



Reforming Development Guidance: Defra's Smarter Guidance and Data consultation, November/December 2014

Comments submitted through guidanceanddata.defra.gov.uk

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 prepares advice on proposals of governments and regulators covering a range of environmental law topics, with the help of its specialist working parties. This response has been prepared with the help of the nature conservation working party.

Comments on List of Existing Guidance

<http://guidanceanddata.defra.gov.uk/development/list-of-existing-guidance/>

UKELA supports the principle of reforming development guidance to bring greater clarity about what is required and to avoid uncertainty caused by conflicting or overlapping guidance. However, UKELA has concerns that the proposed simplification exercise may go too far, resulting in important guidance either being lost or having doubt cast on its status. The table of existing guidance at <http://guidanceanddata.defra.gov.uk/development/list-of-existing-guidance/> indicates that a large number of documents are to be archived (the red ones) or rewritten and the current version archived (the amber ones). Many of these currently serve as important tools in the planning regime.

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For example, the 'red documents' include 'the National Planning Policy Framework (the NPPF)'. We assume this is an error, and that the document to be archived is in fact the Quick Guide 363_12 (available via the url given). The NPPF is fundamental to the operation of the planning system: any proposal to archive/replace it should be subject to a separate, high profile consultation.

The 'amber documents' include important guidance relating to Contaminated Land Exposure Assessments (CLEAs), Soil Guideline Values (SGVs) and CLR11 Model Procedures. Revising these documents (and the many other amber ones) will require significant resources. It is not apparent from the consultation website whether resources are available for rewriting (bearing in mind government budget cuts), the timeframe for rewriting, at what point the current versions will be archived, and how this will affect their status. There needs to be clarity on these matters, so as avoid uncertainty as to the status of current documents, and ensure that important guidance is not axed without new guidance being in place on the relevant issues.

Comments on Plans for Future Content

(<http://guidanceanddata.defra.gov.uk/reforming-development-guidance/>)

It is not clear from the outlines how far the revised documents will guide on the substantive matters to be considered by regulators when considering development consents, assessments etc. Guidance on such matters including relevant policies and legal tests would assist regulators in taking sound decisions, and developers in preparing their applications and informally assessing the merits prior to committing resources to the various planning processes.

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In terms of engagement with Natural England, we set out here a checklist of questions to be addressed in considering development / assessments etc.

1. Are there statutory protected areas in the vicinity? What are they? (SSSI, Nature Reserve, Ramsar site and /or European site (SPA or SAC))

- The tests afforded to the protection of such sites depends upon the designation and the interest features.
- Note that activities outside a site may impact upon it and therefore need to be addressed.
- The surrounding land may be integral to sustaining the interest features such as providing wildlife corridors/stepping stones etc.
- Each European and Ramsar site will have nature conservation objectives which will provide the basis by which any possible impact may be determined.
- Each SSSI/Nature Reserve will have a management statement or management plan to inform judgements on possible impact
- The key legislation are the Wildlife and Countryside Act 1981 as amended and the Habitats Regulations 2010
- Defra policy guidance on biodiversity sets out government policy.

2. Are there species in the vicinity? If so, what are they? Are they protected under legislation?

- The protection afforded varies from species to species and from legislation to legislation. It may also depend upon the time of year, for example

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disturbance of certain species during the breeding season may only be permitted by means of a licence from Natural England.

- A survey (or more recent survey) of the area to determine the species (and numbers etc.) in the potential area affected may be necessary.
- For European protected species (see Schedules Habitats Regulations 2010) the basis of judgements on the importance of the local species population possibly affected will be provided by the assessment of conservation status for that species set out in the most recent UK report on the implementation of the Habitats Directive (Article 17 report).
- The key legislation are as above but also include the Protection of Badger Act 1992.
- Relevant government policy is also as above.

3. Non-statutory sites (wildlife trust nature reserves or sites of community importance) will also be of local biodiversity importance and will probably host protected species and be important to sustaining nationally important designated sites (see above).

4. Natural England is also the Government's statutory adviser for the protection and management of landscape designations (AONBs). The possible impact on an AONB or the wider landscape will need to be addressed.

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