



Planning Consultation Proposals on Environment, Climate Change and Biodiversity Net Gain

AUTHOR / KEY CONTACT



Matt Gilks
Partner

✉ matt.gilks@LA-law.com
☎ 023 8082 7462

This blog outlines the proposals for the implementation of environmental aspects of new consultation from the Department for Levelling Up, Housing and Communities to update the National Planning Policy Framework (NPPF) and planning policy more generally in England.

The consultation is entitled [Levelling-up and Regeneration Bill: reforms to national planning policy](#) and you can see earlier commentary on the consultation [here](#) and [here](#) as well as see the detailed text of the planned changes [here](#).

In terms of proposals or future changes to planning policy in so far as environment, climate change and biodiversity net gain are concerned, the main strands of this wide-ranging consultation include:

Biodiversity Net Gain delivery

The Government proposals aim to further embed environmental priorities into planning policy. The consultation describes mandatory Biodiversity Net Gain (BNG) (due November 2023) and Local Nature Recovery Strategies as merely ‘foundations for planning to have a more proactive role in promoting nature’s recovery.’ If the end of mitigation as ‘just enough’ wasn’t already understood by development and land management professionals already, the time to grapple with change is now. The next couple of years will result in an important shift in emphasis. Joining relatively manageable and understood concepts such as mitigation and compensation it is now imperative to grapple with front loading a requirement that a development will demonstrably ensure and “deliver environmental improvement”. The direction of travel moves the BNG agenda from a negotiable local plan policy to a fulcrum of decision-making.

Whether or not the ‘concerns’ identified by the Government about gaming of a BNG baseline are well-founded at all, the Department is proposing changes to nullify the effect of ‘habitat clearances prior to the submission of planning applications, and before the creation of off-site biodiversity enhancements.’ That this is actually something that is happening is a rather confusing assumption, not least because most land managers or farmers

are far more interested and already engaged in land management. As part of its support for the rural economy to achieve the goals of the [25-Year Environment Plan](#) and a 2050 target for net zero emissions, the Government is already promoting Environmental Land Management Schemes (ELMS). These schemes comprise the Sustainable Farming Incentive, as well as Local Nature Recovery and Landscape Recovery schemes: a summary of the schemes is [at this link](#). Any anecdotal reports of a decline in habitat management is likely to be more attributable to the failure of DEFRA to get those schemes up and running than any deliberate failure to manage habitat. Furthermore, given the extensive legal protection already in place for habitat and wildlife, it is spurious to suggest any responsible landowner would deliberately flout those legal protections to enhance their BNG prospects.

Small scale changes

The other strand is support to ensure small-scale changes to ‘enhance biodiversity and support wildlife recovery’. The consideration refers to the National Model Design Code and cites artificial grass as one example of development that is detrimental to biodiversity. Ironically, BNG was conceived in part as a route to deliver small-site enhancements, since it had been acknowledged that across a range of developments, the larger sites delivered net gains but small sites did not provide on-site enhancement. However, the manner in which the proposals are to be implemented permits BNG off-site delivery, thereby once again shifting the delivery mechanisms to larger or collective projects outside the application redline.

Ancient woodland and Local Nature Recovery Strategies (LNRS)

The consultation also signals forthcoming reviews and policy announcements to further explain practical ways in which local authorities deliver LNRS in the planning system, and to enhance the protection of ancient woodlands and veteran trees. Nevertheless, it is important to bear in mind that none of these announcements has resulted in proposed amendments to an update to the NPPF draft that accompanies this consultation. Instead, it appears that further changes will await another full revision of the NPPF later this year. The rather halting ‘drip drip’ of policy initiatives indicates that the requirements of the Environment Act 2021 and Agriculture Act 2020 as far as they impact the planning system remain at best a ‘work in progress’ or at worst an exercise in crystal ball gazing.

Food production as a material consideration

On 13 June 2022 DEFRA published Government Food Strategy. The main focus of the strategy was on food security. There are identifiable changes in the NPPF in so far as strategic food security is concerned, by a proposed change to footnote 58 of the NPPF. There is an additional detail to ensure consideration is given to the relative value of agricultural land for food production, where significant development of higher quality agricultural land is demonstrated to be necessary, compared to areas of poorer quality land. Nevertheless, this doesn’t require any more than the encouragement of local planning authorities to marginally greater consideration of these issues. It doesn’t significantly change the hierarchy of policy priorities in respect of the

use of land for farming. For example, there is no indication of any requirement for developers to undertake anything analogous to the sequential test required for retail development. There is no change, for example, to provide greater policy support in the provision of on-site seasonal worker residential accommodation. Food security and recruiting enough seasonal agricultural workers are both at a premium. This is just one example where the food and farming sector would have greater policy support to facilitate seasonal worker recruitment since accommodation costs are a significant factor in attracting seasonal workers.

Carbon Impact Assessment

The Department has called for evidence of the operation and impact of carbon assessment in response to cementing a more general requirement for assessments in the planning process as a toolkit for development or forming part of plan making. This reflects developing policy on carbon assessment which is exemplified by [London Plan Policy SI 2 Minimising greenhouse gas emissions](#). The Mayoral policy includes a requirement for development proposals referable to the Mayor to calculate and reduce WLC emissions as part of a WLC assessment. It is supported by the GLA's new guidance on Whole Lifecycle Carbon Assessment reporting (March 2022).

Flood risk and climate change adaption

This section effectively asks for new ideas for changing planning policy to meet climate change adaptation goals. The key messages in this section of consultation include:

- Confirmation of an ongoing review about implementing Schedule 3 to the Flood and Water Management Act 2010 concerning Sustainable Drainage Systems (SuDS) to create baseline standards for new sustainable drainage systems as well as making connections to public sewers conditional of approval that the drainage system meets those national standards
- Announcement of an appraisal to explore routes to better coverage and more frequent updates of Strategic Flood Risk Assessments.

Wind power

Significantly, the consultation sends a message that changes to onshore wind turbine policy are likely to come forward in Spring 2023. There is specific [draft wording for changes to Paragraphs 155 and 158 of the NPPF](#). The change is designed to enable the re-powering of renewable and low carbon energy where planning permission is needed, and amendment of a supporting footnote to provide greater policy support for new turbines where the impacts of any development proposal can be made acceptable in planning terms and have community

support.^[1] If adopted the change reverses a policy against onshore wind from 2015 albeit with a challenging requirement to demonstrate community support.

Implementing Energy Efficiency for Heritage Assets

The draft changes to the NPPF include a new paragraph 161 to give significant weight to the adaptation of buildings (heat pumps and solar panels are given as examples) to become energy efficient. The paragraph indicates that decision-makers should not rule out In summary, the paragraph indicates that decision-makers should not rule out that development even if it involves development in conservation areas and of listed buildings.

An inexorable rise in environmental considerations

There is no doubt that these consultation proposals, recent legislative changes and the Levelling-Up and Regeneration Bill (LURB) make it inevitable that developers, landowners and decision makers and their professional advisors make it inevitable that developers, landowners, decision makers and their professional advisors will be unable to take forward development proposals in the planning system without having a firm grip on the related environmental considerations. To do otherwise may result in development proposals faltering because of a lack of attention to factors that can enhance success or ensure outright and unnecessary project failure. can enhance success or if neglected ensure outright and unnecessary project failure

A counterpoint to this analysis is rather more fuzzy proposals in the LURB. Examples include Environmental Outcome Reports to replace the longstanding Environmental Information Regulations process and the imposition of yet-to-be-formulated National Development Plan Policies. These considerations together with further moves to untether domestic legislation from the European legal framework are bound to mean developers need to ensure they are fully conversant with the rapidly changing regulatory landscape.

Deadline for response

Consultation responses may be made until 11.45 pm on Thursday 2 March by responding on the [Citizen Space portal](#) or emailing PlanningPolicyConsultation@levellingup.gov.uk.

[1] Oddly enough the footnote makes reference to identifying areas suitable for onshore wind farm development in supplementary planning documents, which are to be abolished and replaced with 'supplementary plans' in the Levelling Up and Regeneration Bill if it ever becomes law. Plainly, while the Government is planning to abolish SPDs and replace them with independently examined 'supplementary plan' documents in the medium term (arising from the perception that the weight to be given to them is uncertain), they are perceived as having short-term usefulness to enable local planning authorities to be fleet of foot.

Need advice?

Lester Aldridge's [Planning & Environment](#) team advises national and regional developers on all legal aspects of planning. Contact the team at online.enquires@LA-law.com.