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## **National Planning Policy Framework Response: suggestions and comments on plans for consolidation**

Environmental Protection UK (EPUK) welcomes the opportunity to respond to the invitation from Planning Minister Greg Clark to organisations and individuals to offer their suggestions on the review and consolidation of the National Planning Policy Framework.

We want to see a National Planning Policy Framework that ensures that sustainable development is central to local and national decision making, and that an equitable planning system is in place that protects the natural environment; reduces carbon emissions; mitigates climate change impact; and promotes a healthy local environment.

### **About Environmental Protection UK**

Environmental Protection UK is a national charity that provides expert policy analysis and advice on air quality, land quality, and noise and their effects on people and communities in terms of a wider range of issues including public health, planning, transport, ecosystem services and energy and climate.

We offer clear and critical analysis of UK government and European Union policy proposals, through a range of high-quality publications and expert-led events, as well as up-to-date regulatory information through Essential Environment, our comprehensive guide to UK and EU environment legislation.

We bring together policy makers, business, local authorities and academics to enable and foster successful partnerships for environmental action, and provide networking opportunities to support the careers of environmental professionals and allow them to share best practice.

Our structure enables us to take a progressive and pragmatic approach to the issues which concern us and, on behalf of our wide and extensive cross-sector membership, to promote integrated and effective policy making which supports sensible and workable solutions to pressing environmental challenges.

Environmental Protection UK works with and for UK national and devolved governments, local authorities, business, academics and the general public, and with relevant EU institutions and NGOs.

### **1. Towards an equitable planning system with sustainable development at its heart?**

Given the scope of EPUK's work outlined above, our comments are the issues raised by the consultation which concern our areas of interest and specialism. We want to see a National Planning Policy Framework that ensures that sustainable development is central to local and national decision making, and that an equitable planning system is in place that protects the natural environment; reduces carbon emissions; mitigates climate change impact; and promotes a healthy local environment.

While the Government's aim to provide a National Planning Policy Framework that will empower local communities, be more user-friendly and ensure that planning is relevant, proportionate and effective is laudable, we believe the following must be taken into account.

### **2. Planning must promote a healthy, sustainable natural and built environment**

The stated commitment to consolidate all existing planning guidance gives us cause for concern. EPUK believes that the Government should keep in place sufficiently detailed and clear guidance that enables communities, developers and regulators to ensure that sustainable development is central to local decision making and that a planning system is in place that protects the natural environment, reduces carbon emissions and mitigates climate change impact; and promotes a healthy local environment. The overarching aim of the planning process, and of this review, must be to facilitate appropriate and sustainable development.

Whilst we accept that there is some room for consolidation and updating of the current body of planning guidance, it is necessary to retain a certain level of detail – particularly if communities, to date inexperienced in engaging in the shaping of their neighbourhoods, are to be empowered to plan their own sustainable, healthy communities. We do not believe there is a need to devote scant resources to producing new guidance when a body of guidance that works is in place. Further, National Policy Statements already consulted on contain reference to existing planning guidance. Are these National Policy Statements to be redrafted before or after they are published? If there is no guidance to refer to, what will the Planning Inspectorate and Ministers base their decisions on?

Appropriate, comprehensive guidance ensures that all parties understand the requirements upon them and promotes good practice – this is particularly critical when it comes to national infrastructure. For example, the Department for Energy and Climate Change has recently commissioned research into the consistency of application of the ETSU-R-97 guidance for assessing the noise impact of wind farms, as recommended in PPS 22. Decisions on wind farm applications are often subject to protracted planning battles and we suggest that the removal of guidance in this case would not be conducive to swifter planning decisions.

It is necessary to ensure potential negative impacts of a development on the aural environment, or a potential impact on air quality, can be assessed and mitigated. Guidance is also crucial in ensuring developers consider land contamination and by doing so protect the health of future site users.

#### **4. Prevention is cheaper than cure**

If decision makers (whether they be communities, local authorities, the Planning Inspectorate or Ministers) are not equipped to adequately assess environmental impacts, the burden will shift from planning to regulatory functions within local authorities. The cost of investigating complaints and mitigating impacts – for example noise nuisance, light pollution and exceedences of air quality standards - will increase. As will the health and societal cost of a poorer quality local environment, along with the risk of damage or loss to our ecosystems services. There may also be cost penalties on businesses tasked with mitigating the impacts of inappropriate or unsafe development down the line. For example, if land contamination is not effectively dealt with prior to development, a worst case scenario is the potential necessity of knocking down a development to remediate the land to make it safe for site users, clearly undesirable and costly.

Further, when it comes to national infrastructure:

“Section 158 of the Planning Act 2008 confers statutory authority for carrying out development consented to by, or doing anything else authorised by, a development consent order. Such authority is conferred only for the purpose of providing a defence in any civil or criminal proceedings for nuisance. This would include a defence for proceedings for nuisances under Part III of the Environmental Protection Act 1990 (statutory nuisance) but only to the extent that the nuisance is the inevitable consequence of what has been authorised. The defence is not intended to extend to proceedings where the matter is “prejudicial to health” and not a nuisance.”<sup>1</sup>

With this in mind, it is essential that decision makers, regulators, developers and communities have access to information and guidance that will enable them to assess potential impacts of projects – whether it be noise, light, dust, air pollutants or any other foreseeable emissions. The planning guidance we have does have a serious purpose in protecting local and wider environmental quality for people and wildlife.

#### **4. Knowledge transfer – nudging the nimby nation**

EPUK agrees that communities have an important role to play in shaping the areas in which they live. Handing power to communities to enable them to do so is a laudable aim. However, we have concerns over the practicalities in achieving a balanced approach to development.

Planners and environmental health practitioners within local authorities have years of knowledge and experience to draw on to ensure that informed and appropriate decisions are taken. Communities will need specialist advice to support them in shaping their own healthy, sustainable communities. Our concerns are compounded in the presumption in the recent consultation on permitted development for schools that promoters of schools will be able to identify and develop schools in practically any building they like, without consulting specialists on health and environmental impacts or indeed neighbouring communities on appropriate conversion of a building for school use or the impact of a school on the surrounding neighbourhood.

#### **5. Social equity in engagement**

Experience shows that uninformed citizens often do not welcome proposed development that they perceive might have a detrimental effect on their neighbourhood – whether it be fear of increased traffic, air pollution or noise, or

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<sup>1</sup> Draft National Waste Water Policy Statement 5.11.1

spoiling their view. Mechanisms must be in place to ensure specialists are engaged alongside communities, to balance real issues of local environmental quality against NIMBY fears.

The ability of the 'Big Society' to engage in public consultations will be influenced by many factors, often beyond the control of the individual. Questions of social equity arise where work and family commitments, as well as individual perceptions of systems of engagement, can be a barrier to involvement. Work will need to be done to engage people beyond the educated affluent, with time on their hands, in local decision making.

## **6. Suggestions**

Current planning regulations, while not perfect, are critical in determining the shape of a healthy and sustainable local communities and while some need updating, they do not need to be swept away wholesale.

### **Planning and Pollution Control**

We include as Appendix A a document recently submitted by EPUK to the Department of Communities and Local Government. This sets out the key elements of Planning Policy Statement 23: Planning and Pollution Control (PPS23). We believe it essential that these elements are retained during this consolidation process.

### **Planning and Noise**

We also believe robust guidance on Planning and Noise is essential – in the form of a long awaited update of the guidance set out in PPG 24. It is essential that our existing quieter areas are protected from noise creep, that communities are protected from intrusive noise, and that all development is considered in the context of the Noise Policy Statement England.

## **7. Contact Us**

If you require any further information on the views expressed in this response please contact:

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## Appendix A –

### EPUK Views on Planning Policy Statement 23 Revision



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17<sup>th</sup> December 2010

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#### Planning Policy Statement 23 Revision

Environmental Protection UK (EPUK) would like to comment on the proposal to slim down Planning Policy Statement 23 (PPS 23).

Whilst we accept that the current document may be too long, we would not wish to see it so reduced that it no longer provides sufficient guidance to both regulators and developers in how to deal with pollution issues through the planning process. The aim of the planning process is to facilitate appropriate development and comprehensive guidance ensures that all parties understand the requirements and promotes consistency of practice - this is facilitated by the current PPS 23. This view is supported by regulators, consultants and developers from within EPUK's membership.

We note that the UK is already in infraction of its legal obligations under the EU Air Quality Directive. The planning process has a large part to play in meeting these obligations. Weakening the planning system's ability to manage pollution effectively risks further infraction of this and of similar requirements and could come at high social, environmental and economic costs for all parties involved.

**There are a number of key features that EPUK would like to see retained or included.** We list the general ones here along with specific points relating to Air Quality and Land Contamination. We also note that prior to the review of the planning system, work was undertaken which was led by Defra to include an annex to PPS 23 on light pollution, therefore we also comment on light.

#### Key points to retain/include:

- Delivery of sustainable development should be the central purpose of the planning system.
- Economic growth means (environmentally) sustainable growth.
- All PPS 1 principles (paragraph 13) should be transferred into the new framework.
- Protection and enhancement of the environment, in particular the quality of the natural environment including climate change adaptation, air pollution,

land contamination, conservation of wildlife and habitats, water quality, flood risk and sea level rise and waste management.

- Prudent use of natural resources, in particular sustainable consumption and production.
- Sustainable development must be integrated into development plans.
- Sustainability Appraisals for Local Development Documents (LDDs) (or equivalent), should not be just the bare minimum required to meet EU Strategic Environmental Assessment (SEA) Directive.
- Requirement for LDDs to take into account cross boundary issues.
- Plans must be based on analysis and evidence, plus the precautionary principle where required.

#### In relation to Planning & Pollution Control:

- Pollution issues must be taken into account as appropriate in planning decisions.
- Planning and pollution control systems should be separate but complementary.
- Planning system to focus on whether the development itself is an acceptable use of the land, rather than the control of processes or emissions themselves.
- Planning authorities should assume the relevant pollution control regime will be properly applied and enforced. They should seek to complement it but not to duplicate it.
- Where pollution issues are likely to arise, informal pre-application discussions should be required to provide opportunity to consider the principle of development and to minimise the potential for conflict and duplication between control regimes.
- Submission of applications for planning permission and pollution control permits should be made in parallel to allow co-ordination of their consideration by the relevant authorities.
- In considering proposals for development, account should be taken of the risks of and from air pollution, land contamination and light pollution, and how these can be managed or, preferably, reduced.

#### Air Quality:

- Where air quality limit values are being met no development which could result in a new breach may be permitted. In addition any development in the vicinity of an area where limit values are exceeded should aim to improve air quality in the area of exceedence.
- Where air quality limit values are currently exceeded but the limit value plus maximum margin of tolerance is met, no development which results in a deterioration in air quality may be permitted and any development should aim to improve air quality.
- Where air quality limit values plus maximum margin of tolerance are exceeded only developments which contribute to improvement in air quality may be permitted.
- All local authority planning departments should be urged to develop Supplementary Planning Document (SPD)/ Supplementary Planning Guidance (SPG) and where AQ limit values are exceeded this should be given a high priority.
- Developers should follow the principles outlined in EPUK's "Development Control - Planning for Air Quality", the Greater London Authority's "London

Best Practice Guidance: The control of dust and emissions from construction and demolition" and the Low Emissions Strategy Partnership's "Good Practice Guide".

#### Contaminated Land:

- Interaction between the contaminated land regime as set out in Part 2A of the Environmental Protection Act 1990 (EPA1990) and the planning process; in particular, maintain the advice regarding remediation statements and their inclusion in Public Registers (see PPS23 Clause 2.16). (This is often overlooked by local authorities who think that entries are only required where a Remediation Notice is served).
- Emphasise developer's responsibility for the delivery of a safe site.
- Provision of links to relevant guidance documents e.g. BS 10175 on site investigation (see 2.45 of PPS23), Environment Agency document Contaminated Land Report 11 (CLR11), Planning Inspectorate model conditions, and Environmental Protection & Planning Guide for Environmental Professionals (October 2010).
- Recommendation for pre-application discussions, enquiries regarding local authority's records of potentially contaminated land sites or pre-acquisition surveys.
- Include requirement to ensure remediation is sustainable.
- Comments on decision making process:
  - Consent to be refused if insufficient information provided or advised to reconsider proposal at informal enquiry stage if remediation is deemed unviable.
  - Consideration of past land uses (from local authority records of potentially contaminated land sites).
  - Guidance for developer on information needed to support application.

The following clauses of PPS23 could be deleted and substituted with references to existing guidance, to avoid duplication:

- 2.35 - 2.41 and Tables 2.1 and 2.2 (See Secretary of State's Statutory Guidance to be published 2011).
- 2.43 - 2.44: Land Condition Records not used widely.
- 2.49: Determining applications (See Secretary of State's Statutory Guidance to be published 2011).
- 2.50: Duplicates Secretary of State's Statutory Guidance.
- 2.53: Planning permission for site investigations e.g. boreholes. This is bureaucratic and unnecessary.

#### Light Pollution

- Planning policy guidance must have regard to the impacts of inappropriate and wasteful lighting in accord with the findings of the Royal Commission on Environmental Protection (RCEP) report on Artificial Light and the Environment (2009).
- Planning policy guidance should enable local authorities to assess the likely ecological and potential nuisance impacts from changes to the amount and quality of artificial light.