>            |
| Neither agree or Disagree | <input type="checkbox"/>            |
| Disagree                  | <input checked="" type="checkbox"/> |
| Strongly Disagree         | <input type="checkbox"/>            |

1(b) Do you have comments? (please begin with relevant paragraph number)

PARAS: Foreword; Paras. 9 – 16, 19

1. UKELA welcomes the Government's stated objective of promoting sustainable development, but the draft NPPF does not deliver on this.
2. Government ministers have already stated that they are likely to redraft parts of the NPPF. We would like to be consulted on these changes. As advisors and legal experts, we would like to ensure that this new approach to planning policy can work for those we advise and represent – on all sides of the debate.
3. The definition of 'sustainable development' contained in the document is stated very simply, and repeats the high-level formulation put forward by the Brundtland Commission (para 9). This does not provide any definite answers to the issue of how to apply this in practice. Nor is it clear what the “key sustainable development principles” (para 19 )are in the text of the NPPF.

4. The Environment Audit Committee itself recommended (3<sup>rd</sup> Report, 16 March 2011, para 10) that the five internationally-recognised principles of sustainable development set out in the 2005 Sustainable Development Strategy should be included in the Localism Bill – namely, living within environmental limits, ensuring a strong, healthy and just society, achieving a sustainable economy, promoting good governance and using sound science responsibly. However, the explanation given in the draft NPPF of what sustainable development means in the planning context does not acknowledge these. Indeed, there is no mention of living within environmental limits – which would necessarily restrict how far needs can be met – or the the considerable scientific evidence that already exists as to the extent to which the UK is operating within its ecological limits.
5. What we have instead is an emphasis on growth. People will use the Foreword to help in the interpretation of the document. The Minister defines ‘development’ as ‘growth’, and states that "sustainable development is about positive growth". We recognise that economic growth is an immediate and pressing national issue but the public interest also 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 overall – in the short, medium and long-term.
6. The current draft of the NPPF therefore appears to overlook the fact that the term ‘sustainable development’ was conceived to reconcile tension between environmental and developmental concerns. It also appears to take a short term view, as it prioritises economic growth at the expense of long

term environmental and social objectives.

7. Given the need for integrated solutions as a matter of public policy it is not useful for every authority, agency and neighbourhood to develop its own definition and approach to sustainable development.
8. We are particularly concerned at the drafting of the presumption in favour of sustainable development in para 14, and do not believe that it will achieve its stated aim. Again, the presumption can only work if it is linked back to an appropriate definition of sustainable development that integrates environmental, social and economic objectives.
9. There are some legal complications which will need addressing. We are not alone in making this point – and it does need proper consideration. The presumption as drafted (para 14) does not fit with the basic statutory test that planning decisions should be determined in accordance with the development plan unless material considerations indicate otherwise (section 38(6) of the Planning and Compulsory Purchase Act 2004 – previously set out in s.54A of the TCPA 1990). The old presumption that permission should be granted unless it “would cause demonstrable harm to interests of acknowledged importance” was removed for this very reason.
10. The presumption as drafted also misunderstands 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.
11. 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. All that this part of para 14 should have referred to it whether a plan is out of date.

12. Whilst the current planning system is used to dealing with policies which are “out of date”, under the s.38(6) duty, there is a problem with what it currently says about plans being silent or absent. Many local plans are ‘absent’. As the Impact Assessment records, only 30% of English authorities currently have a Core Strategy in place, and even fewer have adopted a detailed site allocation DPD. Perhaps the worst problem is that 47% have yet to even publish their core strategy – and these are likely to take over a year to adopt even once they are published. By contrast, the government is proposing to adopt the NPPF within 3-6 months from now.

13. Many recent local plans will also deliberately be ‘silent’ on important points, as they will have been adopted following the advice to Inspectors to ensure that DPDs did not repeat national planning guidance. 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.

14. All existing plans will also be ‘silent’ on the point about the presumption. The ability to receive a certificate of conformity needs greater explanation [para 15]. Since it is impossible for existing local plans to “contain” the presumption – as the presumption was not there before - and the soundness tests for local plans have changed (para 48), how can a certificate (under para 26) ever be granted ?

15. These are practical problems, that could be resolved with time. However, there is no transitional period allowed. Does the government intend that there should be an indeterminate period of hurried plan making and unpredictable appeal decisions before the new system beds down? We welcome the indication that there will be a transition allowed.

16. There is also a major problem with the idea that the default answer applies when plans are "indeterminate". This would turn the current working of the plan-led system into confusion. Many decisions in planning are made where the development plan policies are in effect "indeterminate". The issue of conflicting policies in a development plan has been considered in the courts, and has gone all the way to the House of Lords- in *City of Edinburgh Council v Secretary of State for Scotland* [1997] 1 WLR 1447, per Lord Clyde:

" ... In the practical application of section 18A [the equivalent to s.38(6)] it will obviously be necessary for the decision-maker to consider the development plan, identify any provisions in it which are relevant to the question before him and make a proper interpretation of them. His decision will be open to challenge if he fails to have regard to a policy in the development plan which is relevant to the application or fails properly to interpret it. He will also have to consider whether the development proposed in the application before him does or does not accord with the development plan. *There may be some points in the plan which support the proposal but there may be some considerations pointing in the opposite direction. He will require to assess all of these and then decide whether in light of the whole plan the proposal does or does not accord with it. He will also have to identify all the other material considerations which are relevant to the application and to which he should have regard. He will then have to note which of them support the application and which of them do not, and he will have to assess the weight to be given to all of these considerations. He will have to decide whether there are considerations of such weight as to indicate that the development plan should not be accorded the priority which the statute has given to it. And having weighed these considerations and determined these matters he will require*

*to form his opinion on the disposal of the application. If he fails to take account of some material consideration or takes account of some consideration which is irrelevant to the application his decision will be open to challenge. But the assessment of the considerations can only be challenged on the ground that it is irrational or perverse."*

17. The wording at the end of para 14 is likely to be a section that is much debated – at what point is an adverse impact of a development “significant” enough to refuse permission ? and is an expert’s opinion sufficient to be “demonstrable” evidence ? and is a local agenda sufficient to outweigh the benefits ? This is likely to lead to delays in the planning system including longer appeals and more High Court challenges.
18. The presumption in favour of sustainable development could be expressed to facilitate development which meets the minimum sustainable development guidelines in a revised NPPF.
19. As drafted, the presumption is likely to 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.
20. In practical terms, a planning system that is geared to achieve sustainable development needs to embody a spatial planning approach. Only such an approach is sophisticated enough to balance population patterns, societal and economic needs and market forces with all-important ecological constraints. The government’s new approach is essentially market-led, and devoid of spatial considerations. It therefore risks failing to address population imbalances, economic and social inequality and resource pressures (such as water constraints

in the South East). It would have been preferable for the NPPF to include a broad spatial vision of how England should develop, which sets the priorities and key issues for planning authorities to consider in different parts of the country, from a sustainability perspective. This can be done on a broader level than the previous RSS approach, whilst allowing local decision-making on the details.

21. See also our comments under 15(b) concerning how the NPPF addresses protection of the natural environment.

## Plan-making

**The Framework has clarified the tests of soundness, and introduces a useful additional test to ensure local plans are positively prepared to meet objectively assessed need and infrastructure requirements.**

2(a) Do you agree?

- |                           |                                     |
|---------------------------|-------------------------------------|
| Strongly agree            | <input type="checkbox"/>            |
| Agree                     | <input type="checkbox"/>            |
| Neither agree or Disagree | <input type="checkbox"/>            |
| Disagree                  | <input checked="" type="checkbox"/> |
| Strongly Disagree         | <input type="checkbox"/>            |

2(b) Do you have comments? (please begin with relevant paragraph number)

### **Para 14, 20-52**

We have already commented on the relationship between the presumption and local plans in the answers to question 1, and

repeat those same points here.

PLEASE NOTE - the structure of the consultation response document is awkward . Since it seeks to put words into consultees mouths, and does not ask for general comment, it may also mean that some of our concerns do not fit neatly into the stated categories.

There is a problem with seeking to ensure that local plans are “positively prepared to meet objectively assessed need and infrastructure requirements” – this is a matter of expert judgment, and a mix of fact and opinion, and not a mechanical process. The words “objectively assessed” should be deleted, and it could state ‘to meet local needs and infrastructure requirements’ .

The tests of soundness at the moment (in PPS 12) already require Inspectors to check whether the Local Planning Authority has a robust evidence base, and this includes preparing an infrastructure delivery plan as a matter of good practice.

It remains unclear how any ‘certificate of conformity’ referred to in para 26 can have any status. It is not part of the regulations or statute, and there will be many who would wish to contest such a certificate. Whilst assessing conformity with national policy is part of the local plan examination, there is no such public process for existing plans.

So, we do not know what the legal basis for such a certificate would be, who decides on it and how long it can last.

We would wish to be consulted further on this point.

**The policies for planning strategically across local boundaries provide a clear framework and enough flexibility for councils and other bodies to work together effectively.**

2(c) Do you agree?

- |                           |                                     |
|---------------------------|-------------------------------------|
| Strongly agree            | <input type="checkbox"/>            |
| Agree                     | <input type="checkbox"/>            |
| Neither agree or Disagree | <input type="checkbox"/>            |
| Disagree                  | <input checked="" type="checkbox"/> |

Strongly Disagree

2(d) Do you have comments? (please begin with relevant paragraph number)

The enforced co-operation under the Localism Bill is an untried area. For the most part, it can be expected that local authorities will seek to co-operate amongst themselves – as they do now -, and that many of the “larger-than-local” issues will be addressed without the need for a formal resolution by an outside body.

The problem will come with issues where no authority wants to take the lead – for instance, gypsy site provision in the south-east, or the need for an urban extension into neighbouring authorities’ areas (e.g. at Stevenage).

These needs will not resolve themselves. Whilst the local planning authorities are encouraged to draw up their plans on the basis of “objectively-assessed development needs” these will always require an element of judgment – particularly when the market is, by its very nature, only taking a short term view.

Since there is no spatial plan for England, ‘larger-than-local’ may become a process of planning by appeal – as the LPA argues that the needs are exaggerated and the large developers insist that their research shows otherwise.

See also our comments on question 15(b), below (at paragraph 12).

### **Decision taking**

**In the policies on development management, the level of detail is appropriate.**

3(a) Do you agree

Strongly agree

Agree

Neither agree or Disagree   
Disagree   
Strongly Disagree

3(b) Do you have comments? (please begin with relevant paragraph number)

We assume that this question is restricted to paras 53-70, and not the wider document.

As the draft document does represent a radical simplification of the planning policy framework, it does remove important areas of detailed guidance which have stood the test of time.

**Para 53.**

This para states that “The primary objective of development management is to foster the delivery of sustainable development, not to hinder or prevent development.”

The lack of any discussion of planning enforcement, despite the proposed cancellation of PPG 18, does mean that this introductory sentence to the development management section of the NPPF (paras 53-70) reads as if any development is to be encouraged. It would be better to acknowledge the need for planning enforcement somewhere – or at the least by saying (... not to hinder or prevent appropriate development).

**Para 57**

It is regrettable that para 57 states that LPAs “...cannot require that a developer engages with them before submitting a planning application”, when it is trying to encourage a proactive approach – this should include the applicants as well.

**Paras 62 & 63 –**

the NPPF should acknowledge section 38(6) is not just ‘the starting point’, but is the statutory test.

Para 70.

The viability of proposals should not affect what conditions are considered to be necessary. It can influence what obligations should be required – but the inability to meet a condition (e.g. safe highway access, inadequate landscaping) should lead to a refusal.

There is no real justification provided for the proposed withdrawal of the circular on planning obligations – 05/2005. It provides a well-established set of guidelines.

**Any guidance needed to support the new Framework should be light-touch and could be provided by organisations outside Government.**

4(a) Do you agree

- |                           |                                     |
|---------------------------|-------------------------------------|
| Strongly agree            | <input type="checkbox"/>            |
| Agree                     | <input type="checkbox"/>            |
| Neither agree or Disagree | <input type="checkbox"/>            |
| Disagree                  | <input type="checkbox"/>            |
| Strongly Disagree         | <input checked="" type="checkbox"/> |

4(b) What should any separate guidance cover and who is best placed to provide it?

Our disagreement is not with the suggestion that guidance can be 'light-touch', but with the NPPF's proposed restriction on the ability of LPAs to produce relevant guidance.

LPAs should be free to adopt which local planning documents they wish (para 21 actively discourages this), and the effective ban on supplementary planning documents – such as a Design Guide, or a Conservation Area statement – is unhelpful. It will only lead to more uncertainty about what a particular LPA is likely to decide.

It is very vague to say that "Supplementary planning documents should only be necessary where their production can help to bring forward sustainable development at an accelerated rate" (para 21). The statement that SPD "must not be used to add to

the financial burdens on development” would appear to rule out SPD on planning obligations – whereas these are currently subject to local consultation and objections before adoption.

Existing Practice Guidance from non-departmental public bodies (e.g. on flooding from the Environment Agency, or heritage from English Heritage) is helpful for owners, applicants, local groups and LPAs. It makes an efficient use of public resources.

Outside guidance (from private bodies) can have no status in the planning system – it will not have been subject to public consultation, nor are the authors accountable to the electorate. Whilst outside guidance can be useful expert evidence it is no more than this. The status given to ‘By Design’ produced by CABE is because it was endorsed by the government.

## **Business and economic development**

The 'planning for business policies' will encourage economic activity and give business the certainty and confidence to invest.

5(a) Do you agree?

- |                           |                                     |
|---------------------------|-------------------------------------|
| Strongly agree            | <input type="checkbox"/>            |
| Agree                     | <input type="checkbox"/>            |
| Neither agree or Disagree | <input type="checkbox"/>            |
| Disagree                  | <input checked="" type="checkbox"/> |
| Strongly Disagree         | <input type="checkbox"/>            |

5(b) Do you have comments? (please begin with relevant paragraph number)

This is a qualified disagreement – most of the 'planning for business policies' are very general.

The problem arises on para 75. No justification is given for why the long-term protection on employment land has been removed (see para 75) at the same time as the overall policy is to advocate economic

growth. This perhaps reflects the short-term time horizon being put forward for these NPPF policies, which sacrifices long-term interests.

The current test – that land should be safeguarded if a need can be shown for it on the evidence – works, and strikes a good balance. Employment land is often perceived by landowners/investors as having a lower profit attached to it than if it was released for the quick return represented by a housing or retail scheme – but that then means that businesses are priced out of the market for this land unless it is protected in the long term.

The point also arises (as covered in our comments on Q.1(b)) that whilst short-term economic interests can benefit from a ‘growth’-oriented approach, in the long term, economic activity depends heavily on the health of the natural environment being maintained. Given the strong evidence of unsustainable trends in the UK at present, and of considerable pressures on natural resources and ecological systems, the NPPF needs to reflect the need for economic growth to operate within the framework of what good science tells us the environment can actually support.

5(c) What market signals could be most useful in plan making and decisions, and how could such information be best used to inform decisions?

Market signals tend to be short-term, so that it is difficult to do more than is suggested – to ensure local plans are flexible, and that individual decisions can consider viability where necessary.

The town centre policies will enable communities to encourage retail, business and leisure development in the right locations and protect the vitality and viability of town centres.

6(a) Do you agree?

- Strongly agree
- Agree
- Neither agree or Disagree
- Disagree
- Strongly Disagree

6(b) Do you have comments? (please begin with relevant paragraph number)

The current test does not prevent out of town sites, but requires them to justify themselves – and this can lead to a better integrated town.

Para. 77-78

The NPPF has not justified why office development can be removed from the ‘town centre first’ sequential test. They can be a useful part of the mix of uses, and help support sustainable transport.

It is also odd the NPPF does not refer to “offices” at all (a simple word search shows this – it is only in the Impact Assessment)– as if there was a free for all, and there was no history of their proper development.

(Para. 76, points 5-7; and para. 78)

The retention of the town centre first sequential test for retail and leisure uses appears clear – until the statement that *“it is important that retail and leisure needs are met in full and are not compromised by limited site availability”*. This suggests that all such needs must be met, even if the limitation on site availability is environmental or transport reasons- even if they are AONB or Green Belt sites. This is an example where there is no apparent acceptance in the draft of environmental limits to needs.

**Transport**

The policy on planning for transport takes the right approach.

7(a) Do you agree?

- Strongly Agree
- Agree
- Neither Agree or Disagree

Disagree  
Strongly Disagree

√  
□

7(b) Do you have comments? (please begin with relevant paragraph number)

There is a contradiction between 82 and 86. At paragraph 82 it is explained that “transport policies have an important role to play in facilitating development but also in contributing to wider sustainability and health objectives.” But then in paragraph 86 the NPPF states that “development should not be prevented or refused on transport grounds unless the residual impacts of development are severe, and the need to encourage increased delivery of homes and sustainable economic development should be taken into account.”

The objectives and the policies proposed are also weakened by the use of caveats such as “*where practical*” or “*where reasonable*” (para. 83) – which appear to be unnecessary.

We do not know how this fits with para 14, that harm has to be significant – is ‘severe’ a harder test than this? We assume the choice of a different term is deliberate.

The drafting of the NPPF seems to suggest that transport problems can be significant, and harmful, but permission must be granted if these issues fall short of being judged “severe” –or if we just need more homes and jobs anyway. ‘Sustainable’ economic development used to mean that they were sustainable in transport terms in particular.

It is not clear how the transport policy in the NPPF is intended to reflect the objectives in the climate change policy section on a low carbon economy and GHG emissions reductions. This would benefit from clarification.

### **Communications infrastructure**

Policy on communications infrastructure is adequate to allow effective communications development and technological advances.

8(a) Do you agree?

- |                           |                                     |
|---------------------------|-------------------------------------|
| Strongly Agree            | <input type="checkbox"/>            |
| Agree                     | <input type="checkbox"/>            |
| Neither Agree or Disagree | <input checked="" type="checkbox"/> |
| Disagree                  | <input type="checkbox"/>            |
| Strongly Disagree         | <input type="checkbox"/>            |

8(b) Do you have comments? (please begin with relevant paragraph number)

We have no specific comments to make on this topic – having concentrated our attention on other areas.

## Minerals

The policies on minerals planning adopt the right approach.

9(a) Do you agree?

- |                           |                                     |
|---------------------------|-------------------------------------|
| Strongly Agree            | <input type="checkbox"/>            |
| Agree                     | <input type="checkbox"/>            |
| Neither Agree or Disagree | <input checked="" type="checkbox"/> |
| Disagree                  | <input type="checkbox"/>            |
| Strongly Disagree         | <input type="checkbox"/>            |

9(b) Do you have comments? (please begin with relevant paragraph number)

We have no specific comments to make on this topic – having concentrated our attention on other areas.

## Housing

The policies on housing will enable communities to deliver a wide choice of high quality homes, in the right location, to meet local demand.

10(a) Do you agree?

- |                           |                          |
|---------------------------|--------------------------|
| Strongly Agree            | <input type="checkbox"/> |
| Agree                     | <input type="checkbox"/> |
| Neither Agree or Disagree | <input type="checkbox"/> |

Disagree  
Strongly Disagree

√

10(b) Do you have comments? (please begin with relevant paragraph number)

**107-113**

The question is a little odd in its emphasis. Housing is not delivered by communities, but by private companies, and mainly on private land. The planning system is only part of the solution to increasing housing delivery. It can ensure that sufficient sites are allocated, and suitable permissions granted, but the actual delivery is down to the market. Sites can lie idle even with permission.

The NPPF is too prescriptive when it states that Local Plans should meet the "*full requirements for market and affordable housing*" as shown in the SHMA – as the SHMA does not take account of any sustainability issues. It is simply an expert opinion on what the market and affordable housing needs may be.

## Planning for schools

The policy on planning for schools takes the right approach.

11(a) Do you agree?

- |                           |                                     |
|---------------------------|-------------------------------------|
| Strongly Agree            | <input type="checkbox"/>            |
| Agree                     | <input type="checkbox"/>            |
| Neither Agree or Disagree | <input checked="" type="checkbox"/> |
| Disagree                  | <input type="checkbox"/>            |
| Strongly Disagree         | <input type="checkbox"/>            |

11(b) Do you have comments? (please begin with relevant paragraph number)

We have no specific comments to make on this topic – having concentrated our attention on other areas

## Design

The policy on planning and design is appropriate and useful.

12(a) Do you agree?

- |                           |                                     |
|---------------------------|-------------------------------------|
| Strongly Agree            | <input type="checkbox"/>            |
| Agree                     | <input checked="" type="checkbox"/> |
| Neither Agree or Disagree | <input type="checkbox"/>            |
| Disagree                  | <input type="checkbox"/>            |
| Strongly Disagree         | <input type="checkbox"/>            |

12(b) Do you have comments? (please begin with relevant paragraph number)

We agree that “Good design is indivisible from good planning and should contribute positively to making places better for people.”  
“(114)

But, it is unclear how this then relates to the statement in a later section on climate change that

“151. Local planning authorities should not refuse planning permission for well-designed buildings or infrastructure which promote high levels of sustainability because of concerns about incompatibility with an existing townscape unless the concern

relates to a designated heritage asset ...”

- good design should be able to address both the building (or infrastructure) and its setting. The issue about pylons and wind turbines come to mind.
- Where para 151 refers only to townscape, does this then mean that incompatibility with an existing ‘landscape’ is not covered by this para?
- Is the NPPF drawing a distinction between urban design and environmental design (such as the Government’s zero emissions buildings policy, and established best practice such as BRREAM).?

One approach to consider is that the presumption in favour of Sustainable Development could work to make the default answer to development that meets good practice in environmental design and is located sustainably is ‘yes’. Other proposals could then be subject to further work in partnership with the LPA before they are reconsidered, and if, after this stage, they still fail to meet those objectives, the authority should, unless there are overwhelming reasons to the contrary, reject them.

## Green Belt

The policy on planning and the Green Belt gives a strong clear message on Green Belt protection.

13(a) Do you agree?

- |                           |                                     |
|---------------------------|-------------------------------------|
| Strongly Agree            | <input type="checkbox"/>            |
| Agree                     | <input type="checkbox"/>            |
| Neither Agree or Disagree | <input type="checkbox"/>            |
| Disagree                  | <input checked="" type="checkbox"/> |
| Strongly Disagree         | <input type="checkbox"/>            |

13(b) Do you have comments? (please begin with relevant paragraph number)

### Paras 133-147

This is a part of the document where the redrafting of a well-established PPG may have had unintended consequences –as it reads as if the basic tenet of protection of the Green Belt from inappropriate development has changed. The paras in PPG 2

have been much debated in inquiries and in caselaw.

Current policy in PPG2 (adopted and applied since 1992) provides that (para 3.1) “The general policies controlling development in the countryside apply with equal force in Green Belts but there is, in addition, a general presumption against inappropriate development within them. Such development should not be approved, except in very special circumstances.”

However, the NPPF does not mention this presumption. At the moment, it is a fair conclusion on the wording of the NPPF to say that the current presumption against inappropriate development in the Green Belt will not be applicable once the NPPF is adopted. This is a significant change –as the CPRE have rightly said.

There is a lack of clarity in the NPPF. At paragraph 142 it only states : “Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances”. Harm must however under para 14 be significant and demonstrable – not just ‘harmful’ – it is unclear if para 14 overrides para 142.

### **Climate change, flooding and coastal change**

The policy relating to climate change takes the right approach.

14(a) Do you agree?

- |                           |                                     |
|---------------------------|-------------------------------------|
| Strongly Agree            | <input type="checkbox"/>            |
| Agree                     | <input type="checkbox"/>            |
| Neither Agree or Disagree | <input checked="" type="checkbox"/> |
| Disagree                  | <input type="checkbox"/>            |
| Strongly Disagree         | <input type="checkbox"/>            |

14(b) Do you have comments? (please begin with relevant paragraph number)

This question on the policy on Climate change asks for a value judgment, on which our members may agree or disagree.

The section provides little indication of what is ‘low-carbon’ –and

different interpretations across the country are to be expected.

The policy on renewable energy will support the delivery of renewable and low carbon energy.

14(c) Do you agree?

- |                           |                                     |
|---------------------------|-------------------------------------|
| Strongly Agree            | <input type="checkbox"/>            |
| Agree                     | <input type="checkbox"/>            |
| Neither Agree or Disagree | <input checked="" type="checkbox"/> |
| Disagree                  | <input type="checkbox"/>            |
| Strongly Disagree         | <input type="checkbox"/>            |

14(d) Do you have comments? (please begin with relevant paragraph number)

The section provides little indication of what is 'low-carbon' and renewable –and different interpretations across the country are to be expected. So whilst the policy gives support, it is difficult to predict the effect on delivery.

The draft Framework sets out clear and workable proposals for plan-making and development management for renewable and low carbon energy, including the test for developments proposed outside of opportunity areas identified by local authorities.

14(e) Do you agree?

- |                           |                                     |
|---------------------------|-------------------------------------|
| Strongly Agree            | <input type="checkbox"/>            |
| Agree                     | <input type="checkbox"/>            |
| Neither Agree or Disagree | <input checked="" type="checkbox"/> |
| Disagree                  | <input type="checkbox"/>            |
| Strongly Disagree         | <input type="checkbox"/>            |

14(f) Do you have comments? (please begin with relevant paragraph number)

We have no specific comments to make on this part of the renewable and low carbon topic – having concentrated our attention on other areas.

The policy on flooding and coastal change provides the right level of protection.

14(g) Do you agree?

- |                           |                                     |
|---------------------------|-------------------------------------|
| Strongly Agree            | <input type="checkbox"/>            |
| Agree                     | <input type="checkbox"/>            |
| Neither Agree or Disagree | <input type="checkbox"/>            |
| Disagree                  | <input checked="" type="checkbox"/> |
| Strongly Disagree         | <input type="checkbox"/>            |

14(h) Do you have comments? (please begin with relevant paragraph number)

**The reason for disagreement is that the policy on Flooding is** badly expressed – paras 155 to158 – there is no definition of flood zones, nor protection of the functional flood plain.

It is frustrating that the limitations on the length of the NPPF have caused the removal of the technical detail that PPS 25 provides and which have proved useful in practice.

## Natural and local Environment

Policy relating to the natural and local environment provides the appropriate framework to protect and enhance the environment.

15(a) Do you agree?

- |                           |                                     |
|---------------------------|-------------------------------------|
| Strongly Agree            | <input type="checkbox"/>            |
| Agree                     | <input type="checkbox"/>            |
| Neither Agree or Disagree | <input type="checkbox"/>            |
| Disagree                  | <input type="checkbox"/>            |
| Strongly Disagree         | <input checked="" type="checkbox"/> |

15(b) Do you have comments? (please begin with relevant paragraph number)

1. The comments below (paras 2 to 18) have been provided by UKELA's Nature Conservation Working.
2. The comments relate both to the specific section in the draft NPPF headed Natural Environment (paras 163 – 175) and the implications for environmental protection of the policies under the heading Delivering Sustainable Development (paras 9 – 19).
3. Local plan policies and decision-making in relation to the protection of, and enhancement of, nature conservation values are in many instances unambitious and less than fully effectively implemented. To a very large extent they have been driven by but progressed little further than national planning policy guidance in PPG9 and PPS9.
4. In turn that national policy, in relation to the conservation and restoration of habitats and species and generally with regard to ecological management, derives in a very large part from international treaty obligations of the UK and EU legislation transposing and adding to it.

5. The EU legislation has been interpreted by the European Court of Justice in an increasingly-robust fashion, as has been illustrated by the judgments of the Court and the opinions of Advocate-General Kokott in the *Waddensee* decision on the protection of European sites under article 6 of the Habitats directive and in the recent judgment in favour of the Commission against France in relation to 'the Great Hamster'. This last decision emphasises the importance of mandatory obligations of a positive nature to use the land use planning system to achieve conditions in which the habitat of European protected species outwith European sites must be protected.
6. As a result of this developing case-law, and for other reasons, it is arguable that PPS9 falls short of full recognition of the obligations of the UK which should be realised by the operation of the land use planning system.
7. Further, as PPS 9 is only administrative guidance (and can be regarded as 'soft law'), there must be doubt in any event as to whether central government guidance can be regarded as fully implementing the obligations of the UK, for example under the Habitats and Birds Directives. The weakness of using guidance is illustrated by the first instance judgment of Mitting J in the *Buglife* case where the guidance in PPS9 was held to give way to a general statutory duty on the part of the decision-maker.
8. Current guidance in PPS9 of course ranks equally with all other PPS and is not required to be subjected to provisions of other PPS: likewise other PPS guidance does not give way to PPS9 even though it may, from a legal point of view, carry less weight than the nature conservation obligations explained and interpreted in PPS9. That is a matter of some legal concern as matters stand at present.

9. However, the way in which guidance from different subject areas is integrated in the draft NPPF is extremely concerning. In the most obvious respect, paragraph 23 on page 7 of the draft sets out a list of strategic policies for an area that should be included in the Local Plan. The first four in the list cover policies to deliver different kinds of built development and infrastructure for the support of human populations. The fifth contains a rag-bag of concepts including “protection and enhancement of the natural and historic environment”. It gives no indication of what is to be delivered by local plans in this area, and no specific mention either of species or habitats, notwithstanding that, fully to implement the UK’s obligations, the infrastructure for the restoration of favourable conservation status to protected species should be integrated into land use planning (as indeed arguably should plans to achieve the objectives required by the Water Framework Directive, the Flood Risk Directive and other EU legislation). Without the achievement of the outcomes required by nature conservation and other legislation being identified as strategic priorities at least ranking with the first four indents of paragraph 23, the cutting down of the codex of PPG and PPS into this document will have the effect of demoting nature conservation objectives in guidance to a level which is dubiously lawful in European law.

10. The lack of emphasis upon achievement of the objectives required to be set for species at the European and national level is apparent not only from the formulation of the strategic priorities but from the identification of a broad objective of “a healthy natural environment” which is a term so wide as to be meaningless (para 163). Similarly paragraph 164 is strictly reactive rather than proactive.

11. In our view, the strategic priorities must include the positive use of the land use planning system to achieve the conservation objectives of European sites and protected species, national sites and protected species, and biodiversity action plans - in particular by achieving the ecological requirements of relevant species, which should be viewed as infrastructure. The utility of land to serve such purposes is not, as suggested in the last bullet point of paragraph 19, limited to open land but can include built development in many ways.
12. Similarly, the evidence base required by local planning authorities should include the information relevant to their area and adjacent areas as to the requirements of relevant species to support their sustainable reproduction and where in unfavourable conservation status, restoration to that status. The absence of an adequate evidence base in relation to nature conservation is likely to have the additional adverse consequence that, by the application of guidance in paragraph 14, the nature conservation issues will not be demonstrable and cannot therefore be considered to outweigh the development drivers at all.
13. Further, the measures required to be taken in local plans and development decisions by local planning authorities in relation to habitats and species require liaison and co-ordination between authorities for different areas. Paragraph 44 places emphasis on a duty of co-operation, and targets this at the strategic priorities. Absent a specific strategic priority for nature conservation, and with limited local planning authority resources in ecology, the absence of any specific driver to integrated working in a way which seeks to achieve the desiderata identified in the Lawton report and the DEFRA

natural environment White Paper is likely to result in this area being neglected and co-operation limited to built environment outwith specific landscape protected areas.

14. Additionally, neighbourhood plans are required to be consistent with the strategic priorities set in the local plans. Unless nature conservation issues are made a strategic priority, these will not be required to be respected by neighbourhood plans. On the other hand, if they are, then the local plan will encourage neighbourhood plans to go further with regard to underpinning the requirements of habitats and species.

15. The emphasis of the document when it does deal with nature conservation is, unfortunately, principally site based. Such a view of nature conservation is seriously outdated.

16. By contrast with the provision for nature conservation, in other environmental policy areas the guidance does provide mandatory guidance to support achievement of objectives set in accordance with European legislation. For example para 174 guides that planning policies should “sustain compliance with and contribute towards EU limit values or national objectives for pollutants...” It goes on to say “Planning decisions should ensure that any new development in Air Quality Management Areas is consistent with the local air quality action plan”. Even that is inadequate, in that development outwith local AQMAs is very likely to affect air quality in them to the extent at least that that impact relates from traffic to and from the development.

17. Given that it is accepted that such provision should be made in the Framework, this should be fully applied not only to the requirements of European legislation as to species but also to the requirements of the Water Framework Directive.

18. UKELA would wish to see that the Draft National Planning Policy Framework therefore identifies as strategic priorities not merely the reactive mitigation of impacts on natural environment, and the direct usefulness of natural environment to human beings, but the achievement of networks of infrastructure and patterns of land use. These should be required to be achieved in an integrated, rather than a fragmented, manner to maintain and restore conservation status to the range of species and habitats (including water bodies) that are the subject of existing legal and administrative measures including agro-environmental measures.

19. As for the local environment, it is unclear what the status of the countryside is for its own sake. The importance of the countryside does not just lie in designated areas. These areas – the AONB, National Parks, Green Belt, SSSI – have an additional layer of protection to their status as countryside.

- It will become necessary to argue about what is the “land with the least environmental or amenity value” (para 165),.

- Paragraph 173 states that “planning policies and decisions should aim to ... identify areas of tranquillity which have remained relatively undisturbed by noise and are *prized for their recreational and amenity value for this reason*”. This implies that the justification for its protection will rest on the ability to demonstrate in every case that an area has some value which is “prized”, and it will no longer be enough to rely on the area’s own

intrinsic character for its protection.

### Historic Environment

This policy provides the right level of protection for heritage assets.

16(a) Do you agree?

- |                           |                                     |
|---------------------------|-------------------------------------|
| Strongly Agree            | <input type="checkbox"/>            |
| Agree                     | <input type="checkbox"/>            |
| Neither Agree or Disagree | <input checked="" type="checkbox"/> |
| Disagree                  | <input type="checkbox"/>            |
| Strongly Disagree         | <input type="checkbox"/>            |

16(b) Do you have comments? (please begin with relevant paragraph number)

**We support the English Heritage comments that this needs review, to ensure that the level of protection remains as it is.**

We note that the Government has reassured EH that the intention is not to change heritage policy and that the draft will be re-drafted (letter in the House of Commons Library, 15 September 2011).

## Impact assessment

The Framework is also accompanied by an impact assessment. There are more detailed questions on the assessment that you may wish to answer to help us collect further evidence to inform our final assessment. If you do not wish to answer the detailed questions, you may provide general comments on the assessment in response to the following question:

17a. Is the impact assessment a fair and reasonable representation of the costs, benefits and impacts of introducing the Framework?

1. It is odd that if a development plan requires a SEA, and it is now said that the NPPF becomes the default document when a plan is absent or silent that the NPPF does not itself require a SEA. Having sought to take the place of local plans where necessary (i.e. they are absent, silent or indeterminate), it should not be possible to avoid the purpose behind the SEA requirements.
2. The impact assessment that has been provided is cursory, and relies on generalisation about the likely costs savings. It appears only to assess the impact on procedures, rather than the wider environmental impacts. By the way, the Planning Inspectorate figures for 2010/2011 are now available, and show that appeal levels are about the same, but only 3% of appeals are now inquiries (following the use of their new power to determine procedure).
3. The Impact Assessment misunderstands the NPPF that there is a “requirement for local councils to identify an additional 20 per cent of land in their local plans” – this only applies to on housing land.
  4. The Impact Assessment should assess the consequences that
    - The “Greater flexibility and discretion for local councils, such as that delivered through abolition of the national brownfield development target and national maximum parking standards for major non-residential development,” will lead to greater local variability. It may “remove distortions on development decisions” in terms of national policy, but it will enable local authorities to adopt different, localized distortions.
    - Developers may save time in reading national policy, but will have to spend more time looking at local decision-making and guidance. The net costs are probably the same.
5. The Impact Assessment is wrong in its identification of contradictions – this is the very essence of planning, that a national and local policy will not give a black and white answer and that a balanced judgment is required. The specific example given on page 9 about validation (in a guidance note as opposed to PPS 5) shows that the Assessment was written by someone who cannot distinguish between the different level of detail required. The applicant must provide more detail for a ‘heritage asset’ (as a matter of policy under

PPS 5) than for a general application (as a matter of good practice – the DCLG document is not a PPS)– and if he does not, this will simply delay matters and increase costs.

The assumption on page 17 “More streamlined and simple guidance that removes contradictions may also lead to a reduction in the level of appeals” has no substance.

6. There will still be the need for ‘objectively-assessed’ housing needs to be policed by the Planning Inspectorate – at a similar cost of approximately £1m per year. Moreover, London retains its regionally-imposed targets for each borough, as the London Plan is to be kept.

Local councils will still face “lengthy and costly appeals if their plans were judged to be inconsistent with national policy” but on different points – namely, on 5 years plus 20%, meeting objective needs and on the presumption. The net gain is neutral. Many predict an increase – why should the same development gain permission in LPA ‘A’ and be refused in LPA ‘B’ ? would not the applicant want to test this at appeal ?

## **Planning for Travellers**

18 Do you have views on the consistency of the draft Framework with the draft planning policy for traveller sites, or any other comments about the Government's plans to incorporate planning policy on traveller sites into the final National Planning Policy Framework?

We have not considered the detail of this separate draft policy. It is however notable that it is disproportionately long in comparison with the draft NPPF.